



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. K. v Canada Employment Insurance Commission*, 2019 SST 1581

Tribunal File Numbers: GE-19 - 2522
GE-19 - 2583
GE-19 - 3321

BETWEEN:

N. K.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Christianna Scott

HEARD ON: October 10, 2019

DATE OF DECISION: October 30, 2019

DECISION

[1] The appeals are dismissed. N. K. (the Claimant) is entitled to 38 weeks of regular employment insurance (EI) benefits during the first benefit period (June 18, 2017 to June 16, 2018). The Claimant did not work enough insurable hours to establish a second benefit period starting April 2018. The Claimant also cannot be paid sickness benefits for the week of July 15, 2018.

OVERVIEW

[2] The Claimant started work with his employer in September 2016. The circumstances around the Claimant's end of employment are unclear. The Claimant says that the employer incorrectly completed his record of employment (ROE). He says that he worked for one month longer than the end date written on the ROE, which was June 16, 2017. He also says that he worked more insurable hours than those written on the ROE.

[3] The Canada Employment Insurance Commission (Commission) processed the Claimant's initial claim for regular EI benefits according to the information on the ROE. He received benefits. After, the Canada Revenue Agency (CRA) issued a decision to clarify the date the Claimant ended his employment.

[4] In April 2018, the Claimant then made a second initial claim for regular EI benefits. The Claimant also asked for a week of sickness benefits in July 2018.

[5] On April 5, 2019, the CRA issued another decision to clarify the number of insurable hours the Claimant worked between September 20, 2016, and June 16, 2017.

[6] After the CRA ruling of April 5, 2019, the Commission decided that the Claimant was entitled to 38 weeks of benefits for his first claim. The Commission also decided that the Claimant did not work enough insurable hours to establish a benefit period for his second application for regular EI benefits. Last, the Commission decided that the Claimant could not cancel the first benefit period so that he could receive a week of sickness benefits in July 2018.

[7] The Claimant has appealed the three decisions before the Social Security Tribunal. He says that the Commission did not properly calculate his weeks of entitlement to benefits. He

argues that he worked enough insurable hours to establish a second benefit period in April 2018. He also says that he never asked for the cancellation of his first benefit period. He says that he is entitled to sickness benefits for the week of July 15, 2018.

PRELIMINARY MATTERS

[8] Two preliminary matters arose; (i) the joining of the appeals, and (ii) the late receipt of documents in the appeal that deals with the Claimant's request for sickness benefits (GE-19-3321):

(i) The Claimant filed three appeals with the Tribunal. I heard the appeals at the same time. I have decided to join the appeals because they raise common facts.¹ Many of the Claimant's arguments are based upon the interconnection of the facts in the three files. So, I find that the appeals are best handled in one decision. Also, I find that no injustice is likely to be caused to any party by joining the appeals.

(ii) The Claimant got a copy of the document labelled GD3 in appeal GE-19-3321 one day before the hearing. He expressed concerns about not having had enough time to review GD3. I proposed to the Claimant that we continue with the hearing of the three appeals and he could send the Tribunal written comments to the information in GD3. The Claimant agreed to continue the hearing. He sent his written comments and I have considered them because they relate to the appeals.

ISSUES

[9] The Claimant challenges three decisions from the Commission.

(i) GE-19- 2522: The Claimant contests the Commission's decision to give him 38 weeks of regular benefits.

I must decide how many weeks of benefits was the Claimant entitled to during his first benefit period.

¹ Section 13 of the *Social Security Tribunal Regulations*

- (ii) GE-19-2583: The Claimant contests the Commission's decision that he did not work enough insurable hours to establish a second benefit period.

I must decide if the Claimant worked enough insurable hours to establish a second benefit period.

- (iii) GE-19-3321: The Claimant contests the Commission's decision concerning the cancellation of a benefit period in order to establish a claim for sickness benefits.

I must decide if the Claimant can receive sickness benefits for the week of July 15, 2018.

ANALYSIS

GE-19- 2522 – Entitlement to Weeks of Benefits in the First Benefit Period

[10] The facts relevant to this appeal are as follows:

- The Claimant started work on September 20, 2016.
- It was unclear when the Claimant's employment ended. The employer issued a ROE saying that he stopped working on June 16, 2017, and worked 1552 hours, but the Claimant said that this ROE was wrong. He says that he worked until July 15, 2017, and worked many more hours than 1552 hours.
- On July 1, 2017, the Claimant made an initial claim for regular EI benefits [first application].
- The Commission established the Claimant's benefit period according to the information on the ROE. The Commission paid the Claimant 28 weeks of benefits and his benefit period started on June 18, 2017.
- On April 13, 2018, the Claimant made another initial claim for regular EI benefits [second application].
- During May and June 2018, the Claimant and the Commission exchanged correspondence to clarify the date the Claimant ended his employment.

