



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *CS v Canada Employment Insurance Commission*, 2021 SST 80

Tribunal File Number: GE-21-39

BETWEEN:

C. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

HEARD ON: February 4, 2021

DATE OF DECISION: February 9, 2021

DECISION

[1] C. S. is the Claimant. The Canada Employment Insurance Commission (Commission) made several decisions about her Employment Insurance benefits. She is appealing these decisions to the Social Security Tribunal (Tribunal).

[2] I do not have the authority to make decisions about all of the things the Claimant is trying to appeal. She should ask the Commission to reconsider its decisions about her entitlement to regular benefits and an assignment of benefits.

[3] I find that I have the authority to make decisions about the number of weeks of sickness benefits, and the end of her benefit period. However, I am dismissing her appeal on these issues. She can only collect 15 weeks of sickness benefits. She cannot extend her benefit period.

OVERVIEW

[4] The Claimant stopped working and applied for Employment Insurance benefits. The Commission started paying her benefits. The Claimant gave the Commission more information about her income and the Commission also got more details from the Claimant's employer about her income. The Commission recalculated the Claimant's benefits many times. Eventually, the Commission finished with all of its calculations, but the Claimant owed money to the Commission at the end. The Claimant asked the Commission to reconsider its decisions. The Commission did not change its decisions, and so the Claimant appealed to the Tribunal.

ISSUES

[5] The Claimant has an overpayment. She is trying to appeal the Commission's decisions in a way that will allow her to wipe out the overpayment.

ANALYSIS

What are the issues in this appeal?

[6] Usually, the issue in an appeal is obvious. Some claimants are very clear about which of the Commission's decisions they are trying to appeal. This appeal is different. The Claimant has

a clear goal. She wants to wipe out an overpayment. However, the overpayment happened because of several decisions. There is not one clear decision that led to the overpayment. This means that my first step is to identify which of the Commission's decisions the Claimant wants to appeal.

[7] To do this, first I have to look at the Claimant's history with the Commission.

[8] The Claimant applied for benefits. The employer made some mistakes on the Claimant's Record of Employment (ROE). Also, the ROE did not give a good record of the Claimant's real pattern of earnings. The Commission recalculated the Claimant's benefits several times. The Commission recalculated the Claimant's benefits to account for her highest income weeks. The Commission changed its original decisions about the money her employer paid on separation. This changed the week the Commission started paying benefits to the Claimant. The Commission also changed some of the Claimant's benefits from regular to sickness benefits.

[9] This was the end result of all of the Commission's recalculations:

- The Claimant's benefit period started on January 13, 2019.
- The Claimant got some money from her employer because she stopped working. The Commission allocated these earnings to the first four weeks of her benefit period.
- She served her waiting period in the week of February 10, 2019.
- She collected sickness benefits for 15 weeks: from February 17 to March 2, 2019, and then from June 2 to August 31, 2019.
- She recovered from her injury and started collecting regular benefits in the week of September 22, 2019.
- She collected regular benefits until her benefit period ended on February 8, 2020.

[10] Before the Commission made its final calculations, it paid three weeks of sickness benefits for the weeks of September 1, September 8, and September 15, 2019. When the Commission finished its final calculation, the Claimant became entitled to benefits sooner. This

meant that the Claimant collected her 15th week of sickness benefits in the week beginning August 25, 2019. The Commission asked the Claimant to repay the three weeks of sickness benefits she received in September 2019. This is the overpayment that is the issue in this appeal.

[11] At the hearing, the Claimant said that she was appealing because she wants to wipe out the overpayment in some way. She wants to adjust her benefits in some way so that she can become entitled to three more weeks of benefits, and then use those benefits to offset the overpayment. She suggested a few different ways that this could happen:

- The Commission could pay her three more weeks of sickness benefits.
- The Commission could extend her benefit period and pay three more weeks of regular benefits in February 2020.
- The Commission could change some of her earlier weeks of sickness benefits to regular benefits, and then pay the last three weeks of sickness benefits for the weeks in September 2019.

[12] The Claimant said that she did not want to claim regular benefits for the three weeks in September 2019. She said she is not trying to appeal this issue.

[13] There is one more issue: the Commission withheld benefits in some weeks for an “assignment of benefits.” The Commission says that the Claimant collected provincial income assistance benefits for some weeks in 2019. Later, the Commission paid the Claimant Employment Insurance benefits for those same weeks. The Commission says that it has to repay the Employment Insurance benefits directly to the province to offset the income assistance benefits. This is because the Claimant cannot collect income assistance and Employment Insurance for the same weeks. The Claimant disagrees with the Commission’s information. She says that she did not collect income assistance benefits in 2019.

