



[TRANSLATION]

Citation : *ST v Canada Employment Insurance Commission*, 2021 SST 262

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

Decision

Appellant: S. T.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (417762) dated March 18, 2021 (issued by Service Canada)

Tribunal member: Charline Bourque

Type of hearing: Videoconference
Hearing date: April 27 and May 12, 2021
Hearing participants: Appellant
Appellant's witness
Decision date: May 14, 2021
File number: GE-21-538

Decision

[1] The appeal is dismissed. The claim for Employment Insurance (EI) benefits cannot end on January 21, 2021, as the Appellant asked, since the Appellant does not qualify to have his claim for EI benefits end.

Overview

[2] The Appellant filed a claim for benefits starting November 1, 2020. He says he lost his job because of COVID-19. However, because he studies full-time, the Appellant is of the view that he should not have applied for EI.

[3] Because of his studies, the Commission imposed a disentitlement because he was unavailable. However, since he applied for EI benefits and despite not receiving any benefits because of this disentitlement, he cannot get the Canada Recovery Benefit (CRB), since he has a claim for EI benefits considered active.

[4] The Appellant therefore wants, first, to cancel his claim for EI benefits. If that is not possible, he wants to be able to end it on January 25, 2021, so he can get the CRB. He says he was deprived of an income for several weeks due to his claim for EI benefits being established. But he could not receive any payments because his studies made him unavailable.

Matter I have to consider first

- Commission's reconsideration decision

[5] The Commission made a reconsideration decision about the Appellant's availability. However, the Appellant had also asked the Commission to consider his request to end and/or cancel his claim for EI benefits. Given that the Appellant wanted the Tribunal to consider this issue as well, a request for reconsideration was made to the Commission. The Commission therefore reconsidered these new issues and submitted arguments to the Tribunal on April 30, 2021.¹ I am therefore of the view that I

¹ See the Commission's Supplementary Representations (GD11).

have jurisdiction to consider the issue of ending or cancelling the Appellant's claim for benefits.²

- **Issues under appeal**

[6] The Appellant says he does not want to appeal the issue of availability. He says he understands that he was not available for work because of his studies, which was full-time days for the period from January 25 to May 15, 2021. Therefore, I am of the view that I do not have to consider this issue. The Commission's decision remains.

[7] The Appellant therefore asked me to consider the issue of the cancellation of his claim for EI benefits. The Appellant is of the view that he should not have made this claim for benefits.

[8] Second, if the claim for benefits cannot be cancelled, the Appellant asked that his claim for benefits end on the date his disentitlement to benefits starts—that is, on January 25, 2021.

[9] However, after the hearing, the Appellant sent an email indicating that he would like [translation] "to avoid a cancellation of his claim for benefits under section 10(6)(a)."³ The Appellant is therefore asking the Tribunal to consider the issue of ending his claim for benefits under section 10(8)(a) of the *Employment Insurance Act* (Act).⁴

[10] On May 13, the Appellant sent a new email asking the Tribunal to ignore the previous email.⁵ He therefore wants the issue of the cancellation of his claim for benefits to be considered as well.

[11] Therefore, I am of the view that the issues in this appeal are the ending of the Appellant's claim for benefits on January 25, 2021, and its cancellation. So, I will look at those issues.

² See section 113 of the *Employment Insurance Act* (Act).

³ See the Appellant's May 12, 2021, email (GD13).

⁴ *Idem*.

⁵ See the Appellant's May 13, 2021, email (GD14).

Issue

[12] Can the Appellant's claim for benefits be cancelled?

[13] Can the Appellant's claim for benefits end on January 25, 2021?

Analysis

Issue 1: Can the Appellant's claim for benefits be cancelled?

[14] The Appellant is asking that his claim for benefits be cancelled. The Appellant says he is not entitled to benefits, since he is not receiving them because he is studying full-time. He wants to cancel his claim, or end it if cancellation is not possible, so he can get the CRB, which he says he is entitled to.

[15] Although it saddens me to see the Appellant fighting to get the CRB when he is not receiving EI benefits because of his studies, I am of the view that his claim for EI benefits cannot be cancelled. Despite everything, I understand the difficult situation the Appellant finds himself in, given that his situation appears to have been ignored when the CRB was implemented.

