



Citation: *YL v Canada Employment Insurance Commission*, 2021 SST 527

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

Decision

Appellant: Y. L.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (428300) dated July 14, 2021
(issued by Service Canada)

Tribunal member: John Noonan
Type of hearing: Teleconference
Hearing date: August 12, 2021
Hearing participants: Appellant
Decision date: August 17, 2021
File number: GE-21-1305

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant, Y. L., was upon reconsideration by the Commission, notified that the maximum number of weeks payable on her claim had been determined, based on her combining her separation payment and her entitlement to regular benefits to be 104. The Appellant asserts that the Commission should allow her to obtain, after allocation of her severance monies, her entire claim for regular benefits. The Tribunal must decide if the Appellant's number of weeks of entitlement was correctly determined under the Act.

Issue

[3] Issue # 1: Did the Commission correctly determine the Appellant's number of weeks of entitlement?

Analysis

[4] The relevant legislative provisions are reproduced at GD4.

[5] Subsection 10(10) of the Act states: Extension of benefit period

(10) A claimant's benefit period is extended by the aggregate of any weeks during the benefit period for which the claimant proves, in such manner as the Commission may direct, that the claimant was not entitled to benefits because the claimant was

(a) confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the claimant was being held or any other offence arising out of the same transaction;

(b) **in receipt of earnings paid because of the complete severance of their relationship with their former employer;**

(c) in receipt of workers' compensation payments for an illness or injury; or (d) in receipt of payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the claimant, her unborn child or a child whom she was breast-feeding.

[6] Subsection 10(14) of the Act states: Maximum extension under subsections (10) to (13.02)

(14) An extension under one or more of subsections (10) to (13.02) must not result in a benefit period of more than **104** weeks.

[7] Subsection 12(2) of the Act states:

(2) The maximum number of weeks for which benefits may be paid in a benefit period because of a reason other than those mentioned in subsection

(3) shall be determined in accordance with the table in Schedule I by reference to the regional rate of unemployment that applies to the claimant and the number of hours of insurable employment of the claimant in their qualifying period.

Issue 1: Did the Commission correctly determine the Appellant's number of weeks of entitlement?

[8] Yes

[9] The Appellant had accumulated 1820 hours of insurable employment in her qualifying period (the maximum number used in the calculation of benefits) and the regional rate of unemployment was 6.8 % when her benefit period was established. Accordingly, the number of weeks for which benefits may be paid pursuant to Schedule I in subsection 12(2) of the Act is 38.

[10] The Appellant was notified that she, having received a severance payout from her employer, which represented a complete severance of the employee / employer relationship, resulted in her being eligible to have her benefit period (the period during which benefits can be paid) extended to 104 weeks from 52 weeks.

[11] Her severance payout was deemed to be earnings paid because of the separation and was allocated at average weekly earnings from the week in which the separation occurred. The allocation period was from June 19, 2019 to July 3, 2021. The waiting period was served the week of June 19, 2019 2019. (This allocation has not been appealed here therefore is not part of the case before me. It is mentioned only to show mathematically how the number of weeks was determined.)

[12] The Appellant received separation monies totaling \$298,219.43 rounded to \$298,219.00 which were allocated at her normal weekly earnings of \$2810.64, rounded to \$2811 from her last day worked, to the week beginning July 3, 2021 with \$2526.00 in the last week. The benefit period was extended by an additional 52 weeks (GD3-20-21). The average weekly earnings (normal weekly earnings) of \$2810.64 was calculated based on an average of all of the insurable earnings reported by the employer on the record of employment (GD3-22-24).

[13] This covers a total of 104 weeks, the maximum allowable under the Act.

[14] The Appellant is of the opinion that she, having received a severance package after 40 years of service and once the severance/allocation period was over, she should be provided her EI benefits.

[15] The reasoning for this not being possible was explained by the Commission's agent and again at her hearing.

[16] The Appellant, at her hearing, stated that she, having studied the documentation regarding her appeal, disagrees with the requirements imposed by the Act but wondered if there were any exceptions based on compassionate grounds. She was assured that there were no such exceptions.

[17] She asked what her next steps should be, contact her MP and / or the media. All I could offer, of course, was her right to appeal my decision to the Appeal Division of the Tribunal or to the courts if necessary.

[18] I understand the Appellant's frustrations and that she has paid into the employment insurance program and has been unemployed due to severance from her previous employment of 32 years therefore there should be an exception in her case and consideration given to the extenuating circumstances. However, while I sympathize with the Appellant, I must consider the facts and apply the statutory requirements and I cannot ignore, refashion, circumvent or rewrite the Act, even in the interest of compassion (**Canada (Attorney General) v. Knee, 2011 FCA 301**).

[19] Neither the Tribunal or the Commission have any discretion or authority to override clear statutory provisions and conditions imposed by the Act or the Regulations on the basis of fairness, compassion, financial or extenuating circumstances.

[20] There are no provisions that would allow the Commission or the Tribunal to extend the Appellant's benefit period beyond the 104 week maximum.

Conclusion

[21] The appeal is dismissed.

John Noonan
Member, General Division – Employment Insurance Section