



Citation: *VS v Canada Employment Insurance Commission*, 2021 SST 218

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Claimant: V. S.

Commission: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (415689) dated March 31, 2021
(issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: Teleconference

Hearing date: April 23, 2021

Hearing participant: Claimant

Decision date: April 26, 2021

File number: GE-21-547

Decision

[1] The appeal is dismissed. The Commission cannot waive the Claimant's waiting period. The Commission correctly calculated the overpayment that the Claimant is required to repay.

Overview

[2] The Claimant lost his job and applied for employment insurance (EI) benefits. The system waived his waiting period based on temporary provisions in the law. The Commission discovered that the Claimant's claim should have started one week later than it did. This meant that they could not waive the waiting period. This caused an overpayment.

[3] The Commission denied the Claimant's reconsideration request. They did so because they determined he does not meet the conditions to waive the waiting period. The Claimant argues that the Commission never notified him in writing of their decision not to waive the waiting period.

Matter I have to consider first

[4] The Claimant has to send the Tribunal a copy of the Commission's decision with his notice of appeal.¹ He did not do so. I have a copy of the Commission's file that has this decision. So, I do not need the Claimant to send it.²

Issues

[5] Can the Commission waive the Claimant's waiting period?

[6] Does the Claimant have to repay the overpayment?

¹ Paragraph 24(1)(b) of the *Social Security Regulations* .

² Paragraph 3(1)(b) of the *Social Security Regulations*.

Analysis

Issue 1: Can the Commission waive the Claimant's waiting period?

[7] A claimant has to serve a one-week waiting period before getting benefits.³ The Commission can waive the waiting period. They can do so if a claimant leaves their job because of illness and their employer is to pay them sick leave pay after they stopped working.⁴

[8] There are other ways to waive a waiting period. The Commission can do so if the benefit period starts on or before October 25, 2020.⁵ They can also do so for any benefit period that begins January 31, 2021 through September 25, 2021.⁶

[9] I cannot make decisions outside of the law for any reason, no matter how compelling the circumstances.⁷

[10] I find that the Commission cannot waive the Claimant's waiting period.

[11] The Claimant applied for EI benefits after losing his job. He testified that the Commission notified him in writing and verbally that they would waive his waiting period. He confirmed that he received benefits for the week of November 1, 2020.

[12] The Claimant received a notice of debt from the Canada Revenue Agency (CRA) for \$573. He said that he received no communication from the Commission about their decision related to the waiting period and resulting overpayment.

[13] The Claimant states that he had to follow-up with the Commission about the notice of debt. He said that an agent of the Commission told him that their system waived the waiting period in error.

³ Section 13 of the *Employment Insurance Act*.

⁴ Subsection 40(6) of the *Employment Insurance Regulations*.

⁵ Subsection 153.101(1) of the *Employment Insurance Act*.

⁶ Section 39.01 of the *Employment Insurance Regulations*.

⁷ *Granger v. Canada Employment and Immigration Commission*, A-684-85.

[14] The Commission submits that they waived the Claimant's waiting period based on a record of employment (ROE) from one of his former employers issued. They did not wait for the second employer's ROE. They state that their system automated the waiver of the benefit period because they set the benefit period to start on October 25, 2020. Once they received the second ROE, they corrected the start date of the benefit period to November 1, 2020, since the Claimant's last day of work was October 30, 2020.

[15] The Claimant does not dispute that the Commission cannot waive his waiting period. He contends that the Commission has not notified him of their decision that they waived the waiting period in error. As noted above, he learned of the decision from a notice of debt the CRA sent him.

[16] I found the Claimant to be sincere, honest and straightforward in his testimony. I understand his frustration given his numerous attempts to find out the reason for the notice of debt. I also understand his expectation that the authority who decided to waive the waiting period should notify him of a change in that decision. However, I have to follow the law.

[17] The law details criteria for waiving a waiting period. These criteria are listed above. I find that the Claimant's benefit period started on November 1, 2020. I do so because his last day of work was October 30, 2020. I agree with the Commission that the information the Claimant gave does not show that he meets the requirements of the law. I do not find that he meets any the criteria that would allow the Commission to waive his waiting period.

Issue 2: Does the Claimant have to repay the overpayment?

[18] The law says that a person who gets benefits they are not entitled to has to return the benefits.⁸

[19] The Claimant is required to repay the overpayment of \$573.

⁸ Section 44 of the *Employment Insurance Act*.

[20] As noted above, the Claimant does not dispute that the Commission's system waived his waiting period in error. However, he argues that he should not have to repay the overpayment. He testified that the Commission notified him in writing and verbally that they were waiving his waiting period. He says that no one informed him of the change to this decision. He does not argue that the Commission incorrectly calculated the overpayment.

[21] Again, I sympathize with the Claimant. I understand his frustration about at the lack of communication from the Commission.

[22] I have reviewed how the Commission calculated the overpayment. They say that the overpayment is one week of benefits, which is \$573. I find that the Commission correctly calculated the amount of the overpayment as \$573. I also find that the law requires the Claimant to repay this amount.

Conclusion

[23] The appeal is dismissed.

Audrey Mitchell
Member, General Division – Employment Insurance Section