



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. H. v Canada Employment Insurance Commission*, 2019 SST 880

Tribunal File Number: GE-19-1640

BETWEEN:

M. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Charlotte McQuade

HEARD ON: May 10, 2019

DATE OF DECISION: May 14, 2019

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant was employed as a teacher at a X school from August 16, 2017 to June 28, 2018 at which time she was laid off. She applied for regular Employment Insurance (EI) benefits on July 8, 2018. After serving a one-week waiting period, the Appellant was paid regular benefits from July 1, 2018 to August 25, 2018. The Appellant returned to work on August 27, 2018 until November 30, 2018, at which point she went off on maternity leave. She had accumulated 280 hours of insurable employment during this period. The Appellant gave birth on December 7, 2018 and filed a renewal application for maternity/parental benefits on January 3, 2019. Her claim was renewed effective December 2, 2018. The Appellant received 15 weeks of maternity weeks from December 2, 2018 to March 16, 2019. Her parental benefits began March 17, 2019. The Respondent informed the Appellant that she would be unable to receive the maximum 35 weeks of parental benefits, as her benefit period was to terminate on June 29, 2019.

[3] The Appellant seeks to receive the full amount of parental benefits either through an extension of her benefit period or the cancellation of the benefit period that began July 1, 2018 or the ending of that benefit period and the establishment of a new benefit period from the date her renewal application for maternity benefits was made effective. The Respondent argues that the Appellant does not satisfy the conditions for an extension of her benefit period, the cancellation or ending of the benefit period, which began on July 1, 2018.

PRELIMINARY ISSUE

[4] The Appellant's spouse, S. H., testified as a witness.

ISSUES

[5] Issue 1: Can the Appellant's benefit period be extended past June 29, 2019?

[6] Issue 2: Is the Appellant entitled to receive parental benefits past June 29, 2019?

[7] Issue 3: Can the Appellant cancel the benefit period that began on July 1, 2018 or establish a new benefit period to enable her to collect the potential maximum 35 weeks of parental benefits?

ANALYSIS

Issue 1: Can the Appellant's benefit period be extended past June 29, 2019?

[8] No. The Appellant's benefit period cannot be extended beyond June 29, 2019. The Appellant's benefit period was established effective July 1, 2018 and is 52 weeks in length. The Appellant does not meet any of the potential grounds for extension of the benefit period so her benefit period will end on June 29, 2019.

[9] A benefit period begins on the later of (a) the Sunday of the week in which the interruption of earnings occurs and (b) the Sunday of the week in which the initial claim for benefits is made. ¹The length of a benefit period is 52 weeks. ² A benefit period can be extended in certain circumstances. ³

[10] An extension can be granted for the aggregate number of weeks during the benefit period where a claimant proves that the claimant was not entitled to benefits due to the following reasons:

1. confinement in a prison or similar institution and found not guilty of the offence for which being held;
2. in receipt of earnings paid by reason of the complete severance of the relationship with the former employer;
3. in receipt of workers compensation payments for an illness or injury;

¹ Subsection 10(1) of the *Employment Insurance Act* (Act)

² Subsection 10(2) of the Act

³ Subsections 10(10) to 10(13.02) of the Act

4. in receipt of payments under a provincial law for the preventative withdrawal of work on the basis of having ceased work because continuing work would have resulted in a danger to the claimant, her unborn child or a child whom she was breast-feeding. ⁴

[11] A benefit period can also be extended by the number of weeks during which a newborn child is hospitalized within 52 weeks after the week in which the child is born. ⁵

[12] The Appellant testified that was employed as a teacher at a X school from August 16, 2017 to June 28, 2018. She was laid off due to renovation by the employer. The Appellant applied for regular benefits on July 8, 2018. The Appellant confirmed that the benefit payment history as provided by the Respondent ⁶ was correct. She served a waiting period from July 1, 2018 to July 7, 2018 and then was paid regular benefits from July 8, 2018 to August 25, 2018. The Appellant testified that she returned to work on August 27, 2018 until November 30, 2018, at which point she went off on maternity leave. The Appellant confirmed she gave birth on December 7, 2018 and made a renewal application for maternity/parental benefits on January 3, 2019. She received 15 weeks of maternity weeks from December 2, 2018 to March 16, 2019. The Appellant testified that her parental benefits began March 17, 2019 but due to the ending of the benefit period on June 29, 2019, she will not receive the full potential 35 weeks of parental benefits.

