



Citation: *SS v Canada Employment Insurance Commission*, 2021 SST 251

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

Decision

Appellant: S. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (418532) dated March 16, 2021 (issued by Service Canada)

Tribunal member: Suzanne Graves

Type of hearing: Teleconference

Hearing date: April 23, 2021

Hearing participant: Appellant

Decision date: April 26, 2021

File number: GE-21-555

Decision

[1] I am dismissing the appeal. This means that the Claimant must serve a one-week waiting period before he can receive regular employment insurance (EI) benefits.

Overview

[2] The Claimant works for a retail company. His employer temporarily laid him off due to COVID-19 on January 16, 2021. He applied for regular EI benefits, and his benefit period started on January 17, 2021. The Commission decided that the Claimant has to serve a one-week waiting period before receiving benefits.

[3] The Claimant argues that he should not have to serve a waiting period because he lost his job as a result of the pandemic. He says that the waiting period was waived for other claimants who were laid off because of COVID-19.

[4] The Commission has already refused the Claimant's request to waive his waiting period. He is now appealing the Commission's decision to the Social Security Tribunal.

Issue

[5] Does the Claimant have to serve a one-week waiting period before receiving regular EI benefits?

Analysis

[6] If you qualify for benefits, you can get benefits for each week of unemployment that falls within your benefit period.¹

[7] The law says that you must usually serve a one-week waiting period at the start of your claim.² A waiting period is the time you have to wait before EI benefits can be paid. In some cases, claimants can get a waiver of their waiting period.³

¹ Subsection 12(1) of the *Employment Insurance Act*.

² The one-week waiting period requirement is set out in section 13 of the *Employment Insurance Act*.

³ Sections 39.01, 39.1, and subsection 40(6) of the *Employment Insurance Regulations*. For example, a claimant's waiting period may be waived if they receive sickness pay from their employer after they lose their job.

[8] The Claimant temporarily lost his job because of COVID-19. This is not in dispute. He applied for regular EI benefits on January 12, 2021, and his benefit period started on January 17, 2021. He asks for his waiting period to be waived for the week of January 17, 2021, because the government required his employer to shut down due to the COVID-19 pandemic.

[9] The Claimant says that other claimants who lost work due to COVID-19 just two weeks after he did served no waiting period. He says that changes to the law made in response to the pandemic allow claimants to get benefits without a waiting period.

The government changed the law in response to COVID-19

[10] In March 2020, the government changed the *Employment Insurance Act* (EI Act) to allow the Minister to make interim orders to mitigate the economic effects of the COVID-19 pandemic.⁴

[11] The Minister made several orders to amend the EI Act, one of which added a new temporary benefit, called the EI-Emergency Response Benefit (EI-ERB).⁵

Claimants under the EI-ERB, between March 15, 2020, and September 26, 2020, did not serve a waiting period before receiving benefits.

[12] The Minister also waived claimants' waiting periods for new initial claims made between September 27, 2020, and October 25, 2020.⁶ Later, on January 31, 2021, the government changed the *Employment Insurance Regulations* (Regulations) to waive waiting periods for new claims made from January 31, 2021, to September 25, 2021.⁷

⁴ The *COVID-19 Emergency Response Act* added section 153.3 to the *Employment Insurance Act*, which allows the Minister of Employment and Social Development to make temporary orders amending the Act. Subsection 153.3(8) of the *Employment Insurance Act* says that interim orders prevail to the extent of any conflict with the Act or any regulation made under it.

⁵ Sections 153.5 to 153.13 of the *Employment Insurance Act*, added by: *Interim Order: Amending the Employment Insurance Act (Employment Insurance Emergency Response Benefit)* (SOR/2020-61).

⁶ Subsection 153.191(1) of the *Employment Insurance Act*, added by *Interim Order No. 8: Amending the Employment Insurance Act (Facilitating Access to Benefits)* (SOR/2020-187). This provision applied to initial claims made between September 27, 2020, and October 25, 2020.

⁷ Section 39.01 of the *Employment Insurance Regulations* says that the Commission may waive the waiting period in respect of any benefit period that begins on: "a day that is earlier than the day on which this section comes into force and not later than September 25, 2021" (SOR/2021-3, s.1). This section came into force on January 31, 2021.

[13] The Commission says that the Claimant's benefit period started after October 25, 2020, and before the government changed the Regulations on January 31, 2021. They say that he does not meet any of the conditions to waive his waiting period.

Does the Claimant have to serve a one-week waiting period?

[14] The Claimant must serve a one-week waiting period during the week of January 17, 2021, because his benefit period started before January 31, 2021.

[15] Temporary changes to the EI Act and Regulations made in response to the COVID-19 pandemic unfortunately do not apply to the Claimant's situation. The Claimant's benefit period started on January 17, 2021. This was after October 25, 2020, and before the government changed the Regulations to allow the waiver of waiting periods for regular benefit claims between January 31, 2021, and September 25, 2021.

[16] I acknowledge the Claimant's disappointment that he must serve a waiting period, while many claimants who lost their job due to COVID-19 did not. However, EI is an insurance plan, and claimants have to meet the conditions to get benefits.

[17] The law, as it existed on January 17, 2021, says that claimants must serve a waiting period before receiving regular benefits. So, the Claimant must serve a waiting period as a condition of getting regular benefits according to the law in place when he made his EI claim.

[18] I have sympathy for the Claimant's situation, particularly since he was laid off because his employer had to comply with a pandemic lockdown order. But I have to apply the law as it is written and have no authority to make special exceptions based on compassion.⁸

⁸ In *Canada (Attorney General) v Knee*, 2011 FCA 301, the Federal Court of Appeal said that "rigid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme. However, tempting as it may be in such cases ... adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning."

Conclusion

[19] The appeal is dismissed. This means that the Claimant must serve his waiting period during the week of January 17, 2021.

Suzanne Graves
Member, General Division – Employment Insurance Section