- On October 22, 2018, the CRA ruled that the Claimant was performing insurable work between June 19, 2017, and July 15, 2017.
- The Commission recalculated the Claimant's weeks of entitlement and adjusted it from 28 to 30 weeks of benefits.
- On November 27, 2018, the Commission asked the employer to provide a ROE for the period between June 19, 2017, and July 15, 2017. The employer did not respond to the Commission's request.
- On January 31, 2019, the Commission completed a temporary ROE based on the information provided by the Claimant during their exchanges in May and June 2018. The temporary ROE says that the Claimant worked 160 hours between June 19, 2017, and July 15, 2017.
- On April 5, 2019, the CRA ruled that the Claimant worked 2082 insurable hours between September 19, 2016, and June 16, 2017.
- On April 19, 2019, the Commission issued a reconsideration decision. With the new information from CRA, the Commission decided that the Claimant was entitled to 38 weeks of EI benefits instead of 30.

Issue : How many weeks of benefits was the Claimant entitled to during his first benefit period?

[11] I find that the Commission properly calculated the weeks of entitlement when it granted the Claimant 38 weeks of benefits during his first benefit period.

[12] The Claimant argues that the additional eight weeks of entitlement should not have been added to his first application for benefits for three reasons.

- First, the Claimant says that on March 29, 2019, he had filed an appeal to the Tribunal on all issues related to his first application for EI benefits and therefore the Commission could no longer make any decisions about his first application for benefits. He says that

when the CRA made its decision on April 5, 2019, the Commission had dealt fully with his first application for benefits and therefore could not change the number of weeks of entitlement from 30 weeks to 38 weeks.

- Second, the Claimant says that he never asked the Commission to reconsider the number of weeks of entitlement in the context of his first application for benefits. He says that the additional insurable hours from the CRA ruling should have been used towards his second application for benefits.
- Third, the Claimant says that when the CRA concluded that he had accumulated 2082 hours between September 2016 and June 16, 2017, his second application for benefits (April 13, 2018, application) was before the Commission. He argues that the Commission should have used the extra hours towards establishing a benefit period for his second application for EI benefits. This is what would have been most advantageous to him and the Commission had an obligation to give him benefits that were the most advantageous. The Claimant argues that he would have been entitled to fifteen weeks of benefits under his second application for benefits. Since he acknowledges that the Commission already paid him another eight weeks of benefits (30 to 38 weeks) under his first application, the Claimant argues that he is entitled to an additional seven weeks of benefits on his second application (15 weeks minus 8 weeks already paid).

[13] The Commission argues that in accordance with the CRA ruling of April 5, 2019, the Claimant was entitled to eight extra weeks of EI benefits, which the Commission already paid to the Claimant.

[14] A claimant's weeks of entitlement are determined once a claimant establishes a benefit period. The number of weeks of benefits is determined by taking into account the regional rate of unemployment that applies to a claimant and the number of hours of insurable employment in a claimant's qualifying period.² In general, a qualifying period is the shorter of the 52-week

² Subsection 12(2) of the *Employment Insurance Act* (Act).

period immediately before the start of a benefit period or the period between the start of a prior benefit period and the start of a new benefit period.³

[15] I find that the Claimant has based his arguments on a misunderstanding of the law. I find that the Claimant's qualifying period was from June 19, 2016 until June 17, 2017. This is the period immediately prior to the start of the Claimant's benefit period. The CRA decision clarified that the Claimant had 2082 hours between September 19, 2016, and June 16, 2017. I am bound by the CRA decision. These hours must be used to calculate the Claimant's weeks of entitlement for his first benefit period that started on June 18, 2017, and cannot be used to calculate weeks of entitlement on his second application for benefits in April 2018.

