



Citation : *JB v Canada Employment Insurance Commission*, 2021 SST 340

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

Decision

Appellant: J. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (422060) dated April 23, 2021
(issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Teleconference
Hearing date: May 27, 2021
Hearing participant: Appellant
Decision date: June 3, 2021
File number: GE-21-777

Decision

[1] The appeal is dismissed. The Claimant's benefits cannot be changed from regular employment insurance benefits to Employment Insurance Emergency Response Benefits.

Overview

[2] The Claimant filed an initial claim for employment insurance (EI) benefits on December 20, 2019. She filed renewal claims on April 15, 2020, July 1, 2020, and December 18, 2020.

[3] The Claimant contacted the Canada Employment Insurance Commission (Commission) in April 2021, and requested that the benefits which had been paid to her prior to that date, which were regular EI benefits, be converted to EI Emergency Response Benefits (ERB) as she would have been paid more if she was getting ERB benefits.

[4] The Commission says they cannot change the Claimant's benefits over to ERB benefits. The Commission says the Claimant's benefit period started in December 2019, before the ERB came into existence and her claims after December 2019, were renewal claims, not starting a new claim, so they were also not ERB benefits.

[5] The Commission says the applications the Claimant filled out after December 2019 for her renewal claims, all mentioned the possibility of terminating a previous claim, rather than allowing it to be reactivated, and provided contact information for the Claimant if she needed to talk to someone about those options, but she never contacted the Commission about that possibility.

[6] The Claimant says she had colleagues that applied for benefits at the same time she did and they ended up getting the ERB, not regular benefits, so it is not fair that she ended up getting less than they did, when they all had the same job and were laid-off at the same time.

Issue

[7] Can the Claimant get ERB benefits instead of regular EI benefits?

Analysis

[8] I find the Claimant cannot be paid ERB benefits instead of regular EI benefits.

[9] I find that the ERB was not effective until March 15, 2020, as the law states that a person may make a claim for ERB starting on March 15, 2020.¹

[10] I find the Claimant's initial claim for benefits was filed on December 20, 2019, which is prior to March 15, 2020, therefore that initial claim could not be established as ERB as the law says only claims starting from March 15, 2020, can be a claim for ERB.

[11] However, all of the Claimant's subsequent claims, which the Commission says are renewal claims, were filed after March 15, 2020, could these be ERB instead of regular EI benefits? I find they cannot be changed to ERB.

[12] To understand the Claimant's situation it is necessary to understand the difference between the Claimant's initial claim of December 20, 2019, and her subsequent claims.

[13] When the Claimant made her initial claim on December 20, 2019, a benefit period was established pursuant to the law². The Commission say this benefit period was made effective December 22, 2019. A benefit period is the period of time in which you can collect all the benefits to which you are entitled. In general, a benefit period will run for 52 weeks³. So, in the Claimant's case her benefit period would run into December 2020.

¹ Subsection 153.8(1) of the *Employment Insurance Act*

² Subsection 10(1) of the *Employment Insurance Act*

³ Subsection 10(2) of the *Employment Insurance Act*

[14] The Claimant's payment history⁴ shows that she did not collect benefits continuously from when she filed her initial claim in December 2019; this is where the renewal applications come into play.

[15] The law says that in order to collect benefits you need to file a claim within a certain time limit and when a person has not made a claim for benefits for four or more consecutive weeks the first claim for benefits after that period of time will be counted as being made within one week after the week for which you are asking for benefits⁵.

[16] So, when the Claimant filed for benefits on April 15, 2020, and July 1, 2020, and December 18, 2020, the Commission was not starting a new benefit period, as she already had one established in December 2019, what they were doing was restarting her payments within that same benefit period as the law has said above.

[17] Why did the Commission do this instead of starting a new benefit period? They say they were following the law. I find the Commission did correctly follow the law as it says that unless there is a change or cancellation in the benefit period a new benefit period should not be established if a previous one has not ended⁶.

[18] I find that as the Claimant's benefit period is effective December 22, 2019, had not ended when she filed her subsequent claims for benefits on April 15, 2020, and July 1, 2020, and December 18, 2020, the Commission could not start a new benefit period paying out ERB and thus correctly continued the previous benefit period paying out regular EI benefits.

[19] I find the Claimant is further barred from converting her claims within her benefit period effective December 22, 2019, into ERB due to the law⁷ stating that a person is ineligible for ERB if they receive a different EI benefit other than the EI ERB benefit. As the Claimant was getting regular EI benefits, which is different than the ERB, during her

⁴ GD03-72

⁵ Subsection 26(2) of the *Employment Insurance Regulations*

⁶ Subsection 10(3) of the *Employment Insurance Act*

⁷ Paragraph 153.9(2)(a) of the *Employment Insurance Act*

benefit period, which ran through the period when the ERB could be paid, she is ineligible for the ERB as per the law.

[20] I further find the Claimant's renewal claim filed on December 18, 2020, could not be paid as ERB outside of the other reasons as the law⁸ says that no claim for ERB can be made after December 2, 2020.

[21] I understand the Claimant's argument that her colleagues who had the same position as her and applied at the same time got ERB instead of regular benefits, but regardless of what may have happened with her colleagues, I must apply the law as it is written and what may have happened in another person's situation does not allow me to change the law for the Claimant.

[22] I note the Commission spoke about the Claimant's application saying that a benefit period could be cancelled or ended, this information was on the application, and that the Claimant never called them to ask about this.

[23] If the Claimant would like to explore this option to see what impact, if any, it would have on allowing her to get ERB benefits for the period she wishes, she would need to speak to the Commission about it as I cannot look at it since it has not yet been reviewed by the Commission⁹. For the Claimant's information subsection 10(6) of the *Employment Insurance Act* deals with cancelling a benefit period and subsection 10(8) of the *Employment Insurance Act* deals with ending a benefit period. Both sections can be found [here](#).

Conclusion

[24] The appeal is dismissed. The Claimant's benefits cannot be changed from regular EI benefits to ERB.

Gary Conrad
Member, General Division – Employment Insurance Section

⁸ Subsection 153.8(2) of the *Employment Insurance Act*

⁹ Section 113 of the *Employment Insurance Act*