[13] The Appellant testified that, at the time she was laid off on June 28, 2018, she was pregnant. She applied for regular EI benefits, as she had no work. However, she had no idea that collecting the regular benefits would later affect her claim for parental benefits. The Appellant explained that there is no human resources department where she works. She works for a very small private school. The owner of the school did not advise her nor did the Respondent advise her or bring to her attention that collecting the regular benefits was going to negatively impact her subsequent claim for parental benefits. She testified that she was not asked if she was pregnant when applying for regular benefits and even the Respondent's online information separates the information provided about regular benefits from the information provided about maternity/parental benefits. The Appellant explained she was shocked to learn

⁴ Subsection 10(10) and 10(11) of the Act

⁵ Subsection 10(12) of the Act

⁶ GD3-35

the collection of the regular benefits would impact her claim for parental benefits. The Appellant confirmed that she did not investigate this information herself, as there was nothing to suggest to her when she applied for regular benefits that she was going to have this problem. She did not even receive a letter from the Respondent after applying for regular benefits. The Appellant testified that she would never have applied for the regular benefits had she known this problem was going to arise.

[14] The Appellant testified that she was advised by her doctor to either stay off work or work only part-time due to complications with her pregnancy. She chose to work part-time from August 27, 2018. She explained that at the time she went off on maternity leave and sought maternity benefits, she had not accumulated sufficient hours of insurable employment to establish a new claim for benefits and she would not have had sufficient hours even if she had worked full-time. The Appellant testified that she is willing to pay back the regular benefits she received if it will allow her to receive the full parental benefits. She asks that discretion be exercised, given the circumstances that she was unaware of the impact of collecting regular benefits and was not provided with any information from her employer or the Respondent of that potential impact. She related that she is seeking the funds to care for her children. The Appellant confirmed in her testimony that none of the circumstances as set out in paragraph 10 above was present during her benefit period and her newborn was not hospitalized at any point subsequent to the birth.

[15] The Appellant's spouse testified that they have an older child and they assumed that the parental benefits would be paid without issue as happened with their older child. He emphasized the small size of the school the Appellant works at and that she was not provided with any information that alerted her to the potential impact that collecting regular benefits would have on her claim for parental benefits. He explained that it was an honest mistake and the financial loss from this error amounts to \$6500.00. He asserts that their case is special and that the Tribunal is in place to remedy these types of situations.

[16] I find the Respondent correctly determined the Appellant's benefit period to begin on July 1, 2018 pursuant to subsection 10(1) of the Act. The Appellant's interruption of earnings was on June 28, 2018. She applied for regular EI benefits on July 8, 2018, after her interruption

of earnings. The Sunday of that week is July 1, 2018. Absent any extension, I find the Appellant's benefit period begins on July 1, 2018 and is 52 weeks in length to June 29, 2019.⁷

[17] I find the Appellant does not qualify for an extension to her benefit period. The Appellant confirmed in her testimony that none of the circumstances as set out in subsections 10(10) or 10(11) of the Act occurred. I find also that the Appellant is not entitled to an extension pursuant to subsection 10(12) of the Act as her child was not hospitalized subsequent to the birth.

[18] I have considered whether the Appellant qualifies for an extension under subsections 10(13) or 10(13.01) of the Act. I find the Appellant does not satisfy the conditions of these provisions for an extension, as they require that no regular benefits to have been paid to a claimant during their benefit period. The Appellant confirmed in her testimony that she received regular benefits from July 1, 2018 to August 25, 2018.

[19] I find that the Appellant also does not qualify for an extension pursuant to subsection 10(13.02) of the Act. This section relates to an extension of a benefit period, where a benefit period has been established under paragraph 12(3)(b)(ii) of the Act (election for extended parental benefits of 61 weeks). This provision does not apply as the Appellant made an election for the standard 35 weeks of parental benefits on her renewal application.⁸

[20] I find there is no evidence upon which the Appellant's benefit period can be extended. As such, I find the Respondent has correctly determined the Appellant's benefit period to be from July 1, 2018 to June 29, 2019.

