



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *D. F. v Canada Employment Insurance Commission*, 2019 SST 156

Tribunal File Number: AD-18-551

BETWEEN:

D. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: February 21, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, D. F. (Claimant), maintains that her claim for benefits should be extended to December 30, 2017, instead of September 30, 2017, and that, as a result, she should have 16 weeks of benefits remaining. The Canada Employment Insurance Commission is of the opinion that the end date for the claim for benefits is indeed September 30, 2017, because the allocation of the Claimant's earnings did not prevent the payment of Employment Insurance benefits and therefore did not allow for the extension of the benefit period.

[3] The General Division found that no reason under section 10 of the *Employment Insurance Act* (EI Act) allowed for the extension of the Claimant's benefit period and that it should have ended after 52 weeks on September 30, 2017.

[4] The Tribunal granted leave to appeal. The Claimant argues that the General Division erred in law in its interpretation of section 10 of the EI Act.

[5] The Tribunal dismisses the Claimant's appeal.

ISSUE

[6] Did the General Division err in law in its interpretation of section 10 of the EI Act in finding that wage-loss insurance payments do not allow the extension of the benefit period?

ANALYSIS

Appeal Division's Mandate

[7] The Federal Court of Appeal has determined that the Appeal Division's mandate is limited to the one conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).¹

[8] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[9] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, or based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

Issue: Did the General Division err in law in its interpretation of section 10 of the EI Act in finding that wage-loss insurance payments do not allow the extension of the benefit period?

[10] In support of her application for leave to appeal, the Claimant argues that the General Division erred in law in its interpretation of section 10 of the EI Act. She argues that section 10(10)(c) of the EI Act specifies that the benefit period may be extended if a claimant is receiving workers' compensation payments for an illness or injury.

[11] The evidence shows that the claimant was placed on leave from work because of illness and that she received wage-loss insurance payments from her insurer for the period from October 2, 2016, to April 30, 2017. However, she did not apply to the Commission des normes, de l'équité, de la santé et de la sécurité du travail.

[12] The Claimant submits that the benefits that her insurer paid her represent workers' compensation paid for an illness and that section 10(10)(c) of the EI Act must be applied.

¹ *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

[13] Section 10(10)(c) of the EI Act is worded as follows:

Extension of benefit period

(10) A claimant's benefit period is extended by the aggregate of any weeks during the benefit period for which the claimant proves, in such manner as the Commission may direct, that the claimant was not entitled to benefits because the claimant was

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

[14] Unfortunately for the Claimant, it is well-established case law that wage-loss insurance payments do not constitute workers' compensation payments for an illness or injury within the meaning of section 10(10)(c) of the EI Act.²

[15] As the General Division decided, because there is no reason to allow the extension of the Claimant's benefit period, the benefit period therefore has a maximum duration of 52 weeks. Since the application for Employment Insurance benefits was established on October 2, 2016, it ended on September 30, 2017.

² CUB 79787, CUB 78389, CUB 67513, CUB 57593, 56235, CUB 27889, and CUB 14652.

CONCLUSION

[16] For the reasons stated above, the Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

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| HEARD ON: | January 31, 2019 |
| METHOD OF PROCEEDING: | Teleconference |
| APPEARANCES: | D. F., Appellant Manon Richardson, Representative for the Respondent |