



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. M. v Canada Employment Insurance Commission*, 2020 SST 100

Tribunal File Number: AD-18-427

BETWEEN:

L. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: February 11, 2020

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] This is an appeal of the General Division's decision. The General Division determined that the Appellant, L. M. (Claimant), was entitled to 17 weeks of Employment Insurance regular benefits. The Claimant left Canada in July. She lived and worked in Florida from September 6 to December 5, 2015, before returning to Canada. The Claimant argues that the General Division erred. She argues that she is entitled to a total of 21 weeks of regular benefits.

[3] The Claimant argues that it is unfair that the Canada Employment Insurance Commission (Commission) gave her conflicting and inaccurate information about her entitlement to benefits in the first place. Because of this information, she incurred significant costs, including travel costs to return to Canada. She says that she would not have returned to Canada and would have remained in the United States because she would have received 17 weeks of benefits anyway.

[4] The Claimant also argues that because she returned to Canada, she was entitled to extra weeks of benefits.

[5] The Commission opposes the Claimant's appeal and argues that she is limited to receiving 17 weeks of regular benefits.

[6] I am dismissing the appeal. Under subsection 55(7) of the *Employment Insurance Regulations*, the maximum number of weeks for which regular benefits may be paid is 17 weeks, even if the Claimant subsequently returned to Canada. This was also the maximum number of weeks, even though she received conflicting and inaccurate information from the Commission.

ISSUES

[7] The issues are:

- (a) Is the Claimant entitled to receive additional weeks of Employment Insurance regular benefits when the Commission's agents gave conflicting and inaccurate information?
- (b) Is the Claimant entitled to receive additional weeks of Employment Insurance regular benefits because she returned to Canada?

ANALYSIS

[8] The Claimant lived and worked in Florida for a part of 2015. The parties agree that the Claimant was entitled to at least 17 weeks of Employment Insurance regular benefits under subsections 55(6)(b) and 55(7) of the *Employment Insurance Regulations*. However, the Claimant argues that she should be entitled to more than 17 weeks of benefits.

- (a) **Is the Claimant entitled to receive additional weeks of Employment Insurance regular benefits because the Commission's agents gave conflicting and inaccurate information?**

[9] The Claimant contacted Service Canada several times around November 2015. She explained that she was living in the United States at that time. She asked whether she was entitled to receive Employment Insurance regular benefits.

[10] Each time, an agent gave her a different response. In one instance, an agent informed her that because she was out of the country, she was not entitled to receive any benefits. Another agent informed her that she was entitled to receive benefits even if she was outside Canada. However, there were few exceptions. Yet another agent advised her that she was entitled to 21 weeks of benefits. But, another agent told her that the fact that she was resident in the United States would reduce her entitlement to benefits by four weeks. Ultimately, she understood that she would have to return to Canada to receive any benefits at all.

[11] Thus, the Claimant travelled back to Canada in the middle of winter, so that she could qualify for Employment Insurance benefits. This was at significant cost.

[12] Later, the Claimant learned that she would have qualified and been entitled to receive Employment Insurance regular benefits, even if she had stayed in the United States. She spent thousands of dollars to travel to Canada when there had been no need for her to do so. Although she was flexible in looking for work, she preferred to remain in Florida. She found Canadian winters detrimental to her health and well-being.

[13] The Claimant states that she did not willingly return to Canada. However, agents led her to believe that returning to Canada was the only way in which she could qualify for benefits. She would have never returned to Canada during the winter if the Commission's agents had provided her with accurate information in the first place.

[14] The Claimant argues that the Commission has a duty to provide accurate advice, and that it should bear some responsibility if it does not. She argues that it is unfair that agents bear no liability for their errors. Yet, claimants can be held liable for any inaccurate information they give to the Commission.

[15] The General Division did not consider whether the Claimant could seek extra weeks of benefits based on the Commission's erroneous advice. However, as unfair as it may seem, unfortunately neither the *Employment Insurance Act* nor the *Employment Insurance Regulations* enable me to provide any relief where the Commission's agents provided erroneous advice or inaccurate information to a claimant. This is so, even if the claimant has incurred great expense.

[16] That said, the Commission suggests that the Claimant may be able to appeal for some relief through the Commission's own internal office of client satisfaction.

(b) Is the Claimant entitled to receive additional weeks of Employment Insurance benefits because she returned to Canada?

[17] The Claimant queries whether her return to Canada in December 2015 enables her to rely on subsection 12(2) of the *Employment Insurance Act*. If so, then she might get extra weeks of

benefits. The Commission argues that claimants who subsequently return to Canada and become Canadian residents cannot rely on subsection 12(2) of the *Employment Insurance Act*.

[18] As the General Division member noted, subsection 12(2) of the *Employment Insurance Act* establishes the maximum number of weeks for which Employment Insurance benefits may be paid in a benefit period, based on the number of insurable employment hours accumulated in the qualifying period and the applicable regional rate of unemployment.

[19] The General Division member noted that the Claimant accumulated 910 hours of insurable employment in her qualifying period. The General Division also noted that the regional rate of unemployment was 7.8% when the benefit period was initially established. If subsection 12(2) of the *Employment Insurance Act* applied, the Claimant would be entitled to 21 weeks of Employment Insurance benefits.

[20] However, because the Claimant resided in the United States, subsection 12(2) of the *Employment Insurance Act* was not available to the Claimant. Instead, subsection 55(6) of the *Employment Insurance Regulations* applied.

[21] The Claimant returned to Canada. She is looking to convert her claim for benefits. She hopes she can rely on subsection 12(2) of the *Employment Insurance Act* instead of subsection 55(6) of the *Employment Insurance Regulations*.

[22] However, claimants who return to Canada and become Canadian residents still cannot avail themselves of subsection 12(2) of the *Employment Insurance Act*. In such a scenario, subsections 55(8) and (9) of the *Employment Insurance Regulations* apply. Subsections 55(8) and (9) read as follows:

55 (8) subsection to subsection (10), a claimant referred to in subsections (5) and (6), for whom a benefit period has been established and who subsequently becomes resident in Canada, continues to be entitled to receive benefits for not more than the maximum number of weeks referred to in subsection (7).

(9) Subject to subsection (10), the maximum number of weeks for which benefits may be paid in the benefit period, in respect of a claimant for whom a benefit period has been established in Canada and who subsequently becomes a claimant referred to in subsection (6), is the greater of

(a) the number of weeks for which the claimant has already received benefits in Canada; and

(b) the number of weeks to which the claimant would have been entitled under subsection (7) if the claimant had been temporarily or permanently resident in a place referred to in subsection (6) when the benefit period was established.

[23] I agree that subsections 55(8) and (9) apply in the Claimant's case. I do not have any discretion to waive the provisions of subsections 55(8) and (9). The Claimant is entitled to receive 17 weeks of Employment Insurance regular benefits. This is the maximum number of weeks of benefits for which benefits may be paid.

CONCLUSION

[24] The General Division did not consider the impact of the Claimant's return to Canada on her claim for Employment Insurance benefits. But, it would have made no difference because subsections 55(8) and (9) of the *Employment Insurance Regulations* applied. The Claimant continued to be entitled to 17 weeks of benefits.

[25] The Claimant received conflicting and inaccurate information from the Commission. Even so, the legislation does not let me provide any extra weeks of benefits to try to remedy these errors or to hold the Commission to account.

[26] The appeal is dismissed.

Janet Lew
Member, Appeal Division

HEARD ON:	February 3, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	L. M., Appellant Angèle Fricker, Representative for the Respondent