



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. A. v Canada Employment Insurance Commission*, 2018 SST 1361

Tribunal File Number: GE-18-2127

BETWEEN:

B. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Angela Ryan Bourgeois

HEARD ON: October 9, 2018

DATE OF DECISION: November 5, 2018

DECISION

[1] The appeal is dismissed. The Appellant is entitled to 17 weeks of regular benefits, as determined by the Canada Employment Insurance Commission (Commission).

OVERVIEW

[2] The Appellant received 17 weeks of regular benefits under the *Employment Insurance Act* (Act). He disagrees with the Commission's determination that 17 is the maximum number of weeks he is entitled to receive. He disputes the number of hours of insurable employment used by the Commission in their determination. He also feels that the Commission failed to consider his personal circumstances.

[3] I must determine the maximum number of weeks of benefits the Appellant is entitled to receive.

ISSUE

[4] What is the maximum number of weeks of regular benefits the Appellant entitled to receive?

ANALYSIS

[5] The relevant legislative provisions are reproduced in the Annex to this decision.

[6] The maximum number of weeks of regular benefits a claimant is entitled to receive is set out in Schedule 1 to the Act, and is based on the unemployment rate where the claimant resides, and the number of hours of insurable employment in the claimant's qualifying period.¹

What is the maximum number of weeks of benefits the Appellant can receive?

[7] The Appellant is entitled to receive a maximum of 17 weeks of regular benefits.

¹ Subsection 12(2) and Schedule 1 of the Act

[8] I agree with the Commission that the Appellant lives in the Kitchener Region, where at the relevant time the regional rate of unemployment was 5.2%. The Appellant did not dispute these facts.

[9] I agree with the Commission that the Appellant's qualifying period is from January 1, 2017, to December 30, 2017. The Appellant did not dispute this.

[10] Based on the only record of employment before me, I agree with the Commission that the Appellant has 956 hours of insurable employment during his qualifying period.

[11] The Appellant argued that he has 994 hours during his qualifying period as shown on his record of employment. I agree with the Appellant that his record of employment shows that he had a total of 994 hours of insurable employment. However, only 956 of those hours were during his qualifying period. The record of employment shows that 38.5 of those insurable hours were before his qualifying period started on January 1, 2017.

[12] According to Schedule 1, when a claimant has between 945 and 970 hours of insurable employment and resides in a region with an unemployment rate of 6% or less, the claimant is entitled to a maximum of 17 weeks of regular benefits. Therefore, because the Appellant lives in a region with an unemployment rate of less than 6%, and has between 945 and 970 hours of insurable employment, he is entitled to a maximum of 17 weeks of regular benefits.

[13] The Appellant argued that Schedule 1 does not take into account his factual situation, and expressed hope that his government would care enough to consider his specific situation. He feels people should not be treated in a general way. He asked me to take into account the likelihood of his employment, the amount he has paid into employment insurance, that he never missed a day's work, his job was hard on his body, he could not continue to work, he continues to receive medical treatment, and he has not put in any fraudulent claims. He asked that I look at him as an individual and take into account that the \$3,600 he received in benefits is a very small amount compared to the amount he earned, and contributed to employment insurance when he worked.

[14] While I appreciate and understand the Appellant's position, and his frustration with the amount he received in benefits, I must follow the law as it is written, and can only consider the factors set out in the legislation.

[15] Applying the relevant facts to Schedule 1, the Appellant is entitled to a maximum of 17 weeks of benefits.

CONCLUSION

[16] The appeal is dismissed.

Angela Ryan Bourgeois
Member, General Division - Employment Insurance Section

HEARD ON:	October 9, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	B. A., Appellant

ANNEX

THE LAW

Employment Insurance Act

12 (1) If a benefit period has been established for a claimant, benefits may be paid to the claimant for each week of unemployment that falls in the benefit period, subject to the maximums established by this section.

(2) Subject to subsections (2.1) to (2.6), the maximum number of weeks for which benefits may be paid in a benefit period because of a reason other than those mentioned in subsection (3) shall be determined in accordance with the table in Schedule I by reference to the regional rate of unemployment that applies to the claimant and the number of hours of insurable employment of the claimant in their qualifying period.

(2.1) Subject to subsection (2.7), the number of weeks of benefits set out in the table in Schedule I that applies in respect of a claimant is deemed to be the number of weeks that would otherwise apply in respect of the claimant, but for this subsection, increased by five weeks if the following conditions are met:

(a) the claimant is not a long-tenured worker;

(b) the claimant's benefit period began during the period beginning on January 4, 2015 and ending on July 8, 2017;

(c) the claimant's ordinary residence at the beginning of the benefit period was in a region referred to in subsection (2.8); and

(d) benefits were paid or payable to the claimant because of a reason mentioned in subsection (2) for at least one week in the benefit period.

