



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *UT v Canada Employment Insurance Commission*, 2021 SST 459

Tribunal File Number: GE-21-32

BETWEEN:

U. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Charlotte McQuade

DATE OF DECISION: February 8, 2021

REASONS AND DECISION

INTRODUCTION

[1] U. T. (the “Claimant”) applied for EI sickness benefits on July 4, 2020 after ceasing work on June 16, 2020 to have knee surgery. The Canada Employment Insurance Commission (the “Commission”) told the Claimant that, due to amendments to the *Employment Insurance Act* (EI Act) as a result of Covid-19, she had to be paid EI Emergency Response Benefit (“ERB”) instead of EI sickness benefits. The Commission says the law requires payment of EI ERB benefits for claimants whose benefit period for EI sickness benefits could have been established after March 15, 2020. ¹The Commission said the Claimant had to be paid the EI ERB benefit instead of EI sickness benefits because her benefit period for EI sickness benefits would have begun on June 14, 2020.

[2] The Claimant appealed the Commission’s decision to the Tribunal. She says that she earned the 600 insurable hours needed to qualify for EI sickness benefits and she claimed EI sickness benefits. She says she did not stop work due to Covid-19 and did not claim the EI ERB benefit. She says it is unfair that she is paid the EI ERB benefit at the lower weekly gross benefit rate of \$500.00 rate as opposed to the gross \$573.00 per week she would have received from EI sickness benefits.

ISSUE

[3] The issue in this appeal is whether the Claimant should have been paid EI sickness benefits or EI ERB benefits. The Tribunal must decide whether the appeal should be summarily dismissed.

PRELIMINARY ISSUE

[4] The Claimant says she was contacted by the Tribunal to ask if she wanted a virtual hearing or an in-person hearing. She said she wanted an in-person hearing as she had no help or facilities to go on a virtual hearing and this was agreed to by the Tribunal. She says she was told it would take time to get an in person hearing and she had no objection to this. A review of the

¹ Paragraphs 153.5(2)(b) and 153.5(3)(a) of the *Employment Insurance Act*.

file shows the Claimant also declined a zoom telephone hearing. The Tribunal makes every attempt to accommodate a Claimant's choice of hearing. However, the Tribunal has the discretion to determine how the hearing is conducted.² Due to the pandemic, in-person hearings are not available to Claimants at this time.

[5] In this case, however, I decided not to hold a hearing because the Claimant's appeal appeared to have no reasonable chance of success. Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[6] Section 22 of the *Social Security Tribunal Regulations* states that before summarily dismissing an appeal, the General Division must give notice in writing to the Claimant and allow the Claimant a reasonable period of time to make submissions.

[7] I wrote to the Claimant on January 24, 2021, seeking written submissions about the intention to summarily dismiss this appeal by February 15, 2021. The Claimant responded with submissions on February 6, 2021.

EVIDENCE

[8] The Claimant applied for EI sickness benefits on July 4, 2020 after stopping work on June 16, 2020.³ She says in her Notice of Appeal that she stopped work to have knee surgery and she never applied for any other benefits, or the Canada Emergency Response Benefit ("CERB"). The employer's Record of Employment dated June 24, 2020 says it was issued for reason of "illness or injury".⁴

[9] I find as a fact that the Claimant applied for EI sickness benefits on July 2020 after ceasing work on June 16, 2020 to have knee surgery. I find she did not stop work for reasons related to the pandemic.

² Section 21 of the *Social Security Tribunal Regulations*.

³ GD3-11.

⁴ GD3-13.

SUBMISSIONS

[10] The Appellant submitted in her Notice of Appeal that she earned the 600 insurable hours needed to qualify for EI sickness benefits and she claimed EI sickness benefits. She says she did not stop work due to Covid-19 and did not claim the EI ERB benefit. She says it is unfair that she is paid the ERB benefit at the lower weekly gross benefit rate of \$500.00 rate as opposed to the gross \$573.00 per week she would have received as EI sickness benefits.

[11] The Claimant told the Commission that the changes to the law were not transparent.⁵

[12] The Claimant says in her submission of February 6, 2021 to the Tribunal that the Prime Minister has only one generic answer for all Canadians' problems. The Claimant says she is not physically able to work but she does not have any choice. She has to work. The Claimant argues that the Prime Minister has made mistakes many times and this is one more mistake. She says that the Tribunal must consult with the Prime Minister and then the Prime Minister will realize the mistake and correct it. She says the Prime Minister paid \$23,000 to his mother from taxpayer's money. She also says the Tribunal's position that her appeal appears to have no reasonable chance of success is unjustifiable and biased against hardworking Canadian senior citizens.

