



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *C. M. v Canada Employment Insurance Commission*, 2020 SST 185

Tribunal File Number: GE-20-315

BETWEEN:

C. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Charline Bourque

HEARD ON: February 19, 2020

DATE OF DECISION: February 27, 2020

DECISION

[1] The appeal is dismissed. The Appellant is not entitled to receive the additional weeks of benefits provided by Pilot Project No. 21 for seasonal workers.

OVERVIEW

[2] The Appellant has seasonal employment with the Association de chasse & pêche du X [X hunting and fishing association]. She stopped working on October 18, 2019. The Appellant asked to take advantage of the five-week increase in benefits allowed for seasonal workers who meet certain criteria. On January 8, 2020, the Commission denied the Appellant's application because it found that she was not eligible for Pilot Project No. 21, which allows a five-week increase in benefits.

[3] The Commission indicates that the Appellant did not file at least two of her claims around the same time of year in the last 260 weeks, as the *Employment Insurance Regulations* (Regulations) require.

[4] As a result, I must determine whether the Appellant is eligible for Pilot Project No. 21.

ISSUE

[5] Is the Appellant eligible for an increase in the weeks of benefits for seasonal workers?

ANALYSIS

Issue: Is the Appellant eligible for an increase in the weeks of benefits for seasonal workers?

[6] The maximum number of weeks for which Employment Insurance benefits may be paid in a benefit period varies based on the number of insurable hours accumulated in the qualifying period and based on the regional rate of unemployment in the claimant's region section [*sic*].¹

¹ This principle is set out in the *Employment Insurance Act* (Act) at section 12(2).

[7] Pilot Project No. 21 was put in place to allow seasonal workers to increase the number of weeks of benefits and obtain five additional weeks.²

[8] To be eligible, claimants must prove that they meet the following four criteria:³

- a) the date on which a benefit period is established must be between August 5, 2018, and May 30, 2020;
- b) at the time that the benefit period is established, the claimant is ordinarily resident in a region covered by the pilot project;⁴
- c) in the 260 weeks before the beginning of the benefit period referred to in paragraph (a), at least three benefit periods had been established during which regular benefits were paid or payable; and
- d) at least two of the benefit periods referred to in paragraph (c) had begun around the same time of year—that is within eight weeks.

[9] The Commission states that the Appellant meets the first three criteria of Pilot Project No. 21. The beginning of her claim is October 20, 2019; she is ordinarily resident in one of the economic regions covered by the pilot project; and she established at least three benefit periods during which regular benefits were paid or payable in the 260 weeks before the beginning of the current benefit period.⁵

[10] I agree with the Commission's position that the Appellant meets the first three criteria established by Pilot Project No. 21. Furthermore, I have taken into account that the representative does not dispute the fact that the Appellant meets the first three criteria.

[11] However, the Commission submits that the Appellant does not meet the last criterion for receiving a five-week increase in benefits as Pilot Project No. 21 allows. The Commission

² Pilot Project No. 21 is set out in section 77.992 of the Regulations.

³ The criteria are set out in section 77.992(2) of the Regulations.

⁴ The regions covered by the pilot project are described in Schedule I and are set out in Schedule II.92 of the Regulations.

⁵ The Commission explained its position in its submissions on page GD4-2.

submits that, even though three benefit periods were established in the 260 weeks before the beginning of the current benefit period, at least two of them did not begin around the same time of year as the current benefit period.

[12] The Commission indicates that the earlier claims do not have to begin on exactly the same date as the qualifying claim. The earlier claims are deemed to have begun around the same time as the qualifying claim if the beginning of the benefit period falls within 17 weeks—8 weeks before or after each one-year period.

[13] The Commission considers that the five earlier claims are as follows: October 28, 2018; January 7, 2018; January 22, 2017; February 14, 2016; March 8, 2015; and March 16, 2014. Therefore, the Commission is of the view that there is only one earlier period with the benefit period beginning around October.

[14] The representative argues that the Commission has not met its obligation under the pilot project to inform a claimant properly. He noted that the Commission's background material does not refer to the fact that claims must begin around the same period.⁶ Furthermore, he states that the Commission cannot rely on the argument that ignorance of the law is no excuse.⁷

[15] The representative argues that, when the Employment Insurance system renews an old claim and the claimant receives benefits starting from the old claim, this corresponds to a benefit period.

[16] He indicates that the Commission has forgotten paragraph (3) of section 77.992 of the Regulations, which refers to a "notification of payment" and not to a notification of new payment. The representative indicates that Parliament would have specified if it wanted this to refer only to a new claim.

