



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *TB v Canada Employment Insurance Commission*, 2021 SST 328

Tribunal File Number: GE-21-328

BETWEEN:

T. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

HEARD ON: March 19, 2021

DATE OF DECISION: March 31, 2021

DECISION

[1] T. B. is the Claimant. The Canada Employment Insurance Commission (Commission) made decisions about her Employment Insurance (EI) benefits. She is appealing these decisions to the Social Security Tribunal (Tribunal).

[2] I am dismissing the Claimant's appeal. I find that the Commission correctly calculated her weekly rate of benefits. She applied for benefits and qualified in August 2020. The Commission had to use the law in place at the time she applied. This means that she cannot increase her weekly rate of benefits to \$500.

OVERVIEW

[3] The Claimant was collecting the Canada Emergency Response Benefit (CERB). In August 2020, she applied for EI maternity and parental benefits. The Commission told her that she did not have enough hours to qualify for benefits. A Commission agent told her to apply again in September 2020. The Claimant applied again in September. She thought the second application meant that her weekly rate of benefits would be \$500.

[4] The Commission reviewed her two applications. The Commission decided that she really did qualify in August 2020. However, this meant that the Commission had to follow the old law about calculating her weekly rate of benefits. The Commission decided that her weekly rate of benefits should be \$200. The Claimant is appealing this decision to the Tribunal.

[5] The Claimant argues that her weekly rate of benefits should be \$500. She says this was the weekly rate of her CERB. She says that she does not want her benefits to start in August 2020 if it means that she only gets \$200 a week.

[6] The Commission says that the Claimant qualified in August 2020 when she applied. The Commission says that the law in place when she applied in August does not allow it to bump up her weekly rate of benefits to \$500. The Commission says that the correct weekly rate of benefits is \$200.

ISSUES

[7] The Claimant is getting \$200 as her weekly rate of benefits. She wants her weekly rate of benefits to be \$500. To make a decision on her appeal, I must decide whether the Commission correctly calculated her weekly rate of benefits. I will also look at the start date of the Claimant's benefit period.

ANALYSIS

Did the Claimant qualify for benefits when she applied in August 2020?

[8] The Claimant always qualified when she first applied in August 2020. The Commission made a mistake when it sent her a letter saying that she did not have enough hours to qualify.

[9] I understand that the Commission did not reconsider the decision about when to start the benefit period.¹ This means that I do not have the authority to make a decision about when the Claimant's benefit period should start. However, the start date of the Claimant's benefit period is an important part of this appeal. The Claimant made two applications. The law about calculating the weekly rate of benefits was different each time she applied. This means that it is important for me to look at when the Claimant's benefit period started.

[10] The Claimant and the Commission agree about the basic facts. The Claimant stopped working in January 2020 because she went on vacation. She never returned to work. Her workplace closed down because of Covid-19 and they laid her off in March 2020. The Claimant started collecting CERB. On August 13, 2020, she applied for EI maternity benefits.

[11] The Claimant did not have enough hours from her employment to qualify for benefits. She needed 600 hours, but she only had 512 hours.² The Commission sent the Claimant a letter telling her that she did not have enough hours to qualify for maternity benefits.

¹ At GD4-3, the Commission says that it has only reconsidered the decision about the weekly rate of benefits.

² The Commission also failed to give the Claimant a qualifying period extension. According to its submissions in GD12, the Claimant actually had 545 hours of insurable employment in her extended qualifying period.

[12] At the hearing, the Claimant said that a Commission agent told her that she should apply again at the end of September 2020. The Commission agent told her that the law going to change and then she would have enough hours to qualify.

[13] Now the Commission says that this was a mistake. The Commission should have given her a credit of 480 hours when she applied in August 2020. She did not need to apply again in September 2020.

[14] I agree with the Commission. The law that was in place when the Claimant applied in August 2020 had special rules for people applying for maternity benefits. Even though the Claimant only had 512 hours from her job, the law said that she should also get a one-time credit of 480 hours.³ This means that the Claimant had more than 600 hours. She qualified for maternity benefits when she applied in August 2020. She did not need to apply again in September.