[13] The Commission submits that the law requires payment of EI ERB benefits for claimants whose benefit period for EI sickness benefits could have been established after March 15, 2020. The Commission said the Claimant had to be paid the EI ERB benefit instead of EI sickness benefits because her benefit period for EI sickness benefits would have begun on June 14, 2020.

ANALYSIS

[14] Because of the COVID-19 pandemic, changes were made to the *Employment Insurance Act* (EI Act). This included the creation of the EI ERB. This is a new EI benefit set out in Part VIII.4 of the EI Act and effective March 15, 2020. The EI ERB is payable to eligible claimants for two-week periods that fall between March 15, 2020, to October 3, 2020. The EI ERB pays eligible claimants \$500.00 gross per week for a maximum of 24 weeks, minus any weeks for

⁵ GD3-18.

which the claimant receives benefits under the Canada Emergency Response Benefit Act or the Canada Emergency Student Benefit Act.

[15] The EI Act defines EI ERB “claimants” for different reasons. “Claimants” are not just those who have stopped working for reasons related to COVID-19.

[16] An EI ERB claimant is defined in the EI Act to include a claimant who could have had a benefit period established for sickness benefits or regular benefits on or after March 15, 2020.⁶ The EI Act also says that for the period between March 15, 2020 and September 26, 2020, no benefit period is to be established with respect to EI sickness benefits or regular benefits.⁷

[17] The Claimant applied for EI sickness benefit on July 4, 2020, after stopping work on June 16, 2020. The Commission says the Claimant’s benefit period would have begun on June 14, 2020. The Claimant has not raised any dispute with the Commission’s determination that her benefit period would have begun on June 14, 2020 and so I find this was when her benefit period was to begin. This date is after March 15, 2020. Even if the start of the Claimant’s benefit period were delayed until the week of July 5, 2020, the Claimant’s benefit period still would have begun after March 15, 2020.⁸

[18] Because the Claimant could have had a benefit period for EI sickness benefits established after March 15, 2020, she is considered to be a claimant for EI ERB benefits. This is the case even though she did not apply for this benefit.⁹ The law says that no benefit period for sickness or regular EI benefits can be established between March 15, 2020 and September 26, 2020 so the Claimant cannot establish a claim for EI sickness benefits.¹⁰

[19] This means, the benefits to which the Claimant is entitled are those under the EI ERB, paid at the gross rate of \$500.00 per week.¹¹

⁶ See paragraphs 153.5(2)(b) and 153.5(3)(a) of the *Employment Insurance Act*.

⁷ See paragraph 153.5(3)(a) and subsection 153.8(5) of the *Employment Insurance Act*.

⁸ A benefit period begins on the later of the Sunday in the week in which the interruption of earnings occurs, and the Sunday of the week in which the initial claim for benefits is made. (Subsection 10(1) of the *Employment Insurance Act*).

⁹ Paragraphs 153.5(2)(b) and 153.5(3)(a) of the *Employment Insurance Act*.

¹⁰ Paragraph 153.5(3)(a) and subsection 153.8(5) of the *Employment Insurance Act*.

¹¹ Subsection 153.10(1) of the *Employment Insurance Act*.

[20] There is no doubt the Claimant is a hardworking individual who has paid into the EI system for many years. I understand she is going to be disappointed with this result. She worked and paid into the EI system with the expectation of receiving a certain level of benefits but then ended up receiving less than that. She asks that the Tribunal consult with the Prime Minister about this apparent inequity. While I sympathize with the Claimant's situation, the Tribunal cannot engage in such consultation. The Tribunal must apply the law as it is written. Only the legislature can change the law. I have no discretion to step outside the law, no matter how compelling the circumstances.

[21] The facts in the Claimant's case are not in dispute and the law is clear. The Claimant's appeal has no reasonable chance of success.

CONCLUSION

[22] The Tribunal finds that the appeal has no reasonable chance of success; therefore the appeal is summarily dismissed.

Charlotte McQuade
Member, General Division - Employment Insurance Section