



[TRANSLATION]

Citation: *JC v Canada Employment Insurance Commission*, 2021 SST 257

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

Decision

Appellant: J. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (411098) dated February 23, 2021 (issued by Service Canada)

Tribunal member: Charline Bourque

Type of hearing: Videoconference
Hearing date: April 15, 2021
Hearing participant: Appellant
Decision date: May 5, 2021
File number: GE-21-507

Decision

[1] The appeal is allowed. The Appellant's Employment Insurance (EI) claim should be established (renewed) as of May 26, 2020.

Overview

[2] The Appellant started a claim for EI benefits on May 5, 2019. But, because of the allocation of severance pay from his employer, he could not receive EI benefits before May 3, 2020. So, in March 2020, the Appellant applied for the Canada Emergency Response Benefit (CERB) with the Canada Revenue Agency (CRA), since he felt he was entitled to it.

[3] Later, he applied to renew his claim for EI benefits. The Commission did not renew the claim, advising the Appellant to continue with his claim with the CRA. When the CERB ended, the Appellant again applied to renew his May 5, 2019, claim for benefits. The Commission then decided that the claim for benefits could not be established, since the Appellant did not have enough hours to establish a claim.

[4] The Appellant says that the situation is penalizing him, and he wants to reactivate his May 5, 2019, claim for EI benefits.

Issues

[5] What is the status of the Appellant's May 5, 2019, claim for EI benefits?

[6] Could the Commission end the Appellant's May 5, 2019, claim for EI benefits?

[7] Should the Appellant's EI claim have been renewed? If so, as of what date?

Analysis

What is the status of the Appellant's May 5, 2019, claim for EI benefits?

[8] The Appellant established a claim for EI benefits on May 5, 2019. But, since he had received severance pay from his employer, the earnings were allocated to the

benefit period from May 5, 2019, to May 2, 2020. So, the Commission told the Appellant to renew his claim for benefits during the week of April 26, 2020.¹

[9] The Appellant reactivated his claim for EI benefits on May 26, 2020, and again on October 25, 2020. The Appellant was informed that the Commission would automatically reactivate (renew) an existing claim.² The Appellant explains that he was late in filing his application because of the busy telephone and computer system. He says that, despite many attempts, he was unable to apply electronically or to get someone on the line before that.

[10] The Appellant says that, when he came back from a trip, he had to self-isolate in accordance with government guidelines. Since he believed that he was not entitled to EI benefits, he applied for the CERB with the CRA for his self-isolation period. The Commission then informed him that it would not establish the claim for benefits and told him to continue with the CERB.³

[11] The Appellant says he did what the Commission told him to do. Still, he says that the situation is penalizing him. The Appellant says that the CERB he received ended in August 2020. He says that, if he had received EI benefits as requested, he would have been entitled to them for a longer period. So, he wants to receive the EI benefits he was entitled to when he applied in May 2019.

[12] First, I find that the Commission has provided very little information about this case, particularly about the benefit period starting May 5, 2019.

[13] Still, taking into account the Record of Employment, I can determine that the Appellant had more than 1,820 insurable hours of employment.⁴ So, even though the Commission has not provided the Appellant's actual regional rate of unemployment on

¹ See the Commission's decision dated August 28, 2019 (GD3-15).

² See the application for benefits dated May 26, 2020 (GD3-17/18).

³ See the Commission's Supplementary Record of Claim (GD3-20).

⁴ See the Record of Employment, which indicates a total of 2,104 insurable hours of employment (GD3-13).

May 5, 2019, I can conclude that the Appellant was entitled to between 36 and 45 weeks of EI regular benefits.⁵

[14] Second, I find that, contrary to what the Appellant indicated, he was entitled to EI when he claimed the CERB. Still, he was not receiving benefits because of the allocation of his severance pay, not because he was disentitled. In other words, the Commission considers that the Appellant's employer paid him until May 2, 2020, because of the severance pay he received. This is also why the Appellant's benefit period could be extended, since he was receiving pay because of the severance of his relationship with his employer.⁶

[15] Third, I want to point out that it is accepted that a claimant cannot get income from different sources while receiving EI benefits. So, I am of the view that the Appellant could not receive EI or emergency benefits before May 3, 2020, because of the allocation of the earnings from his employer.

[16] Despite everything, the first question I must answer is whether the Commission could end the Appellant's May 5, 2019, claim for benefits.

Could the Commission end the Appellant's May 5, 2019, claim for EI benefits?

[17] The Appellant's claim for benefits started on May 5, 2019. The Appellant applied to renew this claim on May 26, 2020,⁷ and again on October 29, 2020.⁸

[18] The *Employment Insurance Act* (Act) says that a benefit period ends when any of the following first occurs:

- No further benefits are payable to the claimant because the claimant received the maximum number of weeks for which benefits may be paid.

⁵ See Schedule I of the *Employment Insurance Act* (Act). It shows that, for 1,820 or more insurable hours of employment, the number of weeks of benefits is between 36 and 45, depending on the rate of unemployment.

⁶ See section 10(10) of the Act for reasons for extending a benefit period.

⁷ See the EI application dated May 26, 2020 (GD3-17 to GD3-19).

⁸ See the EI application dated May 26, 2020 (GD3-3 to GD3-10).

- The benefit period ended after 52 weeks or after 104 weeks if it was extended in accordance with the requirements⁹ under the Act.
- The claimant requested that their benefit period end to be able to make a new claim.¹⁰

[19] The Commission confirmed that the Appellant had not received all the weeks of benefits he was entitled to. In addition, since his claim for benefits could be extended because of the allocation of severance pay, the Appellant's claim for benefits had not ended. The extension meant that the Appellant's claim for benefits could end on May 1, 2021 (week beginning on April 25, 2021).