[16] I also consider the testimony of the Appellant's witness, who explained that she was in the same situation as the Appellant and that she received the CRB for the entire period for which the Appellant wants to correct his situation. As explained to the Appellant, I cannot intervene with the Canada Revenue Agency, even just to confirm that the Appellant did not receive EI benefits from January 25, 2021, to May 15, 2021, due to the disentitlement imposed on him because he was unavailable while he was studying full-time.

[17] The Act states that, once a benefit period has been established for a claimant, the Commission can:

- a) cancel the benefit period if it has ended and no benefits were paid or payable during the period; or

b) whether or not the period has ended, cancel at the request of the claimant that portion of the benefit period immediately before the first week for which benefits were paid or payable, if the claimant

(i) establishes under this Part, as an insured person, a new benefit period beginning the first week for which benefits were paid or payable or establishes, under Part VII.1, as a self-employed person within the meaning of subsection 152.01(1), a new benefit period beginning the first week for which benefits were paid or payable, and

(ii) shows that there was good cause for the delay in making the request throughout the period beginning on the day when benefits were first paid or payable and ending on the day when the request for cancellation was made.⁶

[18] I am of the view that the benefit period cannot be cancelled.

[19] First, the EI benefit period cannot be cancelled because EI benefits were paid to the Appellant.⁷ The Commission confirms that the Appellant received 11 weeks of benefits.

[20] Second, the claim for benefits cannot be cancelled under section 10(6)(b) of the Act, since no portion of the benefit period falls before the first week for which benefits were payable.

[21] As a result, I am of the view that the claim for EI benefits cannot be cancelled.

Issue 2: Can the Appellant's claim for benefits end on January 25, 2021?

[22] If it cannot be cancelled, the Appellant wants to end his claim for EI benefits on January 25, 2021.

⁶ See section 10(6) of the Act.

⁷ See section 10(6)(a) of the Act.

[23] A benefit period ends when any of the following first occurs:

- no further benefits are payable to the claimant in their benefit period, including for the reason that benefits have been paid for the maximum number of weeks for which benefits may be paid under section 12;
- the benefit period would otherwise end under this section; or
- the claimant:
 - (i) requests that their benefit period end,
 - (ii) makes a new initial claim for benefits under this Part or Part VII.1, and
 - (iii) qualifies, as an insured person, to receive benefits under this Part or qualifies, as a self-employed person within the meaning of subsection 152.01(1), to receive benefits under Part VII.1.⁸

[24] I am of the view that the Appellant does not qualify to have his claim for EI benefits end.

[25] First, the maximum number of benefits has not been paid to him. The Appellant established a claim for EI benefits entitling him to a maximum of 50 weeks of benefits. Of this number, he received 11 weeks between November 1, 2020, and January 23, 2021. He therefore did not receive the maximum number of weeks he is entitled to.

[26] Second, the claim did not end otherwise. The claim for benefits starting November 1, 2020, has a duration of 52 weeks.⁹ The claim is therefore valid until October 30, 2021. The Appellant himself noted that his disentitlement will end on May 15, 2021, and that he should be entitled to benefits from that date.

[27] Lastly, even though the Appellant meets the criterion of asking to end his claim for benefits, he does not meet the other conditions under section 10(8)(d) of the Act.

⁸ See section 10(8) of the Act.

⁹ See section 10(2) of the Act, which states the maximum duration of a claim for EI benefits.

The Appellant did not make a new claim for benefits. It also has not been established that he would qualify to receive benefits if he filed this new claim.

[28] I am of the view that the claim for EI benefits cannot end on January 21, 2021, as the Appellant asked, since the Appellant does not meet the criteria.¹⁰

[29] Lastly, I understand that the Appellant is of the view that the Act can be interpreted in a certain way and that his situation would allow for the cancellation or ending of his claim for benefits. Unfortunately, I do not agree on this point. My role is to apply the Act, and I cannot ignore it despite the Appellant's difficult situation, feeling caught between the Canada Revenue Agency and the Commission.

Conclusion

[30] The appeal is dismissed.

Charline Bourque
Member, General Division – Employment Insurance Section

¹⁰ Section 10(8) of the Act defines these criteria.