



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *DC v Canada Employment Insurance Commission*, 2021 SST 452

Tribunal File Number: GE-21-297

BETWEEN:

**D. C.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Mark Leonard

HEARD ON: March 2, 2021

DATE OF DECISION: March 7, 2021

## **DECISION**

[1] The appeal is allowed. The Claimant is entitled to 45 weeks of Employment Insurance regular benefits.

## **OVERVIEW**

[2] The Claimant made an initial claim for Employment Insurance (EI) regular benefits in January 2020. The Canada Employment Insurance Commission (Commission) looked at the number of qualifying hours and the rate of unemployment at the time the Claimant made his initial claim and determined he was entitled to 36 weeks of benefits. However, due to a severance payment (deemed earnings) from his employer, his benefits did not begin until May 2020.

[3] The Covid-19 pandemic struck shortly after he made his initial claim. The Claimant believes that because of the unique circumstances of the pandemic he should be entitled to 45 or more weeks of EI benefits. He says that the EI program is intended to ensure financial assistance until an unemployed person can find new employment. He offers that it is the spirit of the law that should be considered in determining if he can receive more weeks of benefits. He added that the Federal Government amended the *Employment Insurance Act* (EI Act) to increase weeks of benefits. He believes that the intent of the amendments is to grant more benefits to those affected by the pandemic and he should be entitled to those added benefits.

[4] The Commission says that it granted the maximum number of weeks of benefits available to the Claimant under the law at the time of his initial claim. It says that the Claimant is not entitled to additional weeks of benefits based upon the enacted *EI Act* amendments.

## **ISSUE**

**Is the claimant entitled to more than 36 weeks of benefits?**

## ANALYSIS

[5] A claimant is entitled to receive EI benefits as long as they qualify to receive them<sup>1</sup>. A claimant qualifies if the person<sup>2</sup>

- (a) has an interruption of earnings from employment; and,
- (b) has had during their qualifying period at least the number of hours of insurable employment set out in the following table<sup>3</sup> in relation to the regional rate of unemployment that applies to the person.

[6] The Claimant made his initial claim for EI benefits when we lost his employment. The Commission established a benefit period effective January 12, 2020. On that date, the Claimant had in excess of 1820 hours of insurable employment and the unemployment rate in his area was 4.1%. This entitled the Claimant to 36 weeks of EI benefits<sup>4</sup>. The Commission contends that this calculation is purely mathematical and not open to interpretation or discretion.

[7] The Claimant argues that when the pandemic struck, things changed. He says that to determine his entitlements, I should look at the spirit of the law and not the letter of it. He says that the intent of the EI program is to provide support until a claimant finds new employment. The pandemic has caused there to be less likelihood of finding new employment and so his benefits should continue beyond 36 weeks.

[8] The Claimant does not dispute that the severance paid to him constitutes earnings under the *EI Act*. He does not dispute his insurable hours, nor that rate of unemployment at the time that he made his initial claim for benefits. He says that the calculation as presented by the Commission is in keeping with the “letter of the law.” He did offer that the rate of unemployment when he finally started to receive his benefits in May 2020 had increased to 10.1% from 4.1% because of the pandemic. He submits that using this date would result in his entitlement being 45 weeks of benefits. With reference to the Schedule 1 – Table of Weeks of

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<sup>1</sup> See Section 7(1) of the *Employment Insurance Act*.

<sup>2</sup> See Section 7(2) of the *Employment Insurance Act*.

<sup>3</sup> See Section 7(2) of the *Employment Insurance Act*.

<sup>4</sup> See Schedule 1 – Table of Weeks of Benefits – *Employment Insurance Act*.

Benefits, 1820 insurable hours in an area with 10.1% unemployment would grant the Claimant 45 weeks of benefits.

[9] The Claimant referenced case law originating in the United States<sup>5</sup>. He submits that the case supports the notion that spirit of the law should take precedence over the letter of the law. My examination of the case text does not reach the same conclusion. The U.S. Supreme Court case addressed the issue of court “shopping” by plaintiffs for a court more likely to rule in their favour. The Court ruled that the issue was one of pure jurisdiction surrounding the residence of the respondent. While there were submissions surrounding the notion of the spirit of the law, the final verdict was one of application of the letter of the law concerning jurisdiction. Regardless of the outcome, U.S. case law is not binding in Canada, I am not satisfied that the case supports the Claimant’s argument for a liberal application (*spirit of the law*) of the provisions of the *EI Act*.

[10] The Claimant also provided a reference from the Government of Canada web site<sup>6</sup>. He says that the amendments to the EI programs outlined in the bulletin demonstrate that the intention of the Federal Government is to continue to assist those affected by the pandemic until they find new employment. He says that this bulletin details that claimant will be entitled to up to 50 weeks of benefits.

[11] I have examined the reference and the underlying amendments to the *EI Act*. It is clear that the Federal Government intended those changes to take effect for claims made on, or after September 27, 2020. Since the Claimant’s benefit period started before September 27, 2020, he is not entitled the provisions as outlined in the amendments. New provisions cannot be applied retroactively beyond the specific date imposed by the legislation. Nor can they be used to reinterpret previous provisions under the guise of applying the “spirit of the law,” especially when the new provisions are explicit in their intent.

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<sup>5</sup> See (*Bristol-Myers Squib Co, v. Superior Court of California*, 582 U.S.\_2017)

<sup>6</sup> See [Canada.ca/en/services/benefits/ei/ei-regular-benefits.html](https://Canada.ca/en/services/benefits/ei/ei-regular-benefits.html)

[12] The Commission contends that it is without discretion in this matter. It says that it calculated the Claimant's maximum weeks of benefits in accordance with Schedule 1<sup>7</sup> of the *EI Act* based on the benefit period it determined. It says that Section 12(2) of the *EI Act* is not open to interpretation nor can discretion be applied to grant more weeks than proscribed. It says that neither they, nor I may interpret the words in the in any other way than their plain meaning<sup>8</sup>. For the most part, I agree with the Commission. Where I do not agree with the Commission, focusses on how it determined the Claimant's benefit period.