[20] In addition, the Act does not say that a claim for EI benefits ends when a claimant applies for emergency benefits with the CRA.

[21] The Commission confirmed this position in its representations dated April 28, 2021.¹¹

[22] So, I am of the view that the May 5, 2019, claim for EI benefits had not ended.

Should the Appellant's EI claim have been renewed? If so, as of what date?

[23] The Appellant confirms that he applied for the CERB in March 2020 because he had to self-isolate when he came back from a trip abroad. The Appellant says that he knew he was not entitled to EI at that time. He says that, after speaking with the Commission, he received the CERB from the CRA until August 2020. So, he wants his claim for EI benefits to be renewed so that he can receive EI benefits.

[24] As I explained earlier, I am of the view that the Appellant was entitled to EI benefits at that time, and they could not be paid only because of the allocation of the

⁹ The requirements for extending a claim are set out in section 10(10) of the Act.

¹⁰ See section 10(8) of the Act.

¹¹ See the Commission's Supplementary Representations in response to the Tribunal's questions of April 25, 2021 (GD7).

earnings from his employer. So, to say that he was not entitled to EI benefits is inaccurate. Still, he was not receiving any because of this allocation.

[25] As a result, after his voluntary self-isolation period and after receiving emergency benefits from the CRA, the Appellant applied to renew his EI claim on May 26, 2020,¹² and again on October 29, 2020.¹³

[26] The Commission then explained to the Appellant that it would not establish his claim for benefits as of May 26, 2020, so that he could continue with the CRA.¹⁴ The Appellant explains that, as a result, he received emergency benefits from the CRA until August 2020.

[27] The Commission explained as follows: [translation] “For the renewal filed in May 2020, since the Claimant was already receiving emergency benefits from the CRA, it was considered preferable not to duplicate payments to avoid repayment later.”¹⁵

[28] While I understand the Commission’s position that it wanted to avoid duplicate payments, I disagree with it. It is clear that a person cannot receive double payment for the same week. But, in my view, that decision is up to the Appellant.

[29] I am of the view that it is up to the Appellant to prioritize the type of benefit he wants to get. The Appellant can choose to repay a type of benefit later if he wants, especially since certain factors may influence his decision. For example, the payment amount could be higher for one type of benefit than for another. So, it is the Appellant’s responsibility to make sure that he does not receive duplicate payments for the same period and, if he does, to correct them by notifying the relevant department.

[30] In addition, I think that the Commission, after discussing the Appellant’s choice with him, can temporarily disentitle the Appellant to payments based on the period he received benefits from the CRA.

¹² See the EI application dated May 26, 2020 (GD3-17 to GD3-19).

¹³ See the EI application dated May 26, 2020 (GD3-3 to GD3-10).

¹⁴ See the Commission’s Supplementary Record of Claim (GD3-20).

¹⁵ See the Commission’s Supplementary Representations dated April 28, 2021 (GD7-2).

[31] Finally, after the emergency benefit payments from the CRA ended, the Appellant asked for his claim to be renewed as of October 25, 2020. The Commission informed the Appellant that he did not have enough insurable hours of employment to establish a claim for EI benefits.¹⁶

[32] From this, I understand that the Commission tried to establish a new (initial) claim for benefits.

[33] In response to the Tribunal's questions, the Commission explained as follows: [translation] "For the renewal in October 2020, the Commission notes that the extension of the May 5, 2019, claim, due to the allocation of severance pay, was not properly entered in our systems. For that reason, only the establishment of a new claim was assessed."¹⁷

[34] The Commission also added:

[translation]

Following the checks that were made, the Commission recommends that the SST uphold the Benefit Period Not Established decision for the October 2020 claim. But, when the file resumes, [the Commission] will be able to renew the May 5, 2019, claim as of October 18, 2020. The renewal as of October 18, 2020, is related to the date the renewal claim was filed after the emergency benefits from the CRA ended.¹⁸

[35] I have to reiterate that the issue is the benefit period. As a result, the question is whether the Appellant's benefit period should have been established as of the date he made his claim.

[36] So, I am of the view that the Commission's position is contradictory. The Commission is asking that the appeal be dismissed on the benefit period issue, but it believes that it will renew this renewal claim as of October 18, 2020.

¹⁶ See the Commission's decision dated November 19, 2020 (GD3-25).

¹⁷ See the Commission's Supplementary Representations dated April 28, 2021 (GD7-2).

¹⁸ See the Commission's Supplementary Representations dated April 28, 2021 (GD7-2).

[37] I find that the Commission made a new decision on November 19, 2020, because of repeated errors on its part. In fact, the Commission should not have decided whether to establish a new benefit period; it should have decided whether to renew the May 5, 2019, claim when the Appellant applied to renew it on May 26, 2020.

[38] The Commission itself informs claimants that it will automatically reactivate a claim for benefits if there are still weeks payable on that claim.¹⁹

[39] So, I am of the view that the May 5, 2019, claim for EI benefits should have been reactivated (renewed) as of May 26, 2020. As of that date, the Appellant met the criteria to establish (renew) his claim for EI benefits.

[40] As a result, in my view, the Appellant's claim should be renewed as of May 26, 2020.

[41] I want to point out that the Commission has the option, after speaking with the Appellant, of disentitling him temporarily to avoid the duplication of benefits, since the Appellant received the CERB from the CRA. Still, I am of the view that the decision is up to the Appellant and that it is his responsibility to make sure that his reports are accurate to avoid duplicate payments for the same period and, in so doing, not contravene the Act.

Conclusion

[42] The appeal is allowed. The May 5, 2019, claim for EI benefits should be established (renewed) as of May 26, 2020.

Charline Bourque
Member, General Division – Employment Insurance Section

¹⁹ See the message about reactivating a claim (GD3-17).