



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *CM v Canada Employment Insurance Commission*, 2021 SST 141

Tribunal File Number: GE-21-208

BETWEEN:

C. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

HEARD ON: February 23, 2021

DATE OF DECISION: March 1, 2021

DECISION

[1] C. M. is the Claimant. The Canada Employment Insurance Commission (Commission) made decisions about his Employment Insurance (EI) benefits. He is appealing these decisions to the Social Security Tribunal (Tribunal).

[2] I am dismissing the Claimant's appeal. He has to serve a one-week waiting period because there is nothing in the law that would let me waive his waiting period. He had earnings in his waiting period and the Commission must deduct those earnings dollar for dollar.

OVERVIEW

[3] The Claimant stopped working and applied for EI benefits. After some calculations and recalculations, the Commission decided that he was entitled to 45 weeks of the benefits. The Commission decided that the Claimant had to serve a one-week waiting period. The Claimant declared earnings in his waiting period, but the Commission used its own estimate about the Claimant's earnings. The Claimant appealed the Commission's decisions to the Tribunal.

[4] The Claimant argues that he should not have to serve a waiting period. He says that Commission agents gave him misleading information. He also says that other claimants with waiting periods that start before and after his benefit period do not have to serve a waiting period.

[5] The Commission says that it cannot waive the Claimant's waiting period. The Commission says that his benefit period does not start in a week that allows for a waiting period waiver.

PRELIMINARY MATTERS

[6] The Commission says that it also made a decision about the number of weeks of entitlement. At the hearing, the Claimant said that he was not appealing this decision. He said he agreed with the Commission's decision that he was entitled to 45 weeks of benefits.

[7] Because the Claimant said he is not trying to appeal this issue, I will not include this issue in this decision.

ISSUES

[8] I have to make two decisions:

- Does the Claimant have to serve a waiting period?
- How much did he earn in the week of November 1, 2020? How should the Commission treat these earnings?

ANALYSIS

Does the Claimant have to serve a waiting period?

[9] I find that the Claimant must serve a one-week waiting period. This is because his benefit period does not start in a week that allows for a waiting period waiver.

[10] The Commission says that the Claimant's benefit period starts on November 1, 2020. The Commission argues that the law does not allow anyone with a benefit period starting on November 1, 2020 to waive their waiting period.

[11] The Claimant argues that the Commission should waive his waiting period. He says that it is not fair that he falls in the short window of time without a waiting period waiver.

[12] Both parties agree that the Claimant's benefit period started on November 1, 2020. There is not any reason for me to doubt this date. I agree that the Claimant's benefit period started on November 1, 2020.

[13] At the hearing, the Claimant said that he got misleading information from the Commission about the waiting period. Several agents told him that he would not have to serve a waiting period. He agreed that the law about waiting periods had changed several times, but he argued that the government could change its position about waiving the waiting period. As an example, he noted that the government changed its position on the earnings threshold for eligibility for the Canada Emergency Response Benefit (CERB).

[14] The Claimant explained his argument clearly and persuasively. I understand his frustration. The Covid-19 pandemic means that the government is making regular

announcements about changes to the EI program and other support programs. It can be difficult to understand how these changes might apply in an individual case. It can also be difficult to understand how these announcements translate to new legislation.

[15] I cannot look to government announcements when I make my decision. I have to look at the law itself. Claimants can only collect benefits when the law says that they can. I have to look at the Claimant's particular situation and ask: what does the law say about serving a waiting period?

[16] The law says that the Commission should waive the waiting period for anyone with a benefit period starting before October 25, 2020.¹ The law also says that the Commission can waive the waiting period for anyone with a benefit period starting after January 31, 2021.² The law does not say anything about waiving the waiting period for anyone whose benefit period starts between October 26, 2020 and January 30, 2021.

[17] I have to follow the law. I cannot make changes to the law. I cannot interpret the law in any way other than its plain meaning, even if it seems like I could make things fairer for the Claimant by doing so.³ I think it is likely that Commission agents gave the Claimant incorrect or misleading information about the waiting period. Even so, this does not let me change the law or interpret the law differently.⁴

[18] Everyone involved in this appeal agrees that the Claimant's benefit period started on November 1, 2020. There is nothing in the law that would allow me to waive the Claimant's waiting period. He must serve a one-week waiting period.

How much did he earn in the week of November 1, 2020? How should the Commission treat these earnings?

[19] The Claimant earned \$460 in the week of November 1, 2020. The Commission must deduct these earnings dollar for dollar from his first payable week of benefits.

¹ Section 153.191 of the *Employment Insurance Act*.

² Section 39.01 of the *Employment Insurance Regulations*.

³ *Granger v Canada Employment and Immigration Commission*, A-684-85, at para. 8.

⁴ *Canada (Attorney General) v Shaw*, 2002 FCA 325, at para. 1.

[20] The Claimant completed a report card and reported \$460 of earnings for the week of November 1, 2020. At the hearing, he said that this amount was based on his salary and the number of days he worked.

[21] The Commission used an averaging formula based on the earnings reported on the Record of Employment (ROE). The Commission estimated that his earnings in the week of November 1, 2020 were actually \$475.

[22] Now, the Commission says that it agrees with the earnings on the Claimant's report card. The Commission says that it should not have estimated his earnings. The Commission agrees that the Claimant earned \$460 in the week of November 1, 2020.

[23] Both parties agree about the Claimant's earnings. There is nothing in the file that makes me doubt the Claimant's information about his earnings. I accept that the Claimant earned \$460 in the week of November 1, 2020.

[24] I have already explained why the Claimant has to serve a waiting period. The law says that claimants serve their waiting period in the first week that they would otherwise be able to receive benefits.⁵ The Commission says that the Claimant has to serve his waiting period in the week of November 1, 2020.

[25] The week of November 1, 2020 is the first week of the Claimant's benefit period. His earnings were less than his weekly rate of benefits, so I find that he would receive benefits this week if he did not have to serve a waiting period. I agree with the Commission. The Claimant has to serve his waiting period in the week of November 1, 2020.

[26] The law says that the Commission has to deduct waiting period earnings dollar for dollar from the first week of benefits.⁶ The Commission says that it is going to deduct \$460 from the Claimant's first week of benefits. I agree with the Commission. I find that the Claimant earned \$460 in his waiting period. This means that the Commission has to deduct these earnings dollar for dollar from his first week of benefits.

⁵ Section 13 of the *Employment Insurance Act*.

⁶ Subsection 19(1) of the *Employment Insurance Act*.

CONCLUSION

[27] I am dismissing the Claimant's appeal. He has to serve a waiting period. The Commission must deduct his waiting period earnings from his first week of benefits.

Amanda Pezzutto

Member, General Division - Employment Insurance Section

HEARD ON:	February 23, 2021
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	C. M., Appellant