(2.2) If subsection (2.1) applies in respect of a claimant whose benefit period is deemed under subsection 10(13.2) not to have ended,

(a) the claimant may, for weeks beginning on or after July 3, 2016, be paid benefits because of a reason mentioned in subsection (2) for no more than the five additional weeks referred to in subsection (2.1); and

(b) the claimant may not be paid those additional five weeks of benefits for any week that began before July 3, 2016.

(2.3) Subject to subsection (2.7), the number of weeks of benefits set out in the table in Schedule I that applies in respect of a claimant is deemed to be the number of weeks that would otherwise apply in respect of the claimant, but for this subsection, increased by 25 weeks if the following conditions are met:

- (a) the claimant is a long-tenured worker;
- (b) the claimant's benefit period began during the period beginning on January 4, 2015 and ending on October 29, 2016;
- (c) the claimant's ordinary residence at the beginning of the benefit period was in a region referred to in subsection (2.8); and
- (d) benefits were paid or payable to the claimant because of a reason mentioned in subsection (2) for at least one week in the benefit period.

(2.4) If subsection (2.3) applies in respect of a claimant whose benefit period is deemed under subsection 10(13.4) not to have ended,

- (a) the claimant may, for weeks beginning on or after July 3, 2016, be paid benefits because of a reason mentioned in subsection (2) for no more than the 25 additional weeks referred to in subsection (2.3); and
- (b) the claimant may not be paid those additional 25 weeks of benefits for any week that began before July 3, 2016.

(2.5) The number of weeks of benefits set out in the table in Schedule I that applies in respect of a claimant is deemed to be the number of weeks that would otherwise apply in respect of the claimant, but for this subsection, increased by 17 weeks if the following conditions are met:

- (a) the claimant is a long-tenured worker;
- (b) the claimant's benefit period began during the period beginning on October 30, 2016 and ending on February 25, 2017;
- (c) the claimant's ordinary residence at the beginning of the benefit period was in a region referred to in subsection (2.8); and
- (d) benefits were paid or payable to the claimant because of a reason mentioned in subsection (2) for at least one week in the benefit period.

(2.6) The number of weeks of benefits set out in the table in Schedule I that applies in respect of a claimant is deemed to be the number of weeks that would otherwise apply in respect of the claimant, but for this subsection, increased by 10 weeks if the following conditions are met:

- (a) the claimant is a long-tenured worker;
- (b) the claimant's benefit period began during the period beginning on February 26, 2017 and ending on July 8, 2017;
- (c) the claimant's ordinary residence at the beginning of the benefit period was in a region referred to in subsection (2.8); and
- (d) benefits were paid or payable to the claimant because of a reason mentioned in

subsection (2) for at least one week in the benefit period.

(2.7) If more than one benefit period in respect of a claimant began before July 3, 2016, subsection (2.1) or (2.3), as the case may be, applies to increase the number of weeks of benefits only in the benefit period that began on the day that is closest to that day.

(2.8) The regions, for the purposes of subsections (2.1) to (2.6), are the following regions described in Schedule I to the *Employment Insurance Regulations*:

- (a)** the region of Northern Ontario described in subsection 2(3) of that Schedule;
- (b)** the region of Sudbury described in subsection 2(14) of that Schedule;
- (c)** the region of Northern Manitoba described in subsection 6(3) of that Schedule;
- (c.1)** the region of Southern Interior British Columbia described in subsection 7(1) of that Schedule;
- (d)** the region of Northern British Columbia described in subsection 7(5) of that Schedule;
- (e)** the region of Saskatoon described in subsection 9(2) of that Schedule;
- (e.1)** the region of Southern Saskatchewan described in subsection 9(3) of that Schedule;
- (f)** the region of Northern Saskatchewan described in subsection 9(4) of that Schedule;
- (g)** the region of Calgary described in subsection 10(1) of that Schedule;
- (g.1)** the region of Edmonton described in subsection 10(2) of that Schedule;
- (h)** the region of Southern Alberta described in subsection 10(3) of that Schedule;
- (i)** the region of Northern Alberta described in subsection 10(4) of that Schedule;
- (j)** the region of Newfoundland/Labrador described in subsection 11(2) of that Schedule;
- (k)** the region of Whitehorse described in subsection 12(1) of that Schedule; and
- (l)** the region of Nunavut described in subsection 14(2) of that Schedule.

