



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. F. v Canada Employment Insurance Commission*, 2019 SST 262

Tribunal File Number: GE-19-156

BETWEEN:

H. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Gary Conrad

HEARD ON: February 25, 2019

DATE OF DECISION: February 28, 2019

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant filed an initial application for Employment Insurance (EI) benefits with a benefit period commencing April 1, 2012. The Appellant's benefit period ended before he could collect all the weeks of benefits to which he was entitled. The Appellant filed a request for reconsideration as he feels he is entitled to additional benefits within his benefit period which commenced April 1, 2012. After reviewing his request, the Canada Employment Insurance Commission (Commission) determined that the Appellant had received all the weeks of benefits to which he was entitled in his benefit period commencing April 1, 2012.

ISSUE

[3] Is the Appellant entitled to additional weeks of benefits or an extension of his benefit period?

ANALYSIS

Is the Appellant entitled to additional weeks of benefits or an extension of his benefit period?

[4] No, the Appellant is not entitled to additional weeks of benefits as his weeks of entitlement were correctly calculated using Schedule 1 of the *Employment Insurance Act* (Act) for regular benefits and paragraph 12(3)(c) of the Act for his sickness benefits.

[5] The Tribunal further finds that while the Appellant was unfortunately unable to collect all the weeks of benefits to which he was entitled before his benefit period ended, he is not entitled to an extension of his benefit period, beyond that already granted for the allocation of severance pay, as the Appellant has not provided evidence to support any of the possible reasons for granting an extension of a benefit period listed in subsection 10(10) of the Act.

[6] The Commission submitted that subsection 12(2) of the Act establishes the maximum number of weeks for which EI benefits may be paid in a benefit period, based on the number of insurable employment hours accumulated in the qualifying period and the applicable regional rate of unemployment.

[7] The Commission submitted that the Appellant has not shown any basis for his claim that he is entitled to receive 48 weeks of benefits in his claim. The Commission submitted that the Appellant may have wished the additional weeks to be paid to him during an extension of the benefit period; however, there had been an existing overpayment and the monies were applied to that debt. The benefit period ended after those weeks were applied to the overpayment, so no further benefits were payable.

[8] The Appellant testified that he should get 52 weeks of benefits as he was told by the Commission that this is the maximum that someone could be entitled to and that the Commission has discretion on how many weeks of benefits they award. The Appellant argues that the Commission should have used its discretion to grant him 52 weeks of benefits rather than stopping his benefits in March 2013.

[9] The Appellant testified that while he did not disagree with the information used by the Commission to determine the weeks of benefits he was entitled to in accordance with Schedule 1 of the Act, the Commission has discretion to determine the amount of weeks of a benefit period and he should have gotten the maximum of 52. The Appellant also testified that he did not get all the weeks of benefits that the Commission said he was entitled to if you used their numbers from Schedule 1 of the Act.

[10] The Appellant testified that he agreed with the payment information supplied by the Commission regarding his benefits.

[11] The Appellant testified that the issue came about due to the allocation of his severance payment, and in his mind, although he got sickness benefits, his benefit period only started on December 2, 2012, and ended prematurely in March 2013 as it should have ran until December 2013.

[12] The Appellant testified that during the time he was dealing with the severance pay issue from his employer he was dealing with depression and he thought that the Commission would rule in his favour and allow him the maximum amount of benefits he could get.

[13] A benefit period begins on the later of the Sunday of the week in which the interruption of earnings occurs, and the Sunday of the week in which the initial claim for benefits is made (subsection 10(1) of the Act). The Tribunal finds that in the case of the Appellant his benefit period started on April 1, 2012, as his application for sickness benefits occurred later than his interruption of earnings as his final day for which he was paid was March 30, 2012, as per his Record of Employment.

[14] Except as otherwise provided in subsection (10) to (15) and section 24 of the Act, the length of a benefit period is 52 weeks (subsection 10(2) of the Act).

[15] 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 in receipt of earnings paid because of the complete severance of their relationship with their former employer (paragraph 10(10)(b) of the Act).

[16] The Tribunal notes that the Appellant argued that his benefit period should really only start on December 2, 2012, but finds that as per the legislation the benefit period started on April 1, 2012. The Tribunal finds that, contrary to the claim of the Appellant, his benefit period did not commence just when he started receiving regular benefits. Rather, it commenced when he started receiving sickness benefits and continued to run during a number of weeks required for the allocation of severance pay.

[17] The Tribunal finds that the Appellant's benefit period, starting April 1, 2012, was correctly extended by 18 weeks pursuant to paragraph 10(10)(b) of the Act, as that was the number of weeks during which the severance pay was allocated.

