



Citation: *RP v Canada Employment Insurance Commission*, 2021 SST 403

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

## Decision

**Appellant:** R. P.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (417797) dated March 19, 2021 (issued by Service Canada)

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**Tribunal member:** Katherine Wallocha

**Type of hearing:** Teleconference

**Hearing date:** April 28, 2021

**Hearing participants:** Appellant

**Decision date:** April 30, 2021

**File number:** GE-21-595

**DECISION**

[1] The appeal is dismissed. The Commission has correctly calculated the Claimant's employment insurance (EI) benefit rate.

**OVERVIEW**

[2] The Claimant applied for sickness EI benefits on August 30, 2020. She indicated that she was pregnant and would like her maternity benefits to start immediately after her illness benefits. Her benefit period was established starting August 16, 2020.

[3] The Claimant received two weeks of the EI-Emergency Response Benefit (EI-ERB), and then her baby was born prematurely. Her claim was switched to maternity EI benefits because maternity and parental EI benefits were not included in the EI-ERB. This means she was paid 55% of her weekly income and not the \$500 offered by EI-ERB.

[4] The Claimant requested that the Commission reconsider the benefit rate she was being paid. She said the new temporary measures that began on September 27, 2020, allow maternity and standard parental EI benefits to be paid at a benefit rate of at least \$500 per week. She was told multiple times by Service Canada agents that her rate will change automatically and the difference will be paid to her in a lump sum.

[5] The Commission maintained its decision that her benefit rate was calculated correctly based on 55% of her earnings because her benefit period started before September 27, 2020. The Claimant disagrees. She feels she is entitled to the new rate of \$500 per week according to the new temporary measures. She said it is unfair that someone who worked only 120 hours qualifies for \$500 weekly. She worked more than 600 hours and her weekly benefit rate is much lower because she went into labour earlier than expected.

**WHAT I MUST DECIDE**

[6] Did the Commission correctly calculate the Claimant's benefit rate?

## **REASONS FOR MY DECISION**

[7] As a result of the Covid-19 pandemic, a temporary change was made in the law to allow a minimum weekly benefit rate of \$500 for maternity and parental benefit claimants whose benefit period started on or after September 27, 2020<sup>1</sup>.

[8] To determine if the Claimant was entitled to the new benefit rate, I will first decide when the Claimant's benefit period began.

### **Did the Claimant's benefit period start before September 27, 2020?**

[9] Yes, the Claimant's benefit period began on August 16, 2020.

[10] The law says that a benefit period begins on the Sunday of the week in which the interruption of earnings occurs or the Sunday of the week in which the initial claim for benefits is made, whichever is later<sup>2</sup>.

[11] The Claimant's last day of work was August 22, 2020. She applied for EI benefits on August 30, 2020. When a claimant applies for EI benefits shortly after they become unemployed, the Commission starts the benefit period at the time of their separation of employment. I find the Claimant's benefit period began on August 16, 2020, because this is the Sunday of the week in which the interruption of earnings occurred.

[12] I understand the Claimant's argument that she feels her benefit rate should be \$500. However, the temporary measures were implemented on September 27, 2020. The Claimant's benefit period was established before the new temporary law was in place, so she does not qualify for the \$500 benefit rate.

### **Did the Commission correctly calculate the Claimant's benefit rate?**

[13] Yes, the Commission correctly calculated the Claimant's benefit rate at \$213 per week.

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<sup>1</sup> This is set out in s 153.192 of the *Employment Insurance Act* (EI Act).

<sup>2</sup> This is set out in s 10(1) of the EI Act.

[14] The law says that for claimants whose benefit period begins before September 27, 2020, the rate of weekly benefits payable to a claimant is 55% of their weekly insurable earnings<sup>3</sup>.

[15] The Commission says the Claimant's total insurable weekly earnings are \$387. Using the rate of unemployment of 13.1%, the number of best weeks required for the calculation of the Claimant's weekly benefit rate was 14<sup>4</sup>. The Claimant's 14 weeks containing the highest insurable earnings were determined to total \$5,415.83. This total divided by 14 resulted in a total weekly earnings of \$386.85.

[16] I asked the Claimant if she agreed with this total and she agreed that her average weekly earnings were in the area of \$386.85 per week, rounded up to \$387. From this, I find the Commission correctly calculated that the Claimant was entitled to maternity and standard parental EI benefits of \$213 per week [ $\$386.85$  (weekly insurable earnings)  $\times$  55% = \$212.76 (rounded up to \$213)].

**Did the Claimant's application for parental benefits affect her benefit rate?**

[17] No, the Claimant's subsequent application does not change her benefit rate.

[18] When the Claimant applied for sickness benefits, she indicated that she was pregnant and wanted her maternity benefits to start immediately after her sickness benefits. She further indicated that she only wanted to receive 15 weeks of maternity benefits.

[19] The Claimant then applied for parental EI benefits on January 27, 2021. The Claimant argued that her second application was after September 27, 2020. I agree that her subsequent application was after September 27, 2020. But to qualify for EI benefits, the Claimant was required to reactivate an existing claim. This means the start date of her benefit period remains August 16, 2020.

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<sup>3</sup> This is set out in s 14(1) of the EI Act.

<sup>4</sup> This is set out in s 14(2) of the EI Act.

[20] The Claimant argued that she spoke to many Service Canada agents who told her that the benefit rate would change to the higher rate and she would be provided with a lump sum payment to make up the difference.

[21] I respect the Claimant's argument that she feels she was misinformed by the Commission. But the courts have found that Commission agents have no power to amend the law, so any interpretation they make of the law does not, by itself, have the force of law. The courts also said that any commitment the Commission's representatives might make to act in a way other than written in the law is absolutely void<sup>5</sup>. The courts provide direction that I am required to follow. It is unfortunate the Claimant received incorrect information from Commission agents, but I cannot refuse to apply the law.

[22] The Claimant also feels that it is unfair that others who worked less than her will be receiving the \$500 benefit rate. I have sympathy for the Claimant's situation, given that she is receiving a lower benefit rate than claimants with benefit periods starting on or after September 27, 2020. But I am required to apply the law that was in effect at the time she submitted her application and established a benefit period. I am unable to rewrite the law or interpret it differently than its plain meaning<sup>6</sup> even if it would be fair to do so.

## **CONCLUSION**

[23] The appeal is dismissed. The Claimant's benefit period started before September 27, 2020, so she is unable to be paid the higher benefit rate.

*K. Wallocha*

Member, General Division - Employment Insurance Section

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<sup>5</sup> This is explained in the Federal Court of Appeals (FCA) decision *Granger v. Employment and Immigration Commission*, A-684-85.

<sup>6</sup> This is explained in the FCA decision *Canada (Attorney General) v. Knee*, 2001 FCA 301.