



Citation: *WD v Canada Employment Insurance Commission*, 2021 SST 645

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

# **Decision**

**Appellant:**

W. D.

**Respondent:**

Canada Employment Insurance Commission

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**Decision under appeal:**

Canada Employment Insurance Commission  
reconsideration decision (422603) dated May 11, 2021  
(issued by Service Canada)

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**Tribunal member:**

Raelene R. Thomas

**Type of hearing:**

Videoconference

**Hearing date:**

July 2, 2021

**Hearing participant:**

Appellant

**Decision date:**

July 9, 2021

**File number:**

GE-21-971

## **Decision**

[1] The appeal is dismissed.

[2] W. D., who I will call the Claimant, received the correct amount of employment insurance (EI) benefits.

[3] This means the Claimant's benefit rate cannot be increased to \$500 per week.

## **Overview**

[4] The Claimant was laid off because of the COVID-19 pandemic and received Canada Emergency Response Benefits (CERB) until June 6, 2020. The CERB was paid at the rate of \$500 a week. The Claimant gave birth and then applied for EI maternity benefits and EI parental benefits. The EI maternity and EI parental benefits started on June 7, 2020. The Claimant's EI maternity and EI parental benefits were paid at the rate of \$439 a week.

[5] The Claimant asked the Commission to pay her EI benefits at the rate of \$500 a week because other parents who gave birth after September 2020 received \$500 a week. The Commission refused because the \$500 weekly rate was only available to those who applied for EI maternity and EI parental benefits after September 27, 2020.

[6] The Claimant disagrees. She says this is not fair. There is no difference between her family and other families so they should receive the same amount of benefits.

## **Matter I have to consider first**

[7] At the start of the hearing, the Claimant quoted section 15 of the Charter of Rights and Freedoms. That section of the Charter deals with equal treatment under the law. I explained to the Claimant that if she wanted to make a Charter argument, her appeal would need to be treated differently and heard by a different Tribunal Member who is trained to hear Charter arguments.

[8] The Claimant said that she was not intending to make a Charter argument. Accordingly, no Charter issues were considered in this decision.

## Issue

[9] Did the Claimant receive the correct amount of EI maternity and EI parental benefits?

## Analysis

[10] The dollar amount of EI benefits that a claimant receives is 55% of a claimant's weekly insurable earnings. The weekly insurable earnings are the insurable earnings in a "calculation period" divided by a certain number of weeks, as determined by the rate of unemployment in the area where a claimant lives.<sup>1</sup> To calculate a claimant's weekly insurable earnings involves three steps.<sup>2</sup>

[11] The first step is to determine the rate of unemployment in the economic region where the claimant resides when they apply for EI benefits. That rate of unemployment determines the "number of weeks" that is used to calculate the weekly insurable earnings in the calculation period.<sup>3</sup> The "number of weeks" is the calculation period.

[12] For the second step, each week of the claimant's insurable earnings in the qualifying period is reviewed to find the highest weekly insurable earnings for the "number of weeks."

[13] Third, these weekly amounts and any money paid to the claimant by reason of lay-off or separation from employment are added together and then divided by the "number of weeks" to get the claimant's insurable weekly earnings.<sup>4</sup>

[14] When the Claimant applied for EI benefits, she lived in the economic region of Toronto. The Commission submitted that on May 16, 2020, the date she applied for EI

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<sup>1</sup> *Employment Insurance Act*, section 15. This is how I refer to the law that applies to this appeal.

<sup>2</sup> *Employment Insurance Act*, section 14

<sup>3</sup> *Employment Insurance Act*, section 14(2)

<sup>4</sup> *Employment Insurance Act*, section 14(3)

maternity and EI parental benefits, the unemployment rate for the economic region of Toronto was 8%. The Claimant does not dispute this figure.

[15] Because the Claimant lived in an economic region with an unemployment rate of 8%, the “number of weeks” used to calculate her insurable earnings was 20. The Claimant does not dispute this.

[16] The Commission initially looked at the Claimant’s earnings in the 52 weeks before she applied for EI benefits. It determined that her highest paid 20 weeks totalled \$13,448. Dividing that amount by 20 weeks meant that the Claimant was initially paid EI benefits at the rate of \$370.

[17] When the Claimant requested reconsideration the Commission determined she was entitled to have the qualifying period extended.<sup>5</sup> This meant that there were an additional 16 weeks of employment reviewed for the highest paying weeks. The Claimant does not dispute the extension to the qualifying period.

[18] The extension resulted in the Claimant’s 20 weeks of highest earnings totaling \$15,958. The Claimant does not dispute this amount. That amount divided by 20 meant that the Claimant’s EI benefits were increased to \$439 a week. This evidence tells me the Commission correctly calculated the Claimant’s EI maternity and parental benefit rate.

[19] The Claimant submitted that she should be entitled to receive \$500 a week for her EI maternity and parental benefits. She said that the new rate began in September 2020 and that she should not be penalized for having her baby before the new rate came into effect. She should receive the new rate until her benefits ended in June 2021. Her family’s expenses are the same as for those who had their babies after

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<sup>5</sup> The law was changed on August 7, 2020, to say that Claimants seeking special benefits, such as maternity or parental, and who were paid EI ERB or CERB during their qualifying period would have their qualifying period extended by 16 weeks if their benefit period was established before July 5, 2020. See *Interim Order No. 7 Amending the Employment Insurance Act*, section 153.18

September 27, 2020. It is not fair that she is not able to receive the same amount of money as other mothers are receiving.

[20] The Commission says that the Claimant was eligible to receive the CERB until she gave birth to her child. After that, she was eligible to receive EI maternity and EI parental benefits.

[21] The Commission says that it had to consider the date of the child's birth to determine which provisions of the legislation apply when calculating the Claimant's rate of benefits. It says that at the time the Claimant gave birth the provisions of Part I of the *Employment Insurance Act* applied when calculating her rate of benefits. It could not apply the provisions in Part VIII.5 of the *Employment Insurance Act* that set EI benefits at a rate of \$500 a week because those provisions only apply to those claimants who establish a benefit period after September 27, 2020. It says in the Claimant's case her benefit period started on May 31, 2020, so she is not eligible for the \$500 a week rate.

[22] I understand the Claimant's desire to receive the higher amount of EI benefits. When Parliament changed the law to temporarily allow EI maternity and parental benefits to be paid at the rate of \$500 a week it decided that the new rate would apply for benefit periods that started on or after September 27, 2020.<sup>6</sup> In the Claimant's case, her benefit period, during which she could be paid benefits, started on May 31, 2020. This means the Commission had to use the formula that was in the law at that time. Unfortunately, the Claimant is not eligible to be paid \$500 a week for her benefits and her benefit rate had to be calculated using the three-steps I described in paragraphs above. I find that the Commission did correctly calculate the Claimant's benefit rate.

[23] I am sympathetic to the Claimant's circumstances given that she received a lower benefit rate than claimants with benefit periods starting on or after September 27,

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<sup>6</sup> *Interim Order No. 8: Amending the Employment Insurance Act (Facilitating Access to Benefits)* (SOR/2020-187) added section 153.192 to the Employment Insurance Act.

2020. But, I have to apply the law and have no authority to make special exceptions base don compassion.<sup>7</sup>

## **Conclusion**

[24] The appeal is dismissed. This means the Claimant's benefit rate cannot be increased to \$500.

Raelene R. Thomas  
Member, General Division – Employment Insurance Section

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<sup>7</sup> In *Canada (Attorney General) v Knee*, 2011 FCA 301, the Federal Court of Appeal said that “rigid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme. However, tempting as it may be in such cases ... adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.”