[16] The Claimant agreed that he lived in the Montreal region when he made his claim. He also agreed that the regional rate of unemployment was 6.7 when his benefit period was established. I therefore find that the Claimant was entitled to a total of 38 weeks of regular EI benefits, which is the maximum number of weeks of entitlement.⁴

[17] I reject the Claimant's argument that the Commission did not have the authority to revisit the number of weeks of entitlement in his first application for benefits. The Claimant is mistaken when he says that he appealed to the Tribunal all aspects that related to his first application for EI benefits.⁵ The Commission can make decisions on different issues that relate to an application for EI benefits. I concluded in GE-19-1573 that the issue on appeal before the Tribunal was earnings and allocation of earnings.⁶ The number of weeks of entitlement was not at issue in that appeal. Therefore, the issue of the weeks of entitlement was still before the Commission.⁷

[18] I recognize that the absence of an accurate ROE made it difficult for the Claimant to prove the number of hours he worked during the qualifying period and required the Commission to calculate the weeks of entitlement based on the information submitted by the employer. Once

³ Subsection 8 (1) of the Act.

⁴ Subsection 12(2) of the Act.

⁵ The Claimant argues that he appealed all aspects of this first application for benefits in GE-19-1573.

⁶ See page 3 of GE-19-1573.

⁷ See *Canada (Attorney General) v Von Findenigg*, A-737-82.

the CRA made its decision on April 5, 2019, this led the Commission to revisit the number of weeks of entitlement during the first benefit period.

[19] I find that the timing of the CRA ruling cannot grant additional rights to a Claimant unless the law already grants those additional rights. Although the Claimant argues a creative interpretation of the law that would allow him more weeks of overall benefits, I cannot rewrite the legislation or interpret it in a manner that is inconsistent with its plain meaning.⁸

GE-19-2583 – Insurable Hours to Establish a Second Benefit Period

[20] The facts relevant to this appeal are as follows:

- On April 13, 2018, the Claimant made a second application for regular EI benefits [second application].
- On October 22, 2018, the CRA ruled that the Claimant was performing insurable work between June 19, 2017, and July 15, 2017.
- On November 27, 2018, the Commission asked the employer to provide a ROE for the period between June 19, 2017, and July 15, 2017. The employer did not respond to the Commission's request.
- On January 31, 2019, the Commission completed a temporary ROE based on the information provided by the Claimant. The temporary ROE says that the Claimant worked 160 hours between June 19, 2017 and July 15, 2017.
- On February 20, 2019, the Commission made an initial decision on the Claimant's second application for benefits. The Commission decided that the Claimant did not establish a benefit period because he accumulated 516 insurable hours between April 16, 2017, and April 8, 2018, when he needed 665 hours.

⁸ *Canada (Attorney General) v. Knee*, 2011 FCA 301.

- On April 12, 2019, the Claimant asked for reconsideration of the Commission’s initial decision of February 20, 2019.
- On May 30, 2019, the Commission issued a reconsideration decision. The Commission maintained that the Claimant did not establish a second benefit period and decided that the qualifying period was from June 18, 2017, until April 14, 2018. The Commission decided that the Claimant worked 160 insurable hours during the qualifying period and he needed 665 hours to receive unemployment insurance benefits.
- On April 5, 2019, the CRA ruled that the Claimant accumulated 2082 insurable hours between September 19, 2016, and June 16, 2017.

Issue: Did the Claimant work enough insurable hours to establish a second benefit period?

[21] For the reasons explained below, I find that the Claimant did not work enough insurable hours to establish a second benefit period for regular EI benefits.

[22] To qualify for EI benefits a claimant has to have worked a minimum number of insurable hours during a qualifying period.⁹

[23] As stated before, a qualifying period is generally the shorter of the 52-week period immediately before the start of a benefit period or the period between the start of a prior benefit period and the start of a new benefit period.¹⁰

[24] Claimants for employment insurance benefits have the burden of proving that they qualify.¹¹ The term “burden” is used to describe which party must provide enough proof of its position to meet the legal test. The burden of proof is the balance of probabilities, which means that it is more likely than not that the claimant meets the criteria to qualify for benefits.

⁹ Subsection 7(2) of the Act

¹⁰ Subsection 8(1) of the Act.

¹¹ *Canada (Attorney General) v Terrion*, 2013 FCA 97.

Claimant's Qualifying Period

[25] The Claimant argues that his qualifying period for his second application for benefits is between April 16, 2017, and April 8, 2018. He says that the Commission decided this in its initial decision of February 20, 2019, and the Commission cannot change its decision about the qualifying period to disadvantage him.¹² The Commission argues that the qualifying period is between June 18, 2017, and April 14, 2018.

