



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. C. v Canada Employment Insurance Commission*, 2019 SST 890

Tribunal File Number: GE-18-3745

BETWEEN:

D. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Eleni Palantzas

HEARD ON: January 8, 2019

DATE OF DECISION: January 31, 2019

DECISION

[1] The appeal is dismissed. The Claimant is not entitled to receive benefits because the allocation of the separation earnings she received goes beyond her extended benefit period.

OVERVIEW

[2] The Claimant applied for employment insurance regular benefits on July 9, 2018 however, the Canada Employment Insurance Commission (Commission) antedated and established the claim effective September 18, 2016. The Claimant was permanently laid off from her employment due to restructuring. Upon separation, she received a severance package amounting to \$537,852.00. The Commission determined that the total gross amount of the severance package is considered earnings and therefore allocated them to her benefit period from September 18, 2016 to November 24, 2018. Although it also decided to extend her benefit period to the maximum 104 weeks, to September 15, 2018, the allocation prevented payment of any benefits. The Claimant requested that the Commission reconsider its decision arguing that the benefit period should be extended further until she secured employment and the allocation did not appear correct. The Commission however, maintained its decisions. The Claimant appealed to the Social Security Tribunal of Canada (Tribunal).

ISSUES

[3] The Member must decide:

1. Is the Claimant entitled to a benefit period extension beyond the week of September 15, 2018?
2. Were the separation earnings received by the Claimant correctly allocated to her benefit period?

ANALYSIS

[4] The Claimant disagrees with the Commission's decision to deny her benefits while she seeks employment. She expected that her severance package might delay receipt of benefits however; she did not expect that it would precluded her from receiving any benefits. The

Claimant questions both the duration of the benefit period and the allocation of her severance monies.

Issue 1: Is the Claimant entitled to a benefit period extension beyond the week of September 15, 2018?

[5] No. The Commission has provided the maximum allowable benefit period extension of 52 weeks up to the week of September 15, 2018. The Claimant is not entitled to a further extension because her benefit period cannot be more than 104 weeks (subsection 10(14) of the *Employment Insurance Act* (EI Act)).

[6] A benefit period can be extended by the total number of weeks that a claimant proves to the Commission that he/she was not entitled to benefits during her benefit period because of one of the reasons in subsection 10(10) of the EI Act. In this case, the Commission granted the Claimant an extension of 52 weeks because she was in receipt of earnings paid because of the complete severance of her relationship with her former employer (paragraph 10(10)(b) of the EI Act).

[7] The Claimant submitted that she should be granted an extension of her benefit period until she secured employment. The allocation of her severance monies did not allow for payment of benefits so the benefit period should be extended beyond the allocation.

[8] The Member understands the Claimant's argument that the allocation of her separation earnings to her benefit period was more than 52 weeks (see below). However, the legislation provides that a benefit period cannot be extended by more than 52 weeks. That is, when an extension is granted, the resultant benefit period must not be more than 104 weeks (subsection 10(14) of the EI Act). In her case, the extended benefit period was correctly determined to be the maximum 104 weeks, from September 18, 2016 to September 15, 2018.

[9] The Member finds therefore that the Claimant's benefit period was extended by the maximum allowable weeks and cannot be extended beyond September 15, 2018.

Issue 2: Were the separation earnings received by the Claimant correctly allocated to her

benefit period?

[10] Yes, the severance monies that the Claimant received are all considered earnings because they were paid to the Claimant by reason of a separation from her employment. They were therefore correctly allocated to her benefit period beginning the week of separation on September 16, 2016 and ending on November 24, 2018.

[11] In many cases, and for various reasons, a claimant may receive monies that were paid or were payable when they were also in receipt of employment insurance benefits. The Commission must decide whether these monies are considered “earnings” and, if so, to which weeks the earnings should be allocated. The *Employment Insurance Regulations* (Regulations) provide direction as to what monies are considered “earnings” (section 35) and how these earnings are to be allocated (section 36).

[12] The onus is on the Claimant to establish that the monies she received upon separation amount to something other than earnings within the meaning of the EI Act and its Regulations (Bourgeois 2004, FCA 117).

[13] The Claimant does not dispute that the separation monies she received are earnings. The Claimant confirmed at the hearing that she received a total of \$537,852.00 which consisted of \$51,981.08 as vacation pay, \$387,551.00 as severance pay, \$26,154.00 as pay in lieu of notice, \$55,854.00 as separation or retirement bonus and \$16,312.00 as a closure bonus. The Claimant testified that the closure bonus is a performance bonus that is paid out to her every year had she remained employed until December. It was paid out to her because of the severance of her employment.

[14] The Member finds that all the monies the Claimant received, totalling \$537,852.00 are earnings because they were paid to her by reason of a separation from employment (subsection 35(2) of the Regulations). They must therefore be allocated to her benefit period beginning the week of separation, regardless of when the earnings are purported to be paid or payable. The earnings must be allocated in an amount equal to the Claimant’s average weekly earnings, beginning with the week of the separation (subsection 36(9) of the Regulations). The Claimant confirmed that her average weekly earnings are \$4735.85.

[15] The Claimant thought that the allocation of her separation earnings should have ended in June 2018 (94 weeks), not the week of November 17, 2018.

[16] The Member finds however, that the Commission correctly allocated the total gross amount of \$537,852.00 to the weeks beginning September 18, 2016 through to November 24, 2018 (about 113 weeks, not 94 weeks) at a rate equal to her normal weekly earnings of \$4,735.85. An amount of \$2,701 was correctly allocated to the final week of November 18, 2018.

[17] The Member understands and is sympathetic to the fact that the Claimant cannot be paid benefits during her benefit period that ended on September 15, 2018. The Commission and the Tribunal however, are obligated to apply the legislation as it is intended and written. This is not a matter where the Tribunal can exercise discretion.

CONCLUSION

[18] The appeal regarding the benefit period extension is dismissed.

[19] The appeal regarding the allocation of earnings is dismissed.

Eleni Palantzas

Member, General Division - Employment Insurance Section

HEARD ON:	January 8, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. C., Appellant