[15] The Claimant always had enough hours to qualify for benefits when she applied in August 2020. The only reason the Commission did not start her benefit period right away is because it made a mistake.

Issue 2: Did the Commission correctly calculate her benefit rate?

[16] I find that the Commission correctly calculated the Claimant's benefit rate. The Commission had to use the Claimant's earnings. It could not bump her weekly rate of benefits up to \$500 because that law was not in place yet when the Claimant's benefit period started.

[17] The Claimant says that the Commission should pay her \$500 a week. She says this is how much she received with CERB. She says that the law changed in September 2020 so that everyone could get at least \$500 a week for their EI benefits.

[18] The Commission says that the Claimant's weekly rate of benefits is \$200.

³ Subsection 153.17(1) of the *Employment Insurance Act*, as it was from August 10, 2020 to September 26, 2020.

[19] I agree with the Commission. The Claimant applied for and qualified for maternity benefits in August 2020. Her benefit period started on August 30, 2020. This means that the Commission had to follow the law in place at the time to calculate her weekly rate of benefits.

[20] The law changed on September 27, 2020. Anyone with a benefit period starting on or after September 27, 2020 will get at least \$500 weekly.⁴ I cannot apply the new law to the Claimant's situation because her benefit period starts before September 27, 2020. I am sympathetic to the Claimant's situation, but I cannot change the law.

[21] The law that was in place on August 30, 2020 says that the Commission has to use the Claimant's earnings to calculate her weekly rate of benefits.

[22] The Commission used the Claimant's Record of Employment (ROE) to find the 14 weeks with her highest earnings. The Commission added these weeks together to get the Claimant's total insurable earnings - \$5091.33. Then, the Commission divided this by 14 to get her weekly earnings - \$363.67. Finally, the Commission multiplied the Claimant's weekly earnings by 55% and arrived at a weekly rate of benefits of \$200. The Claimant did not give me any information to show that the Commission's calculations were wrong. She did not give me different information about her earnings. I agree with the Commission's calculations.

[23] I cannot change the law. I cannot interpret the law in any way other than its plain meaning.⁵ The Claimant's benefit period started on August 30, 2020. This means that the Commission had to use her earnings to calculate her weekly rate of benefits. The Commission cannot bump up her weekly rate of benefits to \$500 because the law did not allow this on August 30, 2020.

⁴ Subsection 153.192(1) of the *Employment Insurance Act*. It came into effect on September 27, 2020.

⁵ *Canada (Attorney General) v Kneee*, 2011 FCA 301, at para. 9.

Issue 3: Can the Claimant cancel her August 2020 benefit period?

[24] The Commission has not made a reconsideration decision on this issue. This means that I do not have the authority to make a decision about whether the Claimant can cancel her benefit period.

[25] At the hearing, the Claimant said that she wanted to cancel the August 30, 2020 benefit period. She said that she wanted to start her benefit period in September 2020 so that she could get a \$500 weekly rate of benefits.

[26] I asked the Commission for more information about cancelling the August 30, 2020 benefit period. The Commission argues that I do not have the authority to make a decision about cancelling the Claimant's benefit period. This is because the Claimant has not asked the Commission to cancel her benefit period. The Commission has not made a reconsideration decision about cancelling the benefit period.

[27] I only have the authority to hear an appeal if there is a reconsideration decision.⁶ I cannot skip the reconsideration step. If I tried to make a decision about cancelling the Claimant's benefit period, I would be going beyond my authority. This would be a legal error.

[28] The Commission explained the special circumstances when it can cancel a benefit period. The Claimant should read the Commission's submissions in GD12. She can also ask the Commission for more information. But, right now I do not have the authority to make a decision about cancelling her benefit period. I will not look at this issue in my decision.

⁶ Section 113 of the *Employment Insurance Act*.

CONCLUSION

[29] I am dismissing the Claimant's appeal. The Commission calculated her weekly rate of benefits correctly because it had to follow the law in place in August 2020.

Amanda Pezzutto

Member, General Division - Employment Insurance Section

HEARD ON:	March 19, 2021
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	T. B., Appellant Tuan Anh Doan, Representative for the Appellant