[26] As determined above, the end of the Claimant's qualifying period for his first application for EI benefits was on June 17, 2017. I therefore find that the Claimant's prior benefit period started on June 18, 2017. The Claimant does he dispute that he submitted his second application for benefits on April 13, 2018. The documents on the record confirm these dates.

[27] I accept the Commission's position that the Claimant's qualifying period for his second application for benefits (April 13, 2018 application) starts on the first day of an immediately preceding benefit period (June 18, 2017) and ends with the end of the week before the beginning of the new benefit period (April 14, 2018). This period is shorter than 52 weeks. The law requires I use the shorter timeframe to determine the qualifying period.

[28] I do not accept the Claimant's argument that the Commission's initial decision of February 20, 2019 (where the Commission decided that the qualifying period for his second application for benefits was between April 16, 2017 and April 8, 2018), is binding. I must take a fresh look at all of the evidence and make a decision in accordance with the law.¹³

Insurable Hours during the Qualifying Period

[29] Only the insurable hours worked during the qualifying period are used to decide if a claimant qualifies for EI benefits.

[30] The Claimant agrees that he needed 665 hours during the qualifying period to establish the second benefit period.

¹² See appeal GE-19-2583, GD3-56

¹³ The appeal process before the Tribunal is *de novo*, which means that I must consider all of the evidence.

[31] The Claimant said that he had more than 665 hours. The Claimant argues that:

- He used 1552 hours to establish the benefit period for his first EI application. The CRA decided that he had worked 2082 hours instead of 1552 hours. The Claimant argues that the balance of hours from the CRA ruling should be used towards establishing his second benefit period.

- Between April 16, 2017, and April 8, 2018, he worked approximately 13 weeks (April 16, 2017 until July 15, 2017). He testified that he worked approximately 52 hours a week and therefore worked more than 665 hours during the qualifying period for his second application.

[32] The Commission argues that the Claimant worked 160 insurable hours between June 18, 2017, and April 14, 2018. The Commission argues that the Claimant accumulated insurable hours between June 18, 2017 and July 15, 2017. The Commission decided this based on the CRA ruling of October 22, 2018 and the information the Claimant gave to the Commission (he stated that he worked approximately 40 hours a week).¹⁴

[33] As I explained before, the CRA ruling of April 5, 2018, clarified the insurable hours worked during the qualifying period for the first claim. The only insurable hours that can be used for calculating the second benefit period are the insurable hours worked between June 18, 2017, and April 14, 2018.

[34] The CRA ruling of October 22, 2018, clarified that the Claimant worked insurable hours between June 19, 2017, and July 15, 2017. Even if I accept the Claimant's testimony that he worked 52 hours per week, as opposed to 40 hours per week used by the Commission, the insurable hours worked during the qualifying period still fall short of 665 hours needed to qualify for regular EI benefits.

[35] I find that the Claimant has not proven that he worked the required number of insurable hours to establish the benefit period related to his second application for EI benefits. Although the Claimant had accumulated 2082 hours in the qualifying period for his first application, the maximum hours considered for a benefit period is 1820. The Claimant cannot carry over the

¹⁴ See GE-19-2583, Document GD3-45.

remaining hours to establish his second application for EI benefits because the hours are attached to the qualifying period of his first application.

[36] Last, the Claimant says that he also asked for benefits because he worked as a self-employed person and therefore should have been successful under a self-employment claim.

[37] I do not have any power to make a decision on a self-employment claim. The reconsideration decision before me does not relate to a self-employment claim. It relates to insurable hours from work with the Claimant's previous employer.

GE-19-3321 – Request for sickness Benefits

Issue: Can the Claimant receive sickness benefits for the week of July 15, 2018?

[38] The facts relevant to this appeal are as follows:

- In April 2019, the Claimant contacted the Commission to request the payment of 2 weeks of sickness benefits for the weeks of May 2, 2018, and July 15, 2018.
- On July 9, 2019, the Commission told the Claimant that they would pay him sickness benefits for the week of May 2, 2018, because this week fell during his first benefit period.
- On July 9, 2019, the Commission also issued a written decision stating that it is unable to pay for sickness benefits for the week of July 15, 2018, because the benefit period for his first claim, which started on June 18, 2017, had ended. The Commission decided that it could not cancel the first benefit to start another benefit period since the Claimant received benefits.
- On August 15, 2019, the Claimant asked the Commission to reconsider its decision of July 9, 2019.
- On September 13, 2019, the Commission confirmed its decision of July 9, 2019, and did not pay the Claimant sickness benefits for the week of July 15, 2018.