⁶ Decision tree about Employment Insurance additional weeks and information about additional Employment Insurance regular benefits for seasonal workers in affected areas (GD5).

⁷ The representative stresses that this argument is found only in section 19 of the *Criminal Code* and that it was rejected in *Abrahams*. He points out that *Albrecht* found that a person must act in a reasonable and prudent way according to the circumstances.

[17] Therefore, he argues that the Appellant filed at least two claims for benefits at the same time or around the same time—namely on February 14, 2016; January 22, 2017; and January 7, 2018. Furthermore, he argues that the Appellant always stops working around the same time of year. In fact, the Appellant works from May to October and, therefore, has a period of seasonal unemployment every year from October to April.⁸ The difference between her benefit periods is due to the fact that she ends an earlier claim before establishing a new one at the end of the earlier period.

[18] The representative argues that the Commission should consider when her employment ends and not when the benefit period begins given that the beginning of the benefit period can vary depending on when the earlier period was established, especially since the Commission does not provide this information to claimants.

[19] The issue is whether the Appellant has met the fourth criterion imposed by section 77.992 of the Regulations. That section indicates that at least two of the benefit periods that had been established in the 260 weeks before the beginning of the benefit period referred to in paragraph (a) had begun around the same time of year as the benefit period referred to in paragraph (a) began.

[20] The claim for benefits referred to in paragraph (a) is the one that established the current claim for benefits. That claim was established on October 20, 2019.

[21] As a result, two of the benefit periods established in the 260 weeks before the beginning of the October 20, 2019, benefit period must have begun around the same time of year⁹—namely within eight weeks before or after¹⁰ October 20.

[22] The Appellant filed a claim for benefits on October 20, 2019, while her previous claims had been established on the following dates: October 28, 2018; January 7, 2018; January 22, 2017; February 14, 2016; March 8, 2015; and March 16, 2014.

⁸ The Appellant states that her employment ended on October 10, 2015; October 15, 2016; October 14, 2017; October 13, 2018; and October 19, 2019.

⁹ This criterion is set out in paragraph (d) of section 77.992 of the Regulations.

¹⁰ This criterion is set out in paragraph (4) of section 77.992 of the Regulations.

[23] I am of the view that none of those claims were filed around the same time of year, meaning eight weeks before or after the date on which she filed her October 20 claim.

[24] I have also considered the fact that the representative noted that [*sic*] paragraph (3) of section 77.992 of the Regulations, which indicates that for “the purposes of paragraph (2)(c), a claimant’s benefit period established before the beginning of the 260-week period is considered to have been established within the 260-week period if the claimant received a notification of payment or non-payment with respect to any week that falls within that 260-week period.”

[25] The Act indicates that a benefit period corresponds to: “When an insured person who qualifies under section 7 or 7.1 makes an initial claim for benefits, a benefit period shall be established and, once it is established, benefits are payable to the person in accordance with this Part for each week of unemployment that falls in the benefit period.”¹¹

[26] As a result, I am of the view that a benefit period corresponds to an initial benefit period. With a benefit renewal claim, this is the same benefit period that was initially established.

[27] Therefore, even though I agree with the representative and the Appellant that the Appellant is a seasonal worker and that she experiences a disruption of employment each year around the same date, I cannot find that the Appellant’s benefit period dates are different from those the Commission reported. I acknowledge the Appellant’s disappointment that it is merely because of renewing her claims for benefits that she is not entitled to the additional weeks for seasonal workers. I also acknowledge the representative’s argument that the Commission does not provide this information and that the Regulations should not be based on when the claim is established, but rather on when the disruption of work occurs.

[28] However, despite what the representative stated, I am of the view that I cannot go against what the Regulations stipulate.

[29] Therefore, I am of the view that the Appellant does not meet the last criterion of section 77.992(2) of the Regulations, which sets out the criteria for Pilot Project No. 21. The Appellant has not established two claims filed around the same time in the last five years—that is

¹¹ A benefit period is defined under section 9 of the Act.

between August 25 and December 14. As a result, the Appellant is not eligible for an increase in her weeks of benefits for a seasonal worker.

[30] I find that the Appellant is not eligible for an increase in the weeks of benefits for seasonal workers provided by Pilot Project No. 21. As a result, the number of weeks of entitlement is determined according to section 12(2) of the Act.

CONCLUSION

[31] The appeal is dismissed.

Charline Bourque
Member, General Division – Employment Insurance Section

HEARD ON:	February 19, 2020
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	C. M., Appellant Sylvain Bergeron, Representative for the Appellant