



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *CS v Canada Employment Insurance Commission*, 2020 SST 1158

Tribunal File Number: GE-20-2264

BETWEEN:

**C. S.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: John Noonan

HEARD ON: December 3, 2020

DATE OF DECISION: December 14, 2020

## **PRELIMINARY MATTERS**

*[1] I would draw the attention of the Appellant to the following which may be relevant in her case. I am bound by law to only adjudicate the issues before me. In this case, availability and benefit period extension. However testimony at the hearing brought to light circumstances that the Commission has not had the opportunity to consider or rule upon. The Appellant here, while on maternity / parental leave and in the receipt of benefits, had a severe flare-up of her MS symptoms on August 30, 2019 (confirmed by medical documentation) causing her to not be able to hold her newborn, use a computer or even use a telephone. She was transported to St. John's and hospitalized as a result. She further testified that she is still not 100%.*

*[2] During this period she did not / could not apply to have her benefits converted to sickness benefits.*

*[3] Whether the Commission would consider an antedate request by the Appellant that would allow such a conversion of the type of benefits payable for the period during which she was disabled and hospitalized is between the Appellant and the Commission. A positive outcome would, of course, allow an extension to the benefit period in question here*

## **DECISION**

*[4] The appeal is dismissed.*

## **OVERVIEW**

*[5] The Appellant, C. S., a worker in NL, was upon reconsideration by the Commission, notified that it was unable to pay her Employment Insurance Sickness benefits from July 7, 2020 to September 5, 2020 because she had not proven her availability for work. She does not meet the eligibility criteria to have sickness benefits paid after her parental benefits because at least one week of sickness would have had to have been already paid in the benefit period to allow for that option. The Appellant maintains she was sick for two months of her maternity leave and therefore requests sickness benefits from 5 July to 24 July 2019, and the remain sickness benefits from 28 June 2020 to 4 September 2020.. The Tribunal must decide if the Appellant has proven her availability pursuant to sections 18 of the Employment Insurance Act (the Act) and her*

eligibility for an extension of her benefit period in order to receive sickness benefits after parental benefits pursuant to section 10 and 12 of the Act.

## **ISSUES**

[6] Issue # 1: Was the Appellant otherwise available for work?

Issue #2: Whether the number of entitlement weeks, during her benefit period, pursuant to subsection 10 and 12(2) of the Act, was correctly established or could be extended.

## **ANALYSIS**

[7] The relevant legislative provisions are reproduced at GD-4.

[8] In order to be found available for work, a claimant shall: 1. Have a desire to return to the labour market as soon as suitable employment is offered, 2. Express that desire through efforts to find a suitable employment and 3. Not set personal conditions that might unduly limit their chances of returning to the labour market. All three factors shall be considered in making a decision. (**Faucher A-56-96 & Faucher A-57-96**)

### **Issue 1: Was the Appellant otherwise available for work?**

[9] No.

[10] In this case, by the Appellant's statements and submissions, she was on a planned maternity / parental leave as of July 5, 2019.

[11] The ROE completed and submitted by the Appellant as well as the one submitted by her second employer, clearly confirm this planned leave.

[12] I find that the actions on the part of the Appellant do not show a desire, prior to July 5, 2019 to apply for benefits other than those requested

[13] I find the Appellant, by her submissions and actions, has not met the burden of proof required to show she was in fact otherwise available for work.

**Issue #2: Whether the number of entitlement weeks, during her benefit period, pursuant to subsection 10 and 12(2) of the Act, was correctly established or could be extended.**

[14] The lifespan of a benefit period for employment insurance benefits is 52 weeks from the start date of a claim and this means that all benefits an individual is entitled to must be paid to them within this 52 week period.

[15] Subsection 12(2) of the Act establishes the maximum number of weeks for which employment insurance benefits may be paid in a benefit period.

[16] I find that the Commission correctly calculated the number of weeks of payable maternity and parental benefits.

[17] Subsection 10(13) of the Act establishes that a benefit period may be extended so that special benefits may be paid up to that type of special benefits maximum total number of weeks if during a claimant's benefit period the following specifications are met:

- 1) regular benefits were not paid to the claimant,
- 2) sickness, maternity, parental, compassionate care, or Parents of Critically Ill Children (PCIC) benefits were paid to the claimant and at least one of those benefits was not paid to the applicable maximum number of weeks established for those reasons, and
- 3) they were not paid the maximum combined special benefits in that Benefit Period.
- 4) Then if the specifications are met the benefit period is extended so that those benefits may be paid up to that maximum total number of weeks.
- 5) The Commission cannot change the provisions of the Act regarding this issue.

[18] The Appellant was paid the full number of weeks of Maternity and Parental benefits on this claim during her benefit period.

[19] The Appellant made no claim for sickness benefits at any time during her benefit period therefore no sickness benefits were paid which would allow for an extension.

[20] As a result, there can be no benefit period extension beyond the maximum 52 week benefit period because the Appellant's benefit period end date therefore she could not be paid the any possible weeks of sickness benefits extending beyond the end of her claim.

[21] Simply put, because the maximum maternity and parental benefits were paid to the Appellant during her 52 week benefit period, there can, by legislation, be no extension of that benefit period to allow payment of sickness benefits.

[22] There is no jurisprudence that would compel or allow this Member to change the position of the Commission in this case. The Commission's decisions were made in strict accordance with the Act and the Regulations.

[23] I do recognize that there are challenges to be faced by the Appellant, but she, as are all Canadians, is bound by the Law as it stands today.

## CONCLUSION

[24] I find that, having given due consideration to all of the circumstances, the Appellant has not successfully rebutted the assertion that she was not otherwise available for work and the Commission has correctly determined the number of eligible weeks benefits could be paid and the fact that no extension to the benefit period can be allowed therefore the appeal on both issues is dismissed.

John Noonan

Member, General Division - Employment Insurance Section

HEARD ON:	December 3, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. S., Appellant