(3) The maximum number of weeks for which benefits may be paid in a benefit period

- (a)** because of pregnancy is 15;
- (b)** because the claimant is caring for one or more new-born children of the claimant or one or more children placed with the claimant for the purpose of adoption is 35;
- (c)** because of a prescribed illness, injury or quarantine is 15;

(d) because the claimant is providing care or support to one or more family members described in subsection 23.1(2) is 26; and

(e) because the claimant is providing care or support to one or more critically ill children described in subsection 23.2(1), is 35.

(4) The maximum number of weeks for which benefits may be paid

(a) for a single pregnancy is 15; and

(b) for the care of one or more new-born or adopted children as a result of a single pregnancy or placement is 35.

(4.01) If a claim is made under this Part in respect of a child or children referred to in paragraph (4)(b) and a claim is made under section 152.05 in respect of the same child or children, the maximum number of weeks of benefits payable under this Act in respect of the child or children is 35.

(4.1) Even if more than one claim is made under this Act, at least one of which is made under section 23.1 - or even if more than one certificate is issued for the purposes of this Act, at least one of which is issued for the purposes of section 23.1 - for the same reason and in respect of the same family member, the maximum number of weeks of benefits payable under this Act in respect of that family member is 26 weeks during the period of 52 weeks that begins on the first day of the week referred to in paragraph 23.1(4)(a).

(4.2) If a shorter period is prescribed for the purposes of subsection 23.1(5), then that shorter period applies for the purposes of subsection (4.1).

(4.3) When a shorter period referred to in subsection (4.2) has expired in respect of a family member, no further benefits are payable under section 23.1 in respect of that family member until the minimum prescribed number of weeks has elapsed.

(4.4) Even if more than one claim is made under this Act, at least one of which is made under section 23.2 - or even if more than one certificate is issued for the purposes of this Act, at least one of which is issued for the purposes of section 23.2 - for the same reason and in respect of the same critically ill child, the maximum number of weeks of benefits payable under this Act in respect of that child is 35 weeks during the period of 52 weeks that begins on the first day of the week referred to in paragraph 23.2(3)(a).

(4.5) Even if more than one claim is made under this Act, at least one of which is made under section 23.2 - or even if more than one certificate is issued for the purposes of this Act, at least one of which is issued for the purposes of section 23.2 - for the same reason and in respect of the same children who are critically ill as a result of the same event, the maximum number of weeks of benefits payable under this Act in respect of those children is 35 weeks during the period of 52 weeks that begins on the first day of the week referred to in paragraph 23.2(4)(a).

(5) In a claimant's benefit period, the claimant may combine weeks of benefits to which they are entitled because of a reason mentioned in subsection (3), but the maximum number of combined

weeks is 50. If the benefit period is extended under subsection 10(13), the maximum number of combined weeks equals the maximum number of weeks in the benefit period calculated under subsection 10(15) less two weeks.

(6) In a claimant's benefit period, the claimant may, subject to the applicable maximums, combine weeks of benefits to which the claimant is entitled because of a reason mentioned in subsections (2) and (3), but the total number of weeks of benefits shall not exceed 50 or, if the maximum number of weeks for which benefits may be paid to a claimant because of a reason mentioned in subsection (2) is greater than 45 weeks as a result of the application of any of subsections (2.1), (2.3), (2.5) and (2.6), the number that corresponds to that maximum number of weeks increased by five weeks.

(7) [Repealed, 2000, c. 14, s. 3]

(8) For the purposes of this section, the placement with a major attachment claimant, at the same or substantially the same time, of two or more children for the purpose of adoption is a single placement of a child or children for the purpose of adoption.

8 (1) Subject to subsections (2) to (7), the qualifying period of an insured person is the shorter of

(a) the 52-week period immediately before the beginning of a benefit period under subsection 10(1), and

(b) the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period under subsection 10(1).

(2) A qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission may direct, that throughout the week the person was not employed in insurable employment because the person was

(a) incapable of work because of a prescribed illness, injury, quarantine or pregnancy;

(b) confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the person was being held or any other offence arising out of the same transaction;

(c) receiving assistance under employment benefits; or

(d) receiving payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the person, her unborn child or a child whom she was breast-feeding.

(3) A qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission may direct, that

(a) earnings paid because of the complete severance of their relationship with their former employer have been allocated to weeks in accordance with the regulations; and

(b) the allocation has prevented them from establishing an interruption of earnings.

(4) A qualifying period is further extended by the aggregate of any weeks during an extension for which the person proves, in such manner as the Commission may direct, that

(a) in the case of an extension under subsection (2), the person was not employed in insurable employment because of a reason specified in that subsection; or

(b) in the case of an extension under subsection (3), the person had earnings paid to them because of the complete severance of their relationship with their former employer.

