



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. B. v Canada Employment Insurance Commission*, 2019 SST 1462

Tribunal File Number: AD-19-662

BETWEEN:

**S. B.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Pierre Lafontaine

DATE OF DECISION: December 23, 2019

## DECISION AND REASONS

### DECISION

[1] The Tribunal dismisses the appeal.

### OVERVIEW

[2] The Appellant, S. B., 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 EI benefits before her benefit period ended. The Claimant argued that her benefit period should be further extended because she could not work during the time she received long-term disability payments. The Commission maintained that the Claimant's benefit period could not be further extended under the *Employment Insurance Act* (EI Act). The Claimant appealed to the General Division.

[4] The General Division found that the Claimant was not able to work due to illness but that she was not in receipt of workers' compensation payments, as per section 10(10) of the EI Act. It concluded that there was no legal basis to extend the Claimant's benefit period.

[5] The Claimant was granted leave to appeal. She puts forward that the General Division erred in law, more precisely, in its interpretation of section 10(10) of the EI Act.

[6] The Tribunal must decide whether the General Division erred in law in its interpretation of section 10(10) of the EI Act.

[7] The Tribunal dismisses the Claimant's appeal.

## ISSUE

**Did the General Division err in law in its interpretation of section 10(10) of the EI Act when it concluded that the reception of long-term disability payments does not allow the extension of the benefit period?**

## ANALYSIS

### **Appeal Division's mandate**

[8] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act*, the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.<sup>1</sup>

[9] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.<sup>2</sup>

[10] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

**Did the General Division err in law in its interpretation of section 10(10) of the EI Act in finding that the reception of long-term disability payments does not allow the extension of the benefit period?**

[11] The Claimant submits that the General Division erred in law in its interpretation of section 10(10) of the EI Act by using a narrowed and ultra-conservative definition of the phrase 'workers' compensation'. In doing so, it allowed for further interpretation and restriction of the EI Act (i.e. provincial benefits plan vs. private employers' plan).

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<sup>1</sup> *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

<sup>2</sup> *Idem*.

[12] The Claimant puts forward that the intent of both plans is synonymous: to compensate workers who are totally unable to work due to illness/injury. She submits that scrutinizing who is providing such compensation goes beyond the context and intention of the EI Act. She argues that the General Division applied an arbitrary and limited definition to the term “workers’ compensation payments”, to include only those payments made via provincial compensation plans, and to exclude payments via employer compensation plans.

[13] The Claimant submits that nowhere does the EI Act provide a distinction for where such compensation payments must originate, nor from whom the worker receives such compensation payments. She argues that enforcing such a distinction ultimately creates an inherent flaw in the application of the EI Act.

[14] The undisputed evidence shows that the Claimant collected long-term disability payments under her employer’s benefit plan from November 18, 2017, until April 18, 2018. The wage-loss benefits the Claimant received were not workers’ compensation for an illness or injury, and had not been paid under a provincial law.

[15] Section 10(10) (c) of the EI Act is worded as follows:

Extension of benefit period

(10) 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

(c) in receipt of workers’ compensation payments for an illness or injury;

[16] Unfortunately for the Claimant, it is well-established case law that long-term disability payments do not constitute workers’ compensation payments for an illness or injury within the meaning of section 10(10) (c) of the EI Act.<sup>3</sup>

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<sup>3</sup> CUB 79787, CUB 78389, CUB 67513, CUB 57593, CUB 56235, CUB 27889, and CUB 14652.

[17] Benefits such as those received by the Claimant are clearly distinguished from worker' compensation payments in section 35(2) of the EI Regulations. However, Parliament has chosen not to mention these benefits in section 10(10) of the EI Act.

[18] Therefore, the General Division correctly determined that there is no legal basis to extend the Claimant's benefit period past June 22, 2019. It is the only decision it could reach on the basis of the evidence before it and the relevant legislation, as interpreted in the case law.

[19] Although the Tribunal sympathizes with the Claimant, the Tribunal is bound by the applicable legislation. The Claimant may wish to bring her concerns and suggestions for legislative amendments to Parliament who has sole discretion to decide whether such amendments should be enacted.

[20] For the reasons mentioned above, the Tribunal dismisses the appeal.

## **CONCLUSION**

[21] The appeal is dismissed.

Pierre Lafontaine  
Member, Appeal Division

HEARD ON:	December 19, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	S. B., Appellant