Issue 2: Is the Appellant entitled to receive parental benefits past June 29, 2019?

[21] When an insured person who qualifies for benefits makes an initial claim for benefits, a benefit period is established and, once it is established, benefits are payable to the person "for each week of unemployment that falls in the benefit period"⁹

⁷ Subsection 10(2) of the Act

⁸ GD3-21

⁹ Section 9 of the Act

[22] If a benefit period has been established for a claimant, benefits may be paid to the claimant for each week of unemployment that falls in the benefit period, subject to maximums established by section 12 of the Act.¹⁰ The maximum number of weeks of maternity benefits is 15 weeks, and the maximum number of weeks of parental benefits in a benefit period is 35 weeks or 61 weeks, as elected by the claimant.¹¹

[23] I find that the Appellant is not entitled to receive parental benefits past the expiry of her benefit period on June 29, 2019. Because her benefit period terminates on June 29, 2019, she will not be paid the potential maximum 35 weeks of parental benefits by the time it expires. However, the benefit period will end on June 29, 2019, regardless of how many weeks of benefits have been paid. The Appellant cannot be paid benefits for weeks of unemployment that fall outside the benefit period.¹²

Issue 2: Can the Appellant cancel the benefit period that began on July 1, 2018 or establish a new benefit period to enable her to collect the potential maximum 35 weeks of parental benefits?

[24] No. The Appellant cannot cancel the benefit period that began on July 1, 2018. She also is unable to end the benefit period that began on July 1, 2018 and establish a new benefit period.

[25] Subject to a change or cancellation of a benefit period under section 10 of the Act, a benefit period shall not be established for the claimant if a prior benefit period has not ended.¹³

[26] A claimant can only *cancel* a benefit period or part of a benefit period, where no benefits were paid or payable.¹⁴

[27] Once a benefit period has been established for a claimant, the Commission may cancel the benefit period if it has ended and no benefits were paid or payable during the period;¹⁵ or whether or not the period has ended, cancel at the request of the claimant that portion of the

¹⁰ Subsection 12(1) of the Act

¹¹ Subsection 12(3) of the Act

¹² Section 9 and subsection 12(1) of the Act

¹³ Subsection 10(3) of the Act

¹⁴ Subsection 10(6) of the Act

¹⁵ Paragraph 10(6)(a) of the Act

benefit period immediately before the first week for which benefits are paid or payable, if the claimant (i) establishes under this Part, as an insured person, a new benefit period beginning the first week for which benefits were paid or payable; and (ii) shows that there was good cause for the delay in making the request throughout the period beginning on the day when the benefits were first paid or payable and ending on the day when the request for cancellation was made.¹⁶

[28] A cancelled benefit period is deemed never to have begun.¹⁷ This means that the insurable hours that were used to initiate the claim are no longer considered to have been used.

[29] The Appellant has requested that she be able to cancel the benefit period that began on July 1, 2018 so she can establish a new benefit period. She is willing to repay the regular benefits received in order to do this.

[30] The Respondent argues that the Appellant's benefit period, which was established on July 1, 2018, could not be cancelled because the Appellant was paid benefits in the benefit period.

[31] The Appellant confirmed in her testimony having received regular EI benefits during her benefit period established on July 1, 2018. The benefit period established July 1, 2018 has not yet ended. I find therefore that the Appellant's benefit period cannot be cancelled pursuant to paragraph 10(6)(a) of the Act because she has already received benefits during her benefit period and this benefit period has not yet ended.

[32] I find that the Appellant cannot cancel the benefit period under paragraph 10(6)(b) either. A benefit period was established effective July 1, 2018. The Appellant served her one-week waiting period from July 1, 2018 to July 7, 2018 and received regular benefits from July 8, 2018 to August 25, 2018. Given that benefits were paid or were otherwise payable as of the beginning of her claim, no portion of the claim can be cancelled under paragraph 10(6)(b) of the Act.