(5) For the purposes of subsections (2) to (4), a week during which the person was in receipt of benefits does not count.

(6) For the purposes of subsection (3) and paragraph (4)(b), a week during which the person was employed in insurable employment does not count.

(7) No extension under any of subsections (2) to (4) may result in a qualifying period of more than 104 weeks.

SCHEDULE I (Subsections 12(2))

Table of Weeks of Benefits

Number of hours of insurable employment in qualifying period	<i>Regional Rate of Unemployment</i>											
	6% and under	More than 6% but not more than 7%	More than 7% but not more than 8%	More than 8% but not more than 9%	More than 9% but not more than 10%	More than 10% but not more than 11%	More than 11% but not more than 12%	More than 12% but not more than 13%	More than 13% but not more than 14%	More than 14% but not more than 15%	More than 15% but not more than 16%	More than 16%
420-454									26	28	30	32
455-489							24	26	28	30	32	32
490-524						23	25	27	29	31	33	33
525-559					21	23	25	27	29	31	33	33
560-594				20	22	24	26	28	30	32	34	34
595-629			18	20	22	24	26	28	30	32	34	34
630-664			17	19	21	23	25	27	29	31	33	35
665-699	15	17	19	21	23	25	27	29	31	33	35	35
700-734	14	16	18	20	22	24	26	28	30	32	34	36
735-769	14	16	18	20	22	24	26	28	30	32	34	36
770-804	15	17	19	21	23	25	27	29	31	33	35	37
805-839	15	17	19	21	23	25	27	29	31	33	35	37
840-874	16	18	20	22	24	26	28	30	32	34	36	38
875-909	16	18	20	22	24	26	28	30	32	34	36	38
910-944	17	19	21	23	25	27	29	31	33	35	37	39
945-979	17	19	21	23	25	27	29	31	33	35	37	39
980-1014	18	20	22	24	26	28	30	32	34	36	38	40
1015-1049	18	20	22	24	26	28	30	32	34	36	38	40
1050-1084	19	21	23	25	27	29	31	33	35	37	39	41
1085-1119	19	21	23	25	27	29	31	33	35	37	39	41
1120-1154	20	22	24	26	28	30	32	34	36	38	40	42
1155-1189	20	22	24	26	28	30	32	34	36	38	40	42

Regional Rate of Unemployment

Number of hours of insurable employment in qualifying period	6% and under	More than 6% but not more than 7%	More than 7% but not more than 8%	More than 8% but not more than 9%	More than 9% but not more than 10%	More than 10% but not more than 11%	More than 11% but not more than 12%	More than 12% but not more than 13%	More than 13% but not more than 14%	More than 14% but not more than 15%	More than 15% but not more than 16%	More than 16%
1190–1224	21	23	25	27	29	31	33	35	37	39	41	43
1225–1259	21	23	25	27	29	31	33	35	37	39	41	43
1260–1294	22	24	26	28	30	32	34	36	38	40	42	44
1295–1329	22	24	26	28	30	32	34	36	38	40	42	44
1330–1364	23	25	27	29	31	33	35	37	39	41	43	45
1365–1399	23	25	27	29	31	33	35	37	39	41	43	45
1400–1434	24	26	28	30	32	34	36	38	40	42	44	45
1435–1469	25	27	29	31	33	35	37	39	41	43	45	45
1470–1504	26	28	30	32	34	36	38	40	42	44	45	45
1505–1539	27	29	31	33	35	37	39	41	43	45	45	45
1540–1574	28	30	32	34	36	38	40	42	44	45	45	45
1575–1609	29	31	33	35	37	39	41	43	45	45	45	45
1610–1644	30	32	34	36	38	40	42	44	45	45	45	45
1645–1679	31	33	35	37	39	41	43	45	45	45	45	45
1680–1714	32	34	36	38	40	42	44	45	45	45	45	45
1715–1749	33	35	37	39	41	43	45	45	45	45	45	45
1750–1784	34	36	38	40	42	44	45	45	45	45	45	45

Regional Rate of Unemployment

Number of hours of insurable employment in qualifying period	6% and under	More than 6% but not more than 7%	More than 7% but not more than 8%	More than 8% but not more than 9%	More than 9% but not more than 10%	More than 10% but not more than 11%	More than 11% but not more than 12%	More than 12% but not more than 13%	More than 13% but not more than 14%	More than 14% but not more than 15%	More than 15% but not more than 16%	More than 16%
1785–1819	35	37	39	41	43	45	45	45	45	45	45	45
1820–	36	38	40	42	44	45	45	45	45	45	45	45