



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. C. v Canada Employment Insurance Commission*, 2019 SST 265

Tribunal File Number: GE-19-720

BETWEEN:

D. C.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: February 26, 2019

DATE OF DECISION: February 28, 2019

DECISION

[1] The appeal is dismissed. The Claimant does not meet the regulatory requirements to be entitled to be paid increased weeks of regular employment insurance benefits as a seasonal worker.

OVERVIEW

[2] The Claimant works in seasonal employment. She established a benefit period and requested that she receive five additional weeks of benefits under a recently implemented pilot project meant to increase the weeks of benefits for seasonal workers in her area. The Canada Employment Insurance Commission (Commission) determined she was not qualified to receive these increased weeks because she did not meet the necessary regulatory criteria. The Claimant requested a reconsideration of this decision on the basis that she is a seasonal worker and does not meet the criteria only because she established her claim later in the past two years due to a worker's compensation claim. The Commission maintained its decision and the Claimant now appeals to the Social Security Tribunal.

ISSUE

[3] Is the Claimant entitled to be paid increased weeks of regular benefits on the basis of a pilot project meant to increase the weeks of benefits for seasonal workers?

ANALYSIS

[4] A claimant who meets the criteria listed in Pilot Project Number 21 can receive increased weeks of benefits.¹ To receive increased weeks a claimant must reside in a specified region, must have established a benefit period on or after August 5, 2018 (which I will refer to as the "anchor claim"), and must have established at least three benefit periods in the past five years in which they were paid regular benefits. Additionally, two of those three benefit periods must have been established around the same time of year as the anchor claim to meet regulatory seasonal criteria.

¹ Employment Insurance Regulations, subsection 77.992(1).

In other words, they must have been established within 8 weeks before or after the start date of the anchor claim in any of the preceding five years.²

[5] It is not in dispute the Claimant works in typically seasonal employment. The Claimant testified that she usually works from April to August of each year, though the closing date of her employment may vary due to the nature of the industry.

[6] It is also not in dispute that the Claimant does not meet the criteria for the increased weeks of benefits under Pilot Project 21. Both parties agree that the Claimant resides in Eastern Nova Scotia, a region specified for inclusion in the pilot project,³ and that she established a benefit period on August 5, 2018, which constitutes her anchor claim. Further, the Claimant has had three benefit periods in the five years preceding this anchor claim. However, the Claimant agrees that she does not meet the qualifying condition of having two of those three benefit periods established around the same time of year as the anchor claim.

[7] In the past five years, the Claimant established claims for benefits on August 5, 2018, July 16, 2017, January 17, 2016, January 18, 2015, and January 19, 2014.

[8] The Commission submits that only the Claimant's benefit period established in July 2017 meets the qualifying condition of being within the 16 week period surrounding the start date of her anchor claim. The Claimant acknowledges that she does not meet this condition, but states that it was for reasons outside of her control. She testified that she typically makes her initial claim for employment insurance benefits in January of each year, as that coincides with the time that her previous year's claim expires. However, in 2017, she states that she was on a worker's compensation claim which prevented her from making her claim for regular employment insurance benefits at her normal time. As a result, she made her initial claim for employment insurance benefits in July 2017, after her worker's compensation ended. The following year, she made her initial claim for benefits in August 2018, as her previous year's claim had expired by that time.

² Employment Insurance Regulations, subsection 77.992(2).

³ Employment Insurance Regulations, Schedule II.92.

[9] The Commission submits the Claimant was not prevented from establishing a claim for employment insurance benefits while receiving worker's compensation. The Claimant responded at the hearing that she was not aware that she could claim both benefits at the same time, and if she had been aware of the impact it would have on her ability to access the increased weeks of benefits for seasonal workers, then she would have made her initial claim in January, as normal.

[10] I acknowledge the Claimant's argument that, as a seasonal worker, she is among the intended beneficiaries of this pilot project, and that to deny her the increased weeks of benefits based on atypical claim dates in the past two years is unfair. I accept that the Claimant is a seasonal worker; however, I recognize that she must meet specific regulatory conditions to be entitled to the increased weeks of benefits under the pilot project. The Claimant does not meet these conditions.

[11] The Claimant's anchor claim was established on August 5, 2018, and she had four benefit periods in which she was paid regular benefits in the five years preceding the anchor claim. The Commission is correct in its determination that her claim on July 16, 2017, is the only benefit period which was established around the same time of year as her anchor claim. The previous benefit periods were established in January of each year, which is outside of the time period allowed for consideration. Based on these factors, the Claimant does not meet the regulatory requirements to be entitled to the increased weeks of benefits allowed by Pilot Project Number 21.

[12] I sympathize with the Claimant's circumstances, but I am bound by the requirements of the law and *Employment Insurance Regulations* and have no jurisdiction to change it nor to interpret it in a manner that is contrary to its plain meaning, even in the interest of compassion.⁴

CONCLUSION

[13] The appeal is dismissed.

Catherine Shaw
Member, General Division - Employment Insurance Section

⁴ *Canada (Attorney General) v. Knee*, 2011 FCA 301.

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| HEARD ON: | February 26, 2019 |
| METHOD OF PROCEEDING: | Teleconference |
| APPEARANCES: | D. C., Appellant/Claimant |