### **What is the Claimant's benefit period?**

[13] The Commission used the date of the Claimant's initial claim of January 12, 2020, to establish his benefit period.

[14] The Act denotes that a benefit period begins on the later<sup>9</sup> of

- (a) the Sunday of the week in which the interruption of earnings occurs<sup>10</sup>, and
- (b) the Sunday of the week in which the initial claim for benefits is made<sup>11</sup>.

[15] The Commission relies on section 12(2) of the *EI Act* when it established the benefit period based on the initial claim. It says that this decision is consistent with *the EI Act*<sup>12</sup>. Nowhere in Section 12(2) of the *EI Act* does it specify that the benefit period will be established based on the date of the initial claim. The *EI Act* is clear that there are two possible dates and it is the later of these two dates that defines the beginning of the benefit period. The Commission made no reference to when the actual interruption of earnings took place.

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<sup>7</sup> See Section 12(2) of the *Employment Insurance Act*.

<sup>8</sup> See *(Canada (AG) v. Knee*, 2011 FCA 301)

<sup>9</sup> My emphasis.

<sup>10</sup> See Section 10(1)(a) of the *Employment Insurance Act*.

<sup>11</sup> See Section 10(1)(b) of the *Employment Insurance Act*.

<sup>12</sup> See Section 12(2) of the *Employment Insurance Act*.

**Was there an interruption of earnings and when did that occur?**

[16] There are three elements noted in the *Employment Insurance Regulations*<sup>13</sup> (*Regulations*) necessary for an interruption in earnings to occur.

- The insured person must be laid off or separated from that employment.
- There is a period of seven days in which no work is performed for that employer, and,
- A period of seven consecutive days where no earnings arise from that employment.

[17] The Claimant was separated from his employment on January 10, 2020, and he performed no work for a period in excess of seven days after that date. He satisfies two of the elements. However, he did receive earnings arising out of that employment from January 12, 2020, until May 26, 2020, in the form of a severance payment. The *Regulations* confirm that a severance payment is considered earnings arising out of that employment and must be allocated to weeks of unemployment at the Claimant's normal weekly earnings before benefits can be paid<sup>14</sup>.

[18] Therefore, the claimant did not have an interruption of earnings until his severance payment was fully allocated (used up) to the weeks following his separation from employment. Essentially, he continued receiving earnings from his employer and was not eligible to be paid benefits.

[19] He did not experience an interruption in earnings until May 26, 2020. According to Section 10(1), his benefit period must be the later of the interruption of earnings or the date of his initial claim. Since he experienced the interruption of earnings on a date later than the initial claim, the date of the interruption of earnings, May 26, 2020, becomes the date upon which to determine the beginning of his benefit period.

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<sup>13</sup> See Section 14(1) of the *Employment Insurance Regulations*.

<sup>14</sup> See Section 36(9) of the *Employment Insurance Regulations*.

[20] The Act also defines the qualifying period from which the number of hours of insurable employment is calculated. This qualifying period is defined as the 52 weeks immediately prior to the beginning of the benefit period<sup>15</sup>. The Act also provides for an extension of the qualifying period resulting from severance payments<sup>16</sup>. This extension of time is equal to the number of weeks in which severance is allocated. This provision has no other reason to exist except to extend the period in which to capture qualifying hours before the separation from employment since there is no accumulation of hours during the weeks of unemployment to which severance earnings are applied. It is triggered when the benefit period can only be established when an interruption of earnings finally occurs because it has been delayed awaiting the total allocation of earnings flowing from that employment.

### **What does this all mean?**

[21] It means that the critical date is May 26, 2020. This is the date when the interruption of earnings actually takes place. It is the first week wherein the Claimant satisfies the seven consecutive days without allocation of earnings from his employment requirement to complete the three elements of an interruption of earnings. Having met all three elements of an interruption of earnings, the Claimant now meets the requirements to establish a benefit period under 10(1) of the EI Act. Seven consecutive days without earnings from May 26, 2020, occurs on June 2, 2020. The Sunday beginning that week is May 31, 2020.

[22] I find that May 31, 2020, is the date when the Claimant's benefit period is established. It satisfies the requirement of 12(1) of the Act that benefits can only be paid once a benefit period has been established subject to the maximums proscribed in 12(2). Therefore, it also follows that May 31, 2020, triggers the qualifying period calculation of insurable hours and date used to reference the regional unemployment rate.

[23] On May 31, 2020, the Claimant had in excess of 1820 hours of insurable earnings and the unemployment rate in his region was 10.1%. Accordingly, he is entitled to 45 weeks of EI benefits.

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<sup>15</sup> See Section 8(1)(a) of the *Employment Insurance Act*.

<sup>16</sup> See Section 8(3)

[24] Regarding any additional weeks of benefits arising out of the *EI Act* amendments, the amendments specify that the claim must be made after September 27, 2020. I find that the present claim was established before the new provisions came into force. The Claimant is not entitled to the benefits accorded under those amendments. The maximum he can receive is 45 weeks of benefits under this claim.

**CONCLUSION**

[25] The appeal is allowed. The Claimant is entitled to 45 weeks of Employment Insurance regular benefits.

Mark Leonard  
Member, General Division - Employment Insurance Section

HEARD ON:	March 2, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. C., Appellant