Citation: *CP v Canada Employment Insurance Commission*, 2021 SST 354

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	C. P.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (422589) dated May 11, 2021 (issued by Service Canada)

Tribunal member:	Mark Leonard
Type of hearing:	Teleconference
Hearing date:	June 14, 2021
Hearing participants:	Appellant
Decision date:	June 17, 2021
File number:	GE-21-888

Decision

[1] The appeal is allowed. I instruct the Canada Employment Insurance Commission (the Commission) to cancel the Appellant's January 5, 2020, initial claim and establish a new initial claim effective December 6, 2020. This entitles the Appellant a maximum 50 weeks of benefits should she need them.

Overview

[2] The Appellant established an initial claim for regular benefits on January 5, 2020, after she was separated from her employment. Because she received a severance payment, the monies were considered earnings and were allocated to the future weeks of her unemployment. Her benefits were not scheduled to begin until December 7, 2021. When she became eligible to be paid benefits, she noted in her online account that she was entitled to 36 weeks. The Appellant questioned why she would not receive 50 weeks because of the Covid-19 recovery measures. The Commission told her that because she established her initial claim in January 2020, she was only entitled to weeks of benefits based on the calculation applicable at the time.

[3] The Appellant says that this is not fair. She says that the conditions affecting the labour market under Covid-19 restriction existed in December 2020 and still exist. She says that she should be eligible for 50 weeks of benefits like anyone else who claimed benefits on the same date in December 2020.

[4] I must decide the maximum number of weeks of EI benefits allowable.

Issue

[5] What is the maximum number of weeks of EI benefits that the Appellant could receive?

Analysis

[6] A claimant is entitled to receive EI benefits if they qualify to receive them.[1] A claimant qualifies if they;

a) have an interruption of earnings from employment; and,

b) had during their qualifying period at least the number of insurable hours of employment set out in the *Act*.[2]

[7] The Appellant made her initial claim for benefits when she was separated from her employment. The Commission established a benefit period effective January 5, 2021. The calculation to determine the maximum number of weeks a claimant can receive benefits is based on the number of hours the claimant works in their qualifying period and the rate of unemployment in the region where they live.[3]

[8] At that time, it determined that the Appellant had 1820 hours of insurable employment and lived in a region where the unemployment rate was 5%. This entitled the Claimant to 36 weeks of benefits. The Commission says that this calculation is purely mathematical and not open to interpretation or discretion.

[9] Had the Appellant started receiving benefits at that time, there would likely have been no further issue with the claim. However, the Appellant had a sizable severance package from her employer. The regulations require that severance monies must be allocated to the future weeks of unemployment before the claimant can be paid benefits.[4]

[10] The Appellant was not eligible to be paid benefits because of this allocation until December 7, 2020. The Appellant does not dispute her insurable hours, nor the rate of employment at the time she made her claim.

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[1] See Section 7(1) of the *Employment Insurance Act*.
[2] See Section 7(2) of the *Employment Insurance Act.*
[3] See Section 12.2 pursuant to Schedule 1 “Table of Weeks of Benefits” of the *Employment Insurance Act.*
[4] See Section 36(9) of the *Employment Insurance Regulations*.

[11] Between the establishment of her claim, and when she could receive benefits, Covid-19 struck. When she became eligible to receive benefits, she found out that she would only be receiving 36 weeks. She questioned this period because she was aware that the Federal Government had enacted legislation granting up to 50 weeks of benefits due to the effects on the labour market of Covid-19.[5]

[12] She asked the Commission why she was not granted the 50 weeks. The Commission told her that because she made her initial claim in January 2020, the calculations as provided for in the *Act* at that time were applicable. It said that she was not eligible for the enhanced number of weeks of benefits because her claim began before the new provision came into effect September 27, 2020.

[13] The Appellant challenges this decision and says that it is unfair. She says that she essentially continued to be paid by her employer for the entire period between her initial claim and the date her severance allocation ended. She says that she is affected by the Covid-19 situation no differently than someone who made their initial claim after September 27, 2020, and should not be treated differently by the Commission in terms of benefits. She says that she should receive the same number of weeks (50) of benefits as anyone who made a claim the same date she became eligible to be paid benefits.

[14] Ordinarily such a case requires and analysis of several factors. But, there is a better and more equitable way to decide this case.

[15] The Appellant testified that she was just one of several employees released from the same employer at the same time. She says that she worked closely with other employees that find themselves in identical circumstances. All have received negative reconsideration decisions from the Commission and filed appeals with the Social Security Tribunal (the Tribunal). She says that one of her colleagues recently received a positive decision approving her for a maximum of 50 weeks of benefits.

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[5] See Section 12(2.1) of the *Employment Insurance Act*.

[16] In that other case, the appellant was separated from her employment around the same time as the Appellant in this case. They both received severance pay. They both had to await the allocation of those monies before being paid benefits. She became eligible to be paid benefits on October 4, 2020. She was entitled to 36 weeks same as the Appellant in this case. The appellant sought reconsideration on the same grounds that she should be entitled to 50 weeks of benefits afforded by the amended *Act*.[6] The Commission denied his request quoting the same reason as was given to the Appellant in this case.

[17] The Commission conceded the appeal before the hearing. It said that it had the discretion to cancel a benefit period and establish a new benefit period beginning the first week for which benefits were paid or payable. This remedy resulted in the appellant being entitled to 50 weeks of benefits if she needed it.[7]

[18] I am satisfied that the Commission used its discretion in accordance with the law when it cancelled one benefit period and established a new one. [8]

How does this affect the Appellant in this case?

[19] I am satisfied that both appellants worked for the same employer. The employer released them at the same time and for the same reasons. Both established similar benefit periods and both received severance packages that delayed their respective EI benefits start dates beyond September 27, 2020. Given the near-identical circumstances, I can find no reason why the management of their claims should differ.

[20] To allow otherwise would mean that the Commission treated claimants with very similar circumstances in different ways. This would be evidence of inconsistent application of the law without justification. Such actions would be arbitrary and a clear indication that the Commission has not used its discretion judicially.

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[6] See Section 12(2.1) of the *Employment Insurance Act*.
[7] See Social Security Tribunal File # GE-21-746.
[8] See Section 10(6)(b)

[21] I have no answer as to why in one case they would concede the appeal, and in the other, take no action before the hearing. It may be that the Commission was not aware of both of these appellants and their near-identical situations.

[22] However, the Commission is an administrative decision maker. It has significant authority and discretion when making decisions that affect claimants. The Supreme Court of Canada says that when rendering decisions, a decision maker must give consideration to the consistency of those decisions. Those affected by decisions are entitled to expect that like cases will generally be treated alike. [9]

[23] So, what does this mean? If the Commission can exercise its discretion to cancel one claim and establish a new one for an appellant, it can do so for another appellant in identical circumstances as in this case.

Conclusion

[24] The appeal is allowed. I instruct the Commission to cancel the Appellant's January 5, 2020, initial claim, and establish a new initial claim effective December 6, 2020. This entitles the Appellant a maximum of 50 weeks of benefits should she need them.

Mark Leonard
Member, General Division – Employment Insurance Section

[9] See (*Canada (Minister of Citizenship and Immigration) v. Vavilov,* 2019 SCC 65 paragraphs 129 to 132)