[14] In its submissions to the Tribunal, the Commission says that one of the issues is weeks of entitlement. The Commission says that the Claimant had 1466 hours in her qualifying period, and so she was entitled to a maximum of 35 weeks of regular benefits. But I do not see that the Claimant ever asked about this issue. The Claimant has never said that she thinks the

Commission counted her hours incorrectly. She has never said that she wanted more than 35 weeks of regular benefits. Her main concern is that she could not collect any more regular benefits after February 8, 2020.

[15] The Claimant did not tell me that she wants to appeal the Commission's decision about 35 weeks of entitlement, and so I am not going to look at this issue in my decision.

[16] Even though the Claimant has a complicated history with the Commission, I think I can simplify her appeal into four questions:

- Can she collect more than 15 weeks of sickness benefits?
- Does her benefit period have to end on February 8, 2020?
- Can she change some of her sickness benefit weeks to regular benefits?
- Did the Commission correctly calculate the assignment of benefits?

[17] The Commission did not clearly address these four questions during its reconsideration process. This means that I cannot dive directly into answering these questions. First, I have to decide if I have the authority to look at each of these questions. If I do have the authority, then I can make a decision. If I do not have the authority, then the Claimant has to ask the Commission for a reconsideration first.

What does it mean for the Tribunal to have authority to look at an issue?

[18] There is a process to follow when you disagree with a decision about your Employment Insurance benefits. First, you have to ask the Commission to review its decision. This is called a reconsideration.¹ If you still disagree with the Commission's decision after the reconsideration, you can appeal to the Tribunal.²

[19] You cannot skip the reconsideration step. You cannot ask the Tribunal to make a decision about your Employment Insurance benefits before the Commission reconsiders its decision. If

¹ Section 112 of the *Employment Insurance Act*.

² Section 113 of the *Employment Insurance Act*.

the Tribunal tries to make a decision on an issue before the Commission does a reconsideration, then the Tribunal is exceeding its jurisdiction. This is an error. The Tribunal is not allowed to do this.

[20] Another way of saying this is that the Tribunal does not have the authority to make a decision on an issue before the Commission does the reconsideration.

Can the Claimant collect more than 15 weeks of sickness benefits?

Do I have the authority to look at this question?

[21] First, I am going to decide whether I have the authority to look at this question.

[22] The Claimant asked this question at her hearing. She wants me to make a decision about this issue.

[23] I understand that the Commission says that it did not reconsider its decision about the maximum number of weeks of sickness benefits.³ However, the Commission talked to the Claimant about the maximum weeks of sickness benefits during the reconsideration process. The Commission also made arguments about the maximum number of weeks of sickness benefits in its first submissions to the Tribunal.⁴

[24] I think that the Commission's record of conversation shows that the Commission looked at this question during the reconsideration process. I think that this means that the Commission did reconsider this issue, even if it does not talk about it in the reconsideration decision letter.

[25] Because I think that the Commission looked at this question during its reconsideration, I find that I have the authority to look at this question in this appeal.

So, can the Claimant collect more than 15 weeks of sickness benefits?

³ GD8-1

⁴ GD4-4

[26] The Claimant and the Commission both agree that the Claimant collected 15 weeks of sickness benefits. The only issue I have to look at is whether she can get more than 15 weeks of sickness benefits.

[27] She cannot. The law says that no one can get more than 15 weeks of sickness benefits in one benefit period.⁵ I am not allowed to change the law or interpret it in a way other than its plain meaning. Even in a sympathetic situation, I cannot make exceptions.⁶

[28] This means that the Claimant cannot collect more than 15 weeks of sickness benefits. I have to dismiss her appeal on this question.

Does the Claimant's benefit period have to end on February 8, 2020?

Do I have the authority to look at this question?

[29] Just as I did for the first question, I am going to decide whether I have the authority to look at this question.

[30] The Claimant also asked this question at her hearing. She wants me to make a decision about this issue.

[31] The Commission says that it did not reconsider its decision about the length of the Claimant's benefit period.⁷ However, the Commission talked to the Claimant about the end of her benefit period during the reconsideration process. The Commission told her that her benefit period ended on February 8, 2020. The Commission also explained its decision about this issue in its first submissions to the Tribunal. The Commission even referred to case law talking about the length of a benefit period.⁸

[32] I think it is clear that the Commission looked at this question during the reconsideration period. The Commission talked to the Claimant about the length of her benefit period. The Commission told the Claimant, either directly or indirectly, that it was not going to extend her

⁵ Paragraph 12(3)(c) of the *Employment Insurance Act*.

⁶ The Federal Court of Appeal says this at paragraph 9 of its decision *Canada (Attorney General) v Knee*, 2011 FCA 301.

⁷ GD8-1

⁸ GD4-4

benefit period. Even though the Commission did not put this issue in the reconsideration decision letter, I think that the Commission reconsidered this issue. I find that I have the authority to look at this question in this appeal.

So, does the Claimant's benefit period have to end on February 8, 2020?

[33] A benefit period is usually 52 weeks long.⁹ In some cases, the Commission can extend a benefit period. These are the circumstances when the Commission can extend a benefit period:

- You were in jail or a similar institution, and not found guilty of the offense;
- You were receiving separation money because your employment ended;
- You were receiving worker's compensation benefits; or,
- You were receiving payments under a provincial plan to protect pregnant or breastfeeding mothers.¹⁰

[34] The Claimant had an allocation in the first four weeks of her benefit period. She could not collect benefits during those four weeks because the Commission applied the separation money from her former employer. To account for the Claimant missing four weeks at the beginning of her benefit period, the Commission added four more weeks to the end of the Claimant's benefit period. The Commission decided that her benefit period would be 56 weeks long and end on February 8, 2020.

[35] The Claimant does not have a problem with the Commission's decision to extend her benefit period by four weeks. She wants to know if the Commission can extend it even further.

[36] At the hearing, we talked about the conditions for a benefit period extension. The Claimant did not say that she met any of these conditions. She did not give any reasons why she might be entitled to a benefit period extension.

⁹ Subsection 10(2) of the *Employment Insurance Act*.

¹⁰ Subsection 10(10) of the *Employment Insurance Act*. There are other grounds for benefit period extensions in subsections 10(12) to 10(13.03). However, these grounds only apply to claimants asking for parental benefits or special benefits.

[37] The Claimant does not meet any of the conditions for a benefit period extension. This means that she cannot extend her benefit period. I cannot make any exceptions to the law.

[38] I find that the Claimant's benefit period ended on February 8, 2020. She does not meet any conditions to have a longer benefit period. I have to dismiss her appeal on this issue.

Can the Claimant change some of her sickness benefit weeks to regular benefits?

Do I have the authority to look at this question?

[39] At the hearing, the Claimant said that she was not trying to change the weeks of September 1, 8, and 15, 2019 to regular benefit weeks. She said that she wanted to know if the Commission would change any of the earlier sickness benefit weeks to regular benefits. She said that she had not asked the Commission about this during her reconsideration. She only thought of it during her hearing with the Tribunal.

[40] The Commission's records of conversation show that the Claimant and the Commission did not talk about the possibility of changing earlier weeks of sickness benefits to regular benefits.

[41] There is no evidence in the appeal file that shows that the Claimant ever asked the Commission to reconsider its decision to pay sickness benefits before September 2019. The Claimant agrees that she has not asked the Commission for a reconsideration on this issue.

[42] It is clear to me that I do not have the authority to look at this question. This is because there is no reconsideration decision yet. The Claimant should contact the Commission to talk about a reconsideration request on this issue. If she disagrees with the reconsideration decision, she can file a new appeal with the Tribunal.

Did the Commission correctly calculate the assignment of benefits?

Do I have the authority to look at this question?

[43] The Claimant says that she talked about this issue with the Commission. She gave the Tribunal new evidence about the assignment of benefits. She wants me to make a decision about this issue.

[44] The Commission says that it did not reconsider this decision. It says that this is not a really a decision of the Commission because the provincial government made this decision. The Commission says that there is no section of the law that talks about an assignment of benefits.¹¹

[45] I respectfully disagree with the Commission. Subsection 42(3) of the *Employment Insurance Act* talks about assigning benefits. This part of the law allows the Commission to use Employment Insurance benefits to repay a provincial government for income assistance benefits that a person received. There is nothing in the law that says that a person cannot ask for a reconsideration of any decisions made under this part of the law.

[46] It is clear that the Claimant and the Commission talked about the assignment of benefits during the reconsideration process. They talked about which weeks the Commission deducted the Claimant's Employment Insurance benefits to repay benefits to the province.

[47] However, I am not convinced that this means that the Commission actually reconsidered its decision about the assignment of benefits. To make a proper reconsideration decision, I think the Commission ought to understand which part of the law it is using to make a decision. The fact that the Commission says that it did not really make a decision about this issue, and the fact that the Commission said that there is no part of the law that gives them the authority to assign benefits to provincial governments makes me think that the Commission did not really do a proper reconsideration of its decisions on this issue.

[48] I think that the Claimant can ask for a reconsideration on this issue because I think that the Commission used the law to make its decision to assign part of the Claimant's benefits. However, I do not think I have the authority to hear an appeal on this issue right now because the Commission has not reconsidered its decision yet.

¹¹ GD8-2

CONCLUSION

[49] I am dismissing the Claimant's appeal on the issues I have the authority to look at. The Claimant cannot collect more than 15 weeks of sickness benefits. She cannot extend her benefit period. I do not have the authority to make decisions about the other issues the Claimant is trying to appeal.

Amanda Pezzutto

Member, General Division - Employment Insurance Section

HEARD ON:	February 4, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. S., Appellant