Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *JW v Canada Employment Insurance Commission*, 2020 SST 1120

Tribunal File Number: GE-20-2262

BETWEEN:

J. W.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent/Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Suzanne Graves

HEARD ON: November 30, 2020

DATE OF DECISION: December 7, 2020

Canada

DECISION

[1] The appeal is dismissed. This means that the Claimant's benefits cannot be changed to regular employment insurance (EI) benefits.

OVERVIEW

[2] The Claimant in this case works as a school secretary and was laid off for the summer break on June 26, 2020. Her layoff was unrelated to the COVID-19 pandemic. She applied for regular EI benefits and her benefit period was established effective June 28, 2020.

[3] The Commission decided that the Claimant should receive the Employment Insurance Emergency Response Benefit (EI-ERB) under the *Employment Insurance Act* (EI Act). This is the temporary EI benefit that was created in response to the COVID-19 pandemic. She received EI-ERB of $500 per week from June 28, 2020, until she returned to work on August 27, 2020.

[4] The Claimant disagrees with the Commission's decision to pay her the EI-ERB. She says that she does not qualify for the EI-ERB, as she did not lose her job due to COVID-19. She argues that she should receive regular EI benefits at a higher rate than $500 per week. She is also concerned that the government did not deduct tax from her EI-ERB benefits, so she now has to save money to pay income taxes at the end of the year.

ISSUE

[5] I have to decide whether the Claimant can receive regular EI benefits instead of the EI-ERB.

ANALYSIS

[6] In March 2020, the government changed the EI Act to allow the Minister to make temporary orders to mitigate the economic effects of the COVID-19 pandemic.[1] The Minister

[1]The *COVID-19 Emergency Response Act* added section 153.3 to the EI Act, which allows the Minister of Employment and Social Development to make temporary orders amending the Act. Subsection 153.3(8) of the EI Act says that these interim orders prevail to the extent of any conflict with the Act or any regulation made under it.

made several orders to amend the EI Act, effective March 15, 2020, one of which added a new temporary benefit to the EI Act, called the EI-ERB.

[7] The new EI Act provisions say that claimants who would otherwise have established a benefit period for regular benefits between March 15, 2020, and September 26, 2020, are instead claimants for the purposes of the EI-ERB. The law says that a benefit period for regular benefits cannot start during that time.[2] Claimants do not get to choose between the EI ERB and regular EI benefits.

[8] The benefit rate for the EI-ERB is $500 per week for all claimants.[3] By contrast, regular EI benefits are set at a rate of 55% of a claimant's normal weekly earnings, up to a maximum. The maximum weekly regular benefit rate for 2020 is $573.

[9] The Claimant lost her job as a school secretary on June 26, 2020.[4] The parties agree that her layoff was not COVID-19 related. She is laid off from her job with the school board three times each year, in December, March and June. After the summer layoff, she returns to work in late August, for the start of school in September. Due to her original hiring date, she makes an initial claim for EI benefits each June, at the end of the school year.

[10] She made an initial claim for regular benefits on June 26, 2020, and her benefit period was established effective June 28, 2020.[5] She received the EI-ERB for nine weeks from June 28, 2020, until August 27, 2020, at a rate of $500 per week. She argues that she does not qualify for EI-ERB benefits since she did not lose her job due to the COVID-19 pandemic.

[11] The Claimant says that she should qualify for regular EI benefits at a higher rate than $500. She argues it is unfair that she got less than she would have received under regular

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[2] Section 153.8 of the EI Act says that no benefit period can be established with respect to any of the benefits referred to in paragraph 153.5(3)(a) of the Act. Paragraph 153.5(2)(b) states that a claimant means a person who could have had a benefit period established on or after March 15, 2020. Paragraph 153.5(3)(a) clarifies that the benefits referred to in paragraph 153.5(2)(b) include benefits under Part 1 of the EI Act. Part 1 includes regular benefits.
[3] The $500 per week benefit rate is set out in subsection 153.10(1) of the EI Act.
[4] The Claimant's record of employment dated July 10, 2020, is at GD03-13 to 14.
[5] The Claimant's application for benefits is at GD03-3 to 12.

benefits.[6] She notes that some school board employees continued to receive regular EI benefits during the pandemic, if their benefit period had already started before March 15, 2020.

[12] She testified that she expected to receive the maximum EI regular benefit rate, which in the past has amounted to $1,072 after taxes for each biweekly period. Instead, she received only $1,000 before taxes every two weeks.

[13] The government did not withhold tax from the EI-ERB benefit payments, so the Claimant is also concerned about the tax consequences, as she must now save money to pay income tax at the end of the year. This would not have been the case with regular EI benefits, because taxes are withheld from those payments.

[14] The Claimant made a reconsideration request on August 7, 2020, asking the Commission to switch her to regular EI benefits. On October 28, 2020, the Commission decided to pay her regular benefits instead of EI-ERB payments.[7] But on November 12, 2020, the Commission changed its decision, and decided that the Claimant could not be paid regular EI benefits because the law says that claimants who would otherwise have established a benefit period for regular benefits between March 15, 2020, and September 26, 2020, are instead claimants for the purposes of the EI-ERB.[8]

Can the Claimant receive regular EI benefits instead of benefits under the EI-ERB?

[15] While I appreciate the Claimant's frustration, I find that she cannot receive regular EI benefits because her benefit period was established on June 28, 2020. This date is not in dispute. Although she did not lose her job due to COVID-19, her benefit period start date falls within the period between March 15, 2020, and September 26, 2020.

[16] The law is very clear that the Claimant cannot establish a benefit period for regular benefits on June 28, 2020, and the only benefits she can receive are benefits under the EI-ERB.

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[6] The Claimant argues that she would have received $2,144 per four-week period after tax in regular EI benefits, but only received $2,000 before taxes under the EI-ERB (GD02-4).
[7] The Commission's October 28, 2020, reconsideration decision is at GD03-21 to 22.
[8] The November 12, 2020, decision of the Commission is at GD03-23 to 24.

The fact that the Claimant did not lose her job due to COVID-19 is not relevant to deciding which type of benefit she can be paid.

[17] Again, I understand the Claimant's disappointment in this case, particularly given that the Commission made an initial reconsideration decision in her favour, only to later issue a second decision denying her request. However, I have to apply the law as written and have no authority to make special exceptions.[9]

[18] The weekly rate of the EI-ERB is set under the EI Act to be the same for all claimants at $500. The Claimant received the correct weekly benefit rate of $500 per week. I acknowledge the Claimant's concern that she must now save for taxes; however, I have no jurisdiction over tax issues.

CONCLUSION

[19] The appeal is dismissed.

Suzanne Graves
Member, General Division - Employment Insurance Section

HEARD ON:	November 30, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. W., Appellant

[9] In *Canada (Attorney General) v Knee*, 2011 FCA 301, the Federal Court of Appeal said that "rigid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme. However, tempting as it may be in such cases … adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning."