



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *CV v Canada Employment Insurance Commission*, 2021 SST 100

Tribunal File Number: GE-21-75

BETWEEN:

**C. V.**

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: Charlotte McQuade

HEARD ON: February 3, 2021

DATE OF DECISION: February 6, 2021

## **DECISION**

[1] The appeal is dismissed with modification. C. V. (the “Claimant”) does not have enough hours of insurable employment to start a new benefit period on September 27, 2020 for maternity and parental benefits.

[2] The Claimant’s existing benefit period ends May 15, 2021, rather than May 8, 2021 as determined by the Canada Employment Insurance Commission (“Commission”). This means the Claimant is entitled to 18 weeks of standard parental benefits until the benefit period ends on May 15, 2021 instead of 17 weeks, as determined by the Commission.

[3] The Commission has correctly determined the Claimant’s weekly benefit rate.

## **OVERVIEW**

[4] The Claimant stopped working due to illness on January 28, 2020. She applied for Employment Insurance (“EI”) sickness benefits on January 30, 2020 and received 15 weeks of sickness benefits from January 26, 2020 to May 16, 2020. While on sick leave, she was terminated from her job on February 24, 2020. The Claimant was paid one week’s termination pay. After her EI sickness benefits ended, the Claimant applied for the Canada Emergency Response Benefit (“CERB”) which she received until September 26, 2020. The Claimant then re-applied for EI maternity benefits on September 30, 2020 to be followed by 35 weeks of standard parental benefits. Rather than starting a new benefit period, the Commission renewed the Claimant’s existing benefit period effective September 27, 2020. The Commission says this was because the Claimant only had 480 hours of insurable employment in her qualifying period rather than the minimum required 600 hours. The Commission decided the Claimant was entitled to 15 weeks of maternity benefits from September 27, 2020 but she was entitled to only 17 of the 35 weeks of standard parental benefits she had claimed because her benefit period ended on May 8, 2021. The Commission determined the Claimant’s weekly benefit rate was \$368.00 plus \$35.00 for a family supplement for a total of \$403.00 per week.

[5] The Claimant disputes that the Commission renewed her existing benefit period rather than starting a new benefit period of September 27, 2020. She says that she has not worked since January 28, 2020 and so was unable to earn the additional 120 hours of insurable employment

she would need to meet the requirement of 600 insurable hours. She could not work as her employer is still closed and she cannot find alternative work due to the pandemic. The Claimant says the result of renewing the existing benefit period rather than starting a new period is that she cannot collect the maximum 35 weeks of standard parental benefits and her weekly benefit rate is less than it would have been.

[6] The Claimant says she called the Commission multiple times to ask if collecting EI sickness benefits would affect her ability to collect maternity and parental benefits and was assured it would not. She says she also asked the Commission whether collecting the CERB would affect her EI benefits and was told they were separate systems and her EI would not be impacted. The Claimant says she needs the full thirty-five weeks of parental benefits as her son has some health issues and requires her care.

### **PRELIMINARY MATTERS**

[7] The Claimant testified about documentation she had (an email and pay stub) confirming her separation from employment and the one week's termination pay she had received upon separation. This documentation had not been provided to the Tribunal prior to the hearing. However, I allowed this testimony and admitted this documentation into evidence as it was relevant to the length of the Claimant's benefit period. The Claimant submitted the documentation to the Tribunal after the hearing.<sup>1</sup>

### **ISSUES**

[8] I have to decide the following issues:

- Is the end date of the existing benefit period correctly determined to be May 8, 2021?
- Has the Claimant received the correct number of weeks of parental benefits prior to the end of her benefit period?
- Can the Claimant start a new benefit period instead of renewing the existing one?

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<sup>1</sup> GD5 and GD5A.

- Is the weekly benefit rate correct?

## ANALYSIS

[9] I have to decide if the Claimant's existing benefit period should end on May 8, 2021 and whether she has received the correct number of weeks of parental benefits prior to the end of the benefit period.

### *Length of Benefit Period*

[10] Benefits are only payable to a claimant for each week of unemployment that falls in that benefit period.<sup>2</sup>

[11] The law sets out rules as to when a benefit period begins and when it ends. A benefit period begins on the later of (a) the Sunday of the week in which the interruption of earnings occurs and (b) the Sunday of the week in which the initial claim for benefits is made.<sup>3</sup>

[12] A benefit ends 52 weeks after it began,<sup>4</sup> unless an exception set out in the law permits an extension.<sup>5</sup> The law says that an extension can be granted for the total number of weeks during the benefit period where a claimant proves that the claimant was not entitled to benefits due to the following reasons:

1. confinement in a jail, penitentiary or other similar institution and found not guilty of the offence for which being held;
2. in receipt of earnings paid by reason of the complete severance of the relationship with the former employer;
3. in receipt of workers compensation payments for an illness or injury;

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<sup>2</sup> Section 9 of the *Employment Insurance Act*.

<sup>3</sup> Subsection 10(1) of the *Employment Insurance Act*.

<sup>4</sup> Subsection 10(2) of the *Employment Insurance Act*.

<sup>5</sup> Subsections 10(10) to 10(13.02) of the *Employment Insurance Act*.

4. in receipt of payments under a provincial law on the basis of having ceased work because continuing work would have resulted in a danger to the claimant, her unborn child or a child whom she was breast-feeding.<sup>6</sup>

[13] A benefit period can also be extended by the number of weeks during which a newborn child is hospitalized within 52 weeks after the week in which the child is born<sup>7</sup> or if a member of the armed forces is directed to return to duty during their parental leave.<sup>8</sup>

[14] As well, a benefit period can be extended if a claimant has received at least two types of special benefits and at least one of those special benefits were paid for less than the maximum number of weeks established for those reasons. To benefit from this extension, the Claimant cannot have been paid regular benefits and the maximum total number of weeks available for each type of special benefit requested must exceed 50 weeks.<sup>9</sup>

[15] If you do not receive all the weeks of benefits you are potentially entitled to during the benefit period, you cannot receive them later, after the benefit period ends. To receive benefits after the benefit period ends, you have to start over with a new application and if you have enough hours of insurable employment to qualify based on your new application, then you could receive benefits again.

[16] The Commission says the Claimant's benefit period began on January 26, 2020 and would have ended 52 weeks later on January 17, 2021. However, the Commission extended the benefit period so the Claimant could potentially be paid the maximum number of weeks for each type of special benefit she requested. The Commission says the Claimant requested sickness benefits. She later requested maternity benefits to be followed by parental benefits. She did not collect regular benefits. The total maximum weeks for each of these type of special benefits amounts to 65 weeks (15 maximum weeks for sickness benefits,<sup>10</sup> 15 maximum weeks for maternity benefits<sup>11</sup> and 35 maximum weeks for standard parental benefits.<sup>12</sup>) The Commission

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<sup>6</sup> Subsection 10(10) of the *Employment Insurance Act*.

<sup>7</sup> Subsection 10(12) of the *Employment Insurance Act*.

<sup>8</sup> Subsection 10(12.1) of the *Employment Insurance Act*.

<sup>9</sup> Subsection 10(13) of the *Employment Insurance Act*.

<sup>10</sup> Paragraph 12(3)(c) of the *Employment Insurance Act*.

<sup>11</sup> Paragraph 12(3)(a) of the *Employment Insurance Act*.

<sup>12</sup> Paragraph 12(3)(b) of the *Employment Insurance Act*.

says the Claimant's 52-week benefit period of January 26, 2020 to January 17, 2021 was therefore extended by 15 weeks to May 08, 2021.

[17] The Commission says that, because the Claimant's benefit period ends on May 8, 2021, she cannot collect parental benefits after that date. She is only entitled to seventeen out of possible thirty-five weeks of parental benefits because the benefit period ends on May 8, 2021.

[18] The Claimant testified that she stopped work on January 28, 2020 due to illness. She applied for EI sickness benefits on January 30, 2020 and began collecting EI sickness benefits from the week of January 26, 2020. She explained that while collecting EI sickness benefits, her employer terminated her employment on February 24, 2020, as they needed to fill her position. She was provided with one week's termination pay. The Claimant says she thinks she did call the Commission and report these monies. The Claimant provided a copy of the email of February 24, 2020 from her employer terminating her<sup>13</sup> and copy of a pay stub showing gross pay in lieu of notice of \$578.00 for the pay period from February 24, 2020 to March 1, 2020.<sup>14</sup> A payment of vacation pay "paid out" of \$23.12 is also noted.

[19] The Claimant testified that when she became aware of her pregnancy in April 2020 she called Service Canada four times to enquire whether collecting her EI sickness benefits would impact her ability to collect maternity and parental benefits. She says she wanted to be sure. The Claimant said all but one of the Service Canada agents told her that her maternity and parental benefits would not be impacted. Only one said that it was "grey" and he was not 100% sure. The Claimant testified that after her 15 weeks of EI sickness ended, she applied for the CERB through the CRA. She collected those benefits until September 26, 2020. The Claimant says she also asked the Commission about whether collecting the CERB would impact her EI benefits and was told that they were separate systems so collection of the CERB would not impact her EI benefits. The Claimant related that she gave birth on September 20, 2020. She then applied for EI maternity and 35 weeks of standard parental benefits on September 30, 2020.

[20] The parties do not dispute that the Claimant's benefit period began January 26, 2020.

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<sup>13</sup> GD5-1.

<sup>14</sup> GD5A-1.

[21] I find that the Commission has correctly extended the 52-week benefit period for 15 weeks to May 8, 2021, to account for the maximum number of weeks of special benefits the Claimant was seeking.<sup>15</sup>

[22] I have considered whether the Claimant meets any reason for a further extension of his benefit period. I find the Claimant is entitled to a further one-week extension of her benefit period to May 15, 2021.<sup>16</sup> This is because she received one week's pay in lieu of notice and vacation pay for a total of \$601.12 in gross pay, as a result of her separation from employment on February 24, 2000. I do not have any information as to whether these earnings were already allocated to the Claimant's claim. However, there is no mention of an allocation in the Commission's representations. Earnings paid by reason for separation from employment are allocated beginning the week of separation at the rate of the Claimant's normal weekly earnings.<sup>17</sup> I will not make an allocation decision, as that matter is not before me. However, I am satisfied that, given the amount of the separation payment, the Claimant would not be entitled to benefits the week of February 23, 2020. She therefore qualifies for a one-week extension to her benefit period. As I mentioned to the Claimant at her hearing, if the Commission was not aware of that separation payment made to her as a result of her February 24, 2020 termination or those earnings have not been allocated to her claim, that allocation could result in an overpayment.

[23] I find there is no evidence that the Claimant meets any reason for a further extension of her benefit period so the Claimant's benefit period ends on May 15, 2021. I have reviewed the law and see no provision that allows for any extension of the benefit period by reason of collection of the CERB benefit.

#### *Weeks of parental benefits*

[24] A benefit period ends when the maximum number of weeks have been paid to a claimant or the benefit period would otherwise end, whichever occurs first.<sup>18</sup>

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<sup>15</sup> Subsection 10(13) of the *Employment Insurance Act*.

<sup>16</sup> Subsection 10(10) of the *Employment Insurance Act*.

<sup>17</sup> Subsection 36(9) of the *Employment Insurance Regulations*.

<sup>18</sup> Paragraph 10(8)(a) of the *Employment Insurance Act*.

[25] If a benefit period has been established for a claimant, benefits may be paid to the claimant for each week of unemployment that falls in the benefit period, subject to maximums established by section 12 of the Act.<sup>19</sup> As above, the maximum number of weeks of sickness benefits is 15.<sup>20</sup> The maximum number of weeks of maternity benefits is 15 weeks<sup>21</sup>, and the maximum number of weeks of standard parental benefits in a benefit period is 35 weeks.<sup>22</sup>

[26] The Commission says the Claimant collected 15 weeks of sickness benefits between January 26, 2020 and May 16, 2020. The Claimant collected the CERB until September 26, 2020. After her application for maternity and parental benefits on September 30, 2020, her claim was renewed on September 27, 2020. The Claimant collected 15 weeks of maternity benefits. The Commission says she can only collect 17 out of the possible 35 weeks of standard parental benefits because her benefit period ends on May 8, 2021.

[27] As above, I have found the benefit period to end on May 15, 2021. The Claimant is not entitled to receive parental benefits past the expiry of her benefit period on May 15, 2021. The Claimant is entitled to 18 weeks of standard parental benefits before her benefit period terminates on May 15, 2021.

*Can the Claimant start a new benefit period instead of renewing the existing one?*

[28] No. The Claimant does not have enough hours of insurable employment to establish a new benefit period.

[29] In order to establish a new claim for benefits, claimants need to have worked enough hours<sup>23</sup> during a certain timeframe.<sup>24</sup> This timeframe is called the qualifying period.

[30] To be eligible for maternity and parental benefits, claimants must have 600 or more insurable hours in their qualifying period.<sup>25</sup>

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<sup>19</sup> Subsection 12(1) of the *Employment Insurance Act*.

<sup>20</sup> Paragraph 12(3)(c) of the *Employment Insurance Act*.

<sup>21</sup> Paragraph 12(3)(a) of the *Employment Insurance Act*.

<sup>22</sup> Paragraph 12(3)(b) of the *Employment Insurance Act*.

<sup>23</sup> Subsection 93(1) of the *Employment Insurance Regulations*; the hours need to be hours of insurable employment.

<sup>24</sup> Section 7 of the *Employment Insurance Act*; section 93 of the *Employment Insurance Regulations*.

<sup>25</sup> Pregnancy and parental benefits are only payable to major attachment claimants (subsections 22(1) and 23(1) of the *Employment Insurance Act*); “Major attachment claimant” means a claimant who qualifies to receive benefits



[31] In general, the qualifying period is the 52 weeks before a claimant's benefit period would start.<sup>26</sup> (The benefit period is a different timeframe; it is the time when EI benefits may be paid to claimants.)

[32] A current qualifying period can never overlap into a previous qualifying period. So a qualifying period can be shorter than 52 weeks if a Claimant had a previous benefit period. In that case, the qualifying period begins the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a new benefit period.<sup>27</sup>

[33] The Commission does not say what it considers the Claimant's qualifying period to be. The Claimant applied for maternity and parental benefits on September 30, 2020, after her CERB benefits ended on September 26, 2020. The Claimant's new benefit period would have begun on September 27, 2020. The Claimant's preceding benefit period began on January 26, 2020. I find the Claimant's qualifying period to be from January 26, 2020 to September 26, 2020.

[34] The Commission decided that the Claimant had 480 hours of insurable employment during her qualifying period. The Commission said that even though the Claimant had not worked since leaving her work due to illness on January 28, 2020, the government introduced an amendment to the EI Act, which provided the Claimant with 480 hours of insurable employment. The amendment provided that any claimant who makes a request for special benefits under Part I of the EI Act on or after September 27, 2020 receives 480 hours of insurable employment.<sup>28</sup> The Commission says the Claimant made her application for maternity and parental benefits on September 30, 2020 so she met the criteria to be entitled to 480 hours of insurable employment. However, she still does not have the required 600 hours of insurable employment to establish a new claim for maternity and parental benefits.

[35] The Claimant does not dispute that she has 480 hours of insurable employment in her qualifying period. She agrees she has not worked since she left work due to illness on January

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and has 600 or more hours of insurable employment in their qualifying period (Subsection 6(1) of the *Employment Insurance Act*).

<sup>26</sup> Section 8 of the *Employment Insurance Act*.

<sup>27</sup> Subsection 8(1) of the *Employment Insurance Act*.

<sup>28</sup> Part VIII.5 of the *Employment Insurance Act* introduced "Temporary Measures to Facilitate Access to Benefits." Paragraph 153.17(1)(a) of the *Employment Insurance Act*, Part VIII.

28, 2020. I accept the Commission's determination that the Claimant has 480 hours of insurable employment.

[36] The Claimant testified that she was unable to gain any more insurable hours as her employer is still closed and she cannot find new employment due to the pandemic.

[37] I acknowledge the Claimant's situation. It is understandable she has not been able to find work, given the pandemic situation. However, I have no discretion as to the requirement of insurable hours. In order to establish a new benefit period for maternity and parental benefits, the law requires that the Claimant have 600 hours of insurable employment and she only has 480 hours. She cannot therefore establish a new benefit period.

*Is the weekly benefit rate correct?*

[38] The weekly rate of benefit is the maximum amount a claimant may receive for each week in the benefit period.

[39] The rate of weekly benefits is generally 55% of a claimant's weekly insurable earnings.<sup>29</sup>

[40] The weekly insurable earnings amount is determined by using the total insurable earnings in the Claimant's best weeks of earnings in their qualifying period divided by the number of best weeks. The weekly benefit rate is 55% of that number.

[41] The number of best weeks, whether consecutive or not, ranges from 14 to 22 weeks depending on the claimant's regional rate of unemployment in their ordinary place of residence at the beginning of the benefit period.<sup>30</sup>

[42] The rate of weekly benefits of a claimant who has one or more dependent children shall be increased by the amount of a family supplement determined in accordance with the regulations if the claimant establishes they meet the prescribed low-income family eligibility criteria set out in the *Employment Insurance Regulations*.<sup>31</sup>

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<sup>29</sup> Subsection 14(1) of the *Employment Insurance Act*.

<sup>30</sup> Subsection 14(4) of the *Employment Insurance Act*.

<sup>31</sup> Subsection 16(1) of the *Employment Insurance Act*.

[43] The Commission says that the Claimant's qualifying period was from January 27, 2019 to January 25, 2020. Based on the rate of unemployment of 4.3% in the EI Economic region of X where the Claimant resided, the number of best weeks required for the calculation of the claimant's weekly benefit rate was 22.<sup>32</sup>

[44] The Commission said it calculated the Claimant's benefit rate as follows:

\$14,737 (insured earnings in calculation period) / by 22 (required weeks) = \$669.86  
(weekly insurable earnings) x 55% = \$368.00 (the claimant's benefit rate). As the Claimant qualified for the family supplement, she was entitled to \$403.00 including the Family Supplement.

[45] The Claimant does not dispute the Commission's calculation of her weekly benefit rate. She agrees with the unemployment insurance rate and EI economic region used by the Commission and so I accept that as facts. She also agrees with her insurable hours as noted by her employer on her Record of Employment. I find the Commission has properly calculated the Claimant's weekly benefit rate as \$368.00 plus a family supplement of \$35.00 for a total of \$403.00.

[46] The Claimant's dispute is not with the Commission's calculation but rather that she has not been able to establish a new benefit period. The Claimant said that had she been able to establish a new benefit period, she would have received a higher benefit rate than with her existing benefit period. The Claimant pointed out that because of the misinformation she was given, not only is she receiving less weeks of parental benefits but she is also receiving a lower benefit rate. The Claimant explained that her son has some health issues and he requires her care so losing the time with him is problematic.

[47] As above, the Claimant is not able establish a new benefit period so the benefit rate is that relating to her existing benefit period.

[48] I acknowledge the unfortunate result in this case. The Claimant took steps to understand her EI benefits but the consequence of collecting the CERB on her EI claim was not made clear

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<sup>32</sup> Pursuant to the Table in subsection 14(2) of the *Employment Insurance Act*.

to her. As well, she has been unable to establish a new claim for benefits as the pandemic has limited her ability to find work. I am sympathetic to the Claimant's situation. However, no matter how compelling the circumstances, I am unable to step outside the law.<sup>33</sup>

**CONCLUSION**

[49] The appeal is dismissed with modification. The Claimant's weekly benefit rate is correct. Her benefit period is to end on May 15, 2021 instead of May 8, 2021. This means the Claimant is entitled to 18 weeks of parental benefits, instead of 17 weeks of parental benefits.

Charlotte McQuade  
Member, General Division - Employment Insurance Section

HEARD ON:	February 3, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. V., Appellant

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<sup>33</sup> *Canada (AG) v. Knee*, 2011 FCA 301