[39] The Claimant submits that he never asked the Commission to cancel his first benefit period. He confirmed this in his written arguments to the Tribunal.¹⁵ Although the Commission's initial and reconsideration decisions both reference the cancellation of the benefit period, I accept that the Claimant did not ask for the cancellation of the first benefit period. The record confirms the Claimant's statement that he did not ask for the cancellation of the first benefit period to support his request for sickness benefits.¹⁶

[40] The Claimant argues that the Commission should pay him sickness benefits for the week of July 15, 2018. He submits a doctor's note to support his claim. The Claimant argues two points.

- First, the Claimant says that he should receive sickness benefits as part of his first application for benefits. The Claimant maintains that the CRA decision of October 22, 2018, confirmed that he worked for his employer until July 15, 2017. If his employer had properly reported all of his insurable hours of work, the Claimant says that the benefit period for his first application would have started on July 16, 2017, instead of on June 18, 2017. The Claimant says that if the employer had properly recorded his insurable hours of work from the outset, his claim for sickness benefits during the week of July 15, 2018, would have fallen in the first benefit period.
- Second, he argues that he is entitled to the sickness benefit because he established a benefit period on April 15, 2018 (see arguments in GE-19-2583). He argues that this week of sickness benefits falls during this benefit period.

[41] The Commission argues that the Claimant cannot receive sickness benefits for the week of July 15, 2018. The Commission argues two points.

- First, the request for sickness benefits for the week of July 15, 2018, falls outside of his first benefit period. The Commission says that the Claimant's first benefit period started on June 18, 2017, and ended on June 16, 2018.

¹⁵ See GE-19-3321 (GD7-2)

¹⁶ See GE-19-3321 (GD3- 37 to 45).

- Second, the Commission argued that the Claimant did not establish a second benefit period that would encompass the week of July 15, 2018.

[42] I accept the Commission's argument that the Claimant cannot be paid sickness benefits for the week of July 15, 2018.

[43] A benefit period begins on, the Sunday on which the interruption of earnings occurs or the Sunday of the week where the Claimant makes an application for EI benefits. Generally, the length of a benefit period is 52 weeks.¹⁷

[44] Even though the Claimant argues that his first benefit period should have started later because he worked between June 2017 and July 2017, he nevertheless does not contest that his first benefit period actually started in June 2017.

[45] I conclude that the Claimant's benefit period on his first application for EI benefits started on June 18, 2017. The record supports this conclusion.¹⁸ I also find that the first benefit period ended on June 16, 2018. I find that the Claimant is seeking sickness benefits for a week of illness that falls outside of the first benefit period.

[46] I have already found above (GE-19-2583) that the Claimant is unable to establish a second benefit period in April 2018.

[47] I find therefore that the Claimant cannot receive sickness benefits for the week of July 15, 2018.

Arguments Common to the Three Appeals

[48] The Claimant argues that he should be entitled to damages and interest.

[49] The Claimant explained that he should receive damages because the Commission did not process his claims properly. He says that the Commission accused him of a lack of integrity even though the CRA later confirmed that he had many more insurable hours between than those

¹⁷ Paragraph 10(2) of the Act.

¹⁸ See GE19-3321 - GD3-23, GD3-26

indicated on his ROE. He maintains that the Commission abused of its authority and applied double standards because they failed to hold his employer accountable for not completing his ROE properly. The Claimant also says that the Commission did not systematically issue written decisions on his claims and only did so once he filed appeals with the Tribunal and got his member of parliament involved in his claim. Last, the Claimant says that he made an access request for his file with the Commission and the Commission withheld information.

[50] The Claimant also says that he should receive interest on his claim because he has waited a long time to receive his benefits. He says that the delay is because of the Commission's errors and their refusal to accept his evidence that he worked more than 1552 hours and continued to work until July 2017.

[51] I acknowledge that both the Claimant and the Commission were required to address the claims with incomplete information. I recognize the Claimant's frustration with the situation. However, neither the concept of an administrative error nor the concept of interest exists under the Act. Therefore, I do not have the authority to give damages or interest.

CONCLUSION

[52] The appeals are dismissed.

Christianna Scott
Member, General Division - Employment Insurance Section

HEARD ON:	October 10, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	N. K., Appellant