



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *C. L. v Canada Employment Insurance Commission*, 2018 SST 1317

Tribunal File Number: GE-18-1972

BETWEEN:

**C. L.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Catherine Frenette

HEARD ON: November 22, 2018

DATE OF DECISION: November 27, 2018

## **DECISION**

[1] The appeal is dismissed.

## **OVERVIEW**

[2] On February 6, 2017, the Appellant filed an initial claim, and a benefit period was established effective February 5, 2017. The Appellant received 15 weeks of sickness benefits from February 5, 2017, to May 20, 2017. The Appellant then received group wage-loss insurance benefits from May 21, 2017, to January 19, 2018.

[3] On January 19, 2018, the employer eliminated the Appellant's position and terminated her employment effective that date.

[4] On January 26, 2018, the Appellant filed a claim for regular benefits. The Employment Insurance Commission (Commission) informed the Appellant that it could not create a new benefit period because she had not worked since January 30, 2017.

[5] In addition, the Commission informed the Appellant that it could not extend her benefit period beginning February 5, 2017, because the group wage-loss insurance period is not considered for extending a benefit period (section 10(10) of the *Employment Insurance Act* (Act)). The Tribunal must therefore determine whether the Appellant's benefit period can be extended.

## **ISSUE**

[6] Does the Appellant qualify for an extension of her benefit period?

## **ANALYSIS**

### **Does the Appellant qualify for an extension of her benefit period?**

[7] In this case, the benefit period began on February 5, 2017, and ended on February 3, 2018 (sections 10(1) and 10(2) of the Act).

[8] A benefit period may be extended if the claimant proves that, during a number of weeks, they were not entitled to benefits because the claimant was

a) confined in a jail or penitentiary and was not found guilty of the offence for which the claimant was being held;

b) in receipt of earnings paid because of the complete severance of their relationship with their former employer;

c) in receipt of workers' compensation payments for an illness or injury; or

d) in receipt of 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, their unborn child, or a child whom they were breast-feeding (section 10(10) of the Act).

[9] The Appellant testified that she had a period fraught with challenges after she was diagnosed with and had surgery for breast cancer. The Appellant explained that she had to fight the disease and that she worked hard to get better so that she could return to work. Furthermore, two people who were important to the Appellant—her mother and a good friend—died.

[10] Furthermore, when the Appellant asked the employer to return to work gradually, the employer refused. When the Appellant was able to return to work full time, the employer informed her that her position had been eliminated. The news shocked the Appellant because she had worked for the employer for 10 years.

[11] Between January 30, 2017, and January 19, 2018, the Appellant was unable to work because of illness.

[12] According to the Commission, the Appellant had accumulated 1,918 hours of insurable employment during the established qualifying period of February 7, 2016, to February 4, 2017. Moreover, the regional rate of unemployment was 7.4% when the benefit period was established. As a result, the Appellant was entitled to 40 weeks of regular Employment Insurance benefits (section 12(2) of the Act).

[13] The Appellant's representative argued that the Appellant was a member of the labour force according to sections 7(4) and 7(4.1) of the Act because she received wage-loss insurance benefits (GD2-8).

[14] The Appellant's representative also argued that the Appellant had acted in good faith and that she made several attempts to return to the labour market. In addition, the representative mentioned that the Appellant's request for an extension was not unreasonable because the Appellant is a lower-middle-class employee, needs benefits to pay for her home, and had additional expenses because of the illness and her efforts to find employment. Furthermore, the Appellant made personal efforts to rebuild her confidence in herself and return to work.

[15] The Appellant explained to the Tribunal that she feels that she is being punished because of the illness and that this situation is unfair.

[16] In the Commission's view, the benefit period cannot be extended because there are no grounds for the extension.

[17] Despite its sympathy for the Appellant, the Tribunal is of the view that she does not qualify for an extension of the benefit period beginning February 5, 2017.

[18] First, concerning the Appellant's argument that she was a member of the labour force according to section 7(4) and 7(4.1) of the Act, the Tribunal points out that this measure no longer exists as of July 3, 2016, and that it cannot apply to this case.

[19] Next, the conditions for extending a benefit period are clearly defined in section 10(10) of the Act. These conditions do not take into account the fact that the Appellant was unable to work because of illness, so the Tribunal has no authority to deviate from those conditions. The Federal Court of Appeal has actually reminded lower courts that they cannot amend the Act to mitigate its harsh results:

I well understand why the Board and the Umpire were anxious to find in Ms. Knee's favour; rigid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme. However, tempting as it may be in such cases (and this may well be one), adjudicators are permitted neither to re-write legislation nor to interpret it

in a manner that is contrary to its plain meaning (*Canada (Attorney General) v Knee*, 2011 FCA 301).

[20] The Tribunal therefore has no discretion and must apply the Act as it is written. As a result, the Appellant has not proven that she qualifies for an extension of her benefit period (section 10(10) of the Act). The Appellant therefore cannot receive regular benefits because the benefit period ended on February 4, 2017.

## CONCLUSION

[21] The appeal is dismissed.

Catherine Frenette  
Member, General Division – Employment Insurance Section

HEARD ON:	November 22, 2018
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	C. L., Appellant  Louise Roussel, Representative for the Appellant