



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. B. v Canada Employment Insurance Commission*, 2019 SST 883

Tribunal File Number: GE-19-2768

BETWEEN:

**S. B.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Suzanne Graves

HEARD ON: August 19, 2019

DATE OF DECISION: August 28, 2019

## **DECISION**

[1] The appeal is dismissed. I find that the Claimant's benefit period ended on June 22, 2019, and there is no legal basis to further extend it.

## **OVERVIEW**

[2] The Claimant applied for sickness employment insurance (EI) benefits on August 2, 2017. She received 15 weeks of sickness benefits. She then collected long-term disability payments under her employer's benefit plan from November 18, 2017, until April 18, 2018. She lost her job on April 29, 2018, and claimed regular EI benefits. She received a severance payment and the Commission allocated her severance over 47 weeks.

[3] The Commission extended the Claimant's benefit period by 47 weeks and determined that her benefit period ended on June 22, 2019. She received 13 weeks of regular benefits before her benefit period ended. The Claimant argues that her benefit period should be further extended because she could not work during the time she received long-term disability payments.

[4] The Commission says that the Claimant's benefit period cannot be further extended. The *Employment Insurance Act* (EI Act) allows benefit period extensions for specific reasons. These reasons do not include an extension when a claimant is collecting long-term disability payments. The Claimant is appealing the Commission's decision to the Social Security Tribunal.

## **ISSUE**

[5] I must decide whether the Claimant's benefit period can be extended past June 22, 2019.

## **ANALYSIS**

[6] When a claimant applies for benefits, a benefit period is established.<sup>1</sup> The benefit period is usually 52 weeks. In some cases, the benefit period can be longer than 52 weeks.<sup>2</sup>

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<sup>1</sup> S 9 of the EI Act says that when an insured person who qualifies for benefits makes a claim for benefits, a benefit period is established and, once established, benefits are payable "for each week of unemployment that falls in the benefit period."

<sup>2</sup> S 10(2) of the EI Act says that, unless extended by s 10(10) to 10(15), a benefit period is 52 weeks.

[7] When a claimant receives severance payments, their benefit period can be extended for the number of weeks that the severance is allocated.<sup>3</sup> When a claimant is not entitled to benefits because they are in receipt of workers' compensation payments for an illness or injury,<sup>4</sup> the benefit period can also be extended. Benefits are paid to claimants for each week of unemployment that falls in the benefit period, subject to the maximum number of weeks allowed.

**Can the Claimant's benefit period be extended past June 22, 2019?**

[8] No. The Claimant's benefit period ended on June 22, 2019. The EI Act does not allow a benefit period to be extended on the basis that a claimant is collecting long-term disability payments.

[9] The parties agree on the following facts. The Claimant claimed EI sickness benefits and received 15 weeks of benefits from July 30, 2017, to November 17, 2017. She was then still unable to work due to health and family circumstances beyond her control. She collected long-term disability payments from November 18, 2017, to April 18, 2018.

[10] She lost her job on April 29, 2018. She made a renewal claim for regular benefits on March 18, 2018, and reported \$54,999.42 in severance pay and \$11,092.24 pay in lieu of notice. The Commission allocated these payments as earnings and extended the Claimant's benefit period by 47 weeks. It determined that her extended benefit period ended on June 22, 2019.

[11] The Claimant argues that her benefit period should be extended to the maximum allowed 104 weeks. She says that her benefit period should be extended to cover the time she was unable to work and receiving payments under her employer's long-term disability plan. She argues that there is no real difference between being on long-term disability and collecting workers' compensation payments, which would have allowed a benefit period extension. In either case, a claimant is unable to work or collect regular EI benefits.

[12] The Claimant asked me to consider the Supreme Court of Canada decision in *Serge Gagnon v Canada Employment and Immigration Commission*.<sup>5</sup> This decision involved

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<sup>3</sup> S 10(10)(b) of the EI Act

<sup>4</sup> S 10(10)(c) of the EI Act.

<sup>5</sup> [1988] 2 S.C.R.

legislative interpretation in a case where there were two ways to read the Act. The Court looked at the wording, the context and the intention of the Act, and gave the worker the benefit of the doubt.<sup>6</sup> The Court said that the purpose of the Act is “to compensate workers involuntarily unemployed but not to penalize those temporarily but involuntarily unavailable.”

[13] The Commission argues that the Claimant’s benefit period cannot be extended beyond June 22, 2019, because s 10 of the EI Act<sup>7</sup> only allows extensions for specific listed reasons. Receipt of long-term disability payments is not one of those reasons. The Commission determined that the Claimant’s benefit period could only be extended for 47 weeks as a result of her severance allocation. It says there is no other legal basis to extend it further.

[14] I appreciate that the Claimant was unable to work during the time she received long-term disability payments. She makes a compelling argument for a further extension of her benefit period on the basis that she was medically unable to work or collect EI benefits during the time she collected disability benefits under her employer’s plan.

[15] However, the EI Act sets out a strict test and I have to apply the law. The EI Act allows a claimant’s benefit period to be extended in limited circumstances. In this case, the wording of s 10(10)(c) of the EI Act is quite clear. It says that a benefit period can be extended where a claimant is “in receipt of workers’ compensation payments for an illness or injury.” The Claimant was not able to work due to illness but she was not in receipt of workers’ compensation payments. As a result, this section does not allow an extension to her benefit period.

[16] I have sympathy for the Claimant’s situation. However, I have to follow the rules set out in the EI Act and cannot make exceptions for special cases even in the interest of compassion.<sup>8</sup> I cannot “ignore, refashion, circumvent or rewrite” the EI Act.<sup>9</sup> Unfortunately, there is no legal basis to extend the Claimant’s benefit period past June 22, 2019.

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<sup>6</sup> In *Abrahams v Canada (Attorney General)* [1983] 1 S.C.R. 2, the Supreme Court also held that the Act is designed to make benefits available quickly to those unemployed persons who qualify under it and so it should be liberally interpreted to achieve that end.

<sup>7</sup> Ss 10(10) to (15) of the EI Act allow for extensions to the benefit period.

<sup>8</sup> In *Canada (Attorney General) v Levesque*, 2001 FCA 304, the Federal Court of Appeal held that the legislation has to be followed, regardless of the personal circumstances of the appellant, (see also *Pannu v Canada (Attorney General)*, 2004 FCA 90).

<sup>9</sup> *Canada (Attorney General) v Knee*, 2011 FCA 301.

[17] I find that the Commission correctly determined that the Claimant's benefit period was from July 30, 2017, until June 22, 2019, a total of 99 weeks.

**CONCLUSION**

[18] The Claimant's benefit period ended on June 22, 2019, and she cannot receive benefits after that date. This means that her appeal is dismissed.

Suzanne Graves

Member, General Division - Employment Insurance Section

HEARD ON:	August 19, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. B., Appellant