[18] The Tribunal finds that the Appellant collected sickness benefits for the period of April 1, 2012, to June 23, 2012, as per the payment information provided by the Commission, and notes that the Appellant did not dispute the payment information provided by the Commission.

[19] The Tribunal finds that as per the payment information provided by the Commission for the period of June 24, 2012, to August 4, 2012, the Appellant reported earnings that resulted in him not being entitled to be paid any benefits.

[20] The Tribunal finds that as per the payment information provided by the Commission, and the letter from the Appellant's lawyer dated March 13, 2015, the Appellant received a settlement from his employer of \$17,535.00. The Tribunal finds that as per the payment information provided by the Commission these monies were allocated at the Appellant's gross normal weekly earnings for the period of July 29, 2012, to December 1, 2012, a total of 18 weeks, during which time the Appellant was not entitled to be paid benefits but this allocation nevertheless triggered an 18 weeks extension of the benefit period, as discussed above.

[21] The Tribunal notes that the maximum number of weeks for which benefits may be paid in a benefit period shall be determined in accordance with the table in Schedule 1 by reference to the regional rate of unemployment that applied to the claimant and the number of hours of insurable employment of the claimant in their qualifying period (subsection 12(2) of the Act).

[22] The Tribunal accepts the information provided by the Commission in calculating the weeks of benefits to which the Appellant was entitled in his benefit period, and notes the Appellant did not dispute the information used by the Commission in their determination of his weeks of benefits per Schedule 1 of the Act.

[23] In looking at the information contained in Schedule 1 of the Act with the maximum hours of insurable employment in his qualifying period of 1820, in a region with an unemployment rate of under 6%, the Appellant was entitled to 36 weeks of benefits.

[24] For clarity, a benefit period of 52 weeks, plus the 18 weeks extension, is not the same as the amount of weeks to which the Appellant is entitled. The benefit period is the time period during which the Appellant can collect all of the weeks of benefits he is entitled to under Schedule 1. Having an extended benefit period of 70 weeks, in the case of the Appellant, does not mean the Appellant is entitled to 70 weeks of benefits. It only means that he has 70 weeks in which to collect all the benefits to which he is entitled.

[25] The maximum number of weeks of benefits to which the Appellant is entitled are prescribed in the legislation in paragraph 12(3)(c) in the case of sickness benefits and in Schedule 1 of the Act for regular benefits; which in the case of the Appellant is 15 weeks of sickness benefits, and 36 weeks of regular benefits.

[26] The Tribunal finds that in the case of the Appellant, he did not collect 15 weeks of sickness benefits or, 36 weeks of regular benefits, as per the payment information supplied by the Commission; however, that does not mean he is entitled to receive more weeks of benefits or an extension of his benefit period in order to collect the weeks of benefits he is entitled to. In the case of the Appellant, there were circumstances, such as a disentanglement for being outside of the country, that prevented him from collecting all the weeks to which he was entitled during the span of his already extended benefit period.

[27] Further, the Tribunal finds that the Appellant does not qualify for any further extensions of his benefits period, as the Appellant has not provided evidence to support any of the possible reasons for granting an extension of a benefit period listed in subsection 10(10) of the Act.

[28] The fact that the Appellant was not able to collect all the weeks of benefits he was entitled to within his benefit period due to the application of other sections of the legislation does not entitle him to an extension to his benefit period. The Tribunal finds that the Appellant's benefit period was correctly calculated, and he is not entitled to any other extension. While he did not manage to collect all the weeks of benefits he was entitled to, he collected the maximum amount of benefits that he could, given his circumstances, within his benefit period. Therefore, he is not entitled to be paid any more weeks of benefits as weeks of benefits are only payable within a benefit period.

[29] The Tribunal has sympathy for the Appellant's situation and understands his frustration of not being able to collect all the weeks of benefits he was entitled to within his qualifying period; however the Tribunal is 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)

CONCLUSION

[30] The appeal is dismissed. The Tribunal finds that the Appellant is not entitled to additional weeks of benefits as his weeks of entitlement were correctly calculated using Schedule 1 of the Act for regular benefits and section 12(3)(c) for his sickness benefits.

[31] The Tribunal further finds that while the Appellant was unfortunately unable to collect all the weeks of benefits to which he was entitled before his benefit period ended, he is not entitled to an extension of his benefit period, beyond that already granted for the allocation of severance pay. Finally, no evidence was presented to support any other reason to grant an extension of a benefit period found in subsection 10(10) of the Act.

Gary Conrad

Member, General Division - Employment Insurance Section

HEARD ON:	February 25, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	H. F., Appellant