[33] I have also considered whether the Appellant can end her benefit period and start a new benefit period based on her renewal application of January 3, 2019. A benefit period will end if

¹⁶ Paragraph 10(6)(b) of the Act

¹⁷ Subsection 10(7) of the Act

the claimant (i) requests that the benefit period ends (ii) makes a new initial claim for benefits and (iii) qualifies, as an insured person, to receive benefits.¹⁸

[34] I find the Appellant is unable to end the benefit period beginning on July 1, 2018 because she has not accumulated sufficient hours of insurable employment to establish a new benefit period and does not, therefore, she does not qualify as an insured person to receive benefits. Unlike the cancellation of a benefit period, for a benefit period to end at the request of a claimant, a claimant must accumulate sufficient insurable hours to establish a new benefit period. The Appellant is unable to re-use the hours of insurable employment she accumulated to establish the benefit period beginning on July 1, 2018 to also establish a new benefit period.

[35] The Appellant's renewal application for maternity/parental benefits was made on January 3, 2018 and the benefit period was renewed by the Respondent effective December 2, 2018. Considering the renewal application to be a new initial claim for benefits, I find that, pursuant to subsection 8(1) of the Act, the Appellant's qualifying period would be from July 1, 2018 to December 1, 2018.

[36] The Appellant returned to work on August 27, 2018 and according to the Record of Employment provided by her employer dated December 4, 2018, she accumulated 280 hours of insurable employment between August 27, 2018 and November 30, 2018.¹⁹ The Appellant testified that the amount of insurable hours were correct and she had no other work from any other employers. The X school was her only employer since establishing her prior benefit period on July 1, 2018.

[37] To qualify for benefits, a claimant must have an interruption of earnings and must accumulate during their qualifying period a specified minimum number of hours of insurable employment.²⁰ The minimum number of required hours to qualify for benefits depends on the regional rate of unemployment in the EI Economic Region that applies to the claimant in the week the benefit period is to begin. This rate is then correlated to a chart set out in subsection

¹⁸ Paragraph 10(8)(d) of the Act

¹⁹ GD3-39

²⁰ Subsection 7(2) of the Act

7(2) of the Act, which provides the minimum required hours of insurable employment that relates to that regional rate of unemployment.

[38] A claimant who does not qualify to receive benefits under section 7 of the Act can be entitled to receive special benefits provided that he or she (a) has had an interruption of earnings from employment, and (b) has had 600 or more hours of insurable employment in their qualifying period. ²¹

[39] The Respondent has not provided the regional rate of unemployment for the Appellant the week her benefit period was to begin, being the week of December 2, 2018. However, the required insurable hours varies between 420 and 700, depending on the regional rate of unemployment. As such, no matter what the regional rate of unemployment, the Appellant would have insufficient hours of insurable employment to qualify for benefits pursuant to section 7 of the Act, having only 280 hours. The Appellant also does not have enough insurable hours to qualify for special benefits under subsection 93(1) of the EI Regulations either, having only 280 instead of the required 600 hours.

[40] As the Appellant does not qualify for benefits as an insured person, the benefit period which began on July 1, 2018 cannot end at her request. ²²

[41] I acknowledge the Appellant's willingness to repay the regular benefits received. However, unfortunately, this will not resolve the issue as the Appellant does not meet the statutory criteria to be able to cancel the benefit period that began on July 1, 2018 or end that benefit period and establish a new benefit period.

CONCLUSION

[42] I am sympathetic to the Appellant's circumstances and recognize the unfortunate result in this case. The Appellant has asked that the Tribunal exercise discretion to remedy the situation.

²¹ Subsection 93(1) of the *Employment Insurance Regulations* (EI Regulations)

²² Paragraph 10(8)(d) of the Act

Regrettably, I cannot. I am unable to either re-write legislation or to interpret it in a manner that is contrary to its plain meaning.²³

[43] The appeal is dismissed.

Charlotte McQuade
Member, General Division - Employment Insurance Section

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| HEARD ON: | May 10, 2019 |
| METHOD OF PROCEEDING: | In person |
| APPEARANCES: | M. H., Appellant |

²³ *Canada (AG) v. Knee*, 2011 FCA 301