



[TRANSLATION]

Citation: *ML v Canada Employment Insurance Commission*, 2021 SST 871

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

**Decision**

**Appellant:** M. L.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (436742) dated October 27,  
2021 (issued by Service Canada)

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**Tribunal member:** Josée Langlois  
**Type of hearing:** Teleconference  
**Hearing date:** December 21, 2021  
**Hearing participant:** Appellant  
**Decision date:** December 22, 2021  
**File number:** GE-21-2384

## **Decision**

[1] The appeal is dismissed.

[2] I find that the Appellant's application for benefits can't be considered as though it was made on December 4, 2017.

## **Overview**

[3] The Appellant applied for family caregiver benefits for adults on July 27, 2021. A benefit period was established from July 25, 2021. On July 27, 2021, she also asked the Canada Employment Insurance Commission (Commission) to consider her application retroactively to receive family caregiver benefits from December 4, 2017.

[4] On October 27, 2021, the Commission found that the Appellant wasn't entitled to special benefits from December 4, 2017, because she hadn't had an interruption of earnings and didn't qualify to establish an earlier benefit period from that date.

[5] The Appellant disagrees. She admits that she was on deferred salary leave between July 31, 2017, and July 29, 2018. But she argues that she hadn't accumulated hours of work before her leave allowing her to defer her salary. For this reason, she considers the amount paid by her employer during her leave as a loan and not earnings.

[6] I have to decide whether the Appellant's application for benefits should be considered as though it was made on December 4, 2017.

## **Issues**

[7] Did the Appellant qualify for benefits from December 4, 2017?

[8] Did the Appellant have good cause for the delay?

## Analysis

### Did the Appellant qualify for benefits from December 4, 2017?

[9] A benefit period can be established at an earlier date when two conditions are met: The claimant shows that they qualified for benefits on the earlier day, and there was good cause for the delay throughout the period beginning on the earlier day and ending on the day the initial claim was made.<sup>1</sup>

[10] To receive benefits, a worker must show that they qualify; namely, that they had an interruption of earnings from employment and that they had, during their qualifying period, at least 420 hours of insurable employment.<sup>2</sup>

[11] The Commission disputes that the Appellant qualifies for benefits. It argues that there was no interruption of earnings under section 14(3) of the *Employment Insurance Act* (Act). It also argues section 11(3) of the Act, which reads as follows:

**(3)** A week or part of a week during a period of leave from employment is not a week of unemployment if the employee

- (a)** takes the period of leave under an agreement with their employer;
- (b)** continues to be an employee of the employer during the period; and
- (c)** receives remuneration that was set aside during a period of work, regardless of when it is paid.

[12] The Commission also argues that, by choosing to take part in a differed salary leave, the Appellant agreed to receive a lower salary while working, to be able to receive pay while on leave.

[13] It explains that, under special provisions, employees on differed salary leave don't have an interruption of earnings during their leave, unless an interruption of earnings can be established based on another job. The Commission says that

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<sup>1</sup> Section 10(4) of the *Employment Insurance Act* (Act).

<sup>2</sup> Section 7 of the Act.

employees on this type of leave are deemed to work full working weeks for each week of their differed salary leave.

[14] As a result, the Commission argues that the Appellant's file doesn't meet one of the requirements on the earlier day, that is, December 4, 2017. It explains that, to establish a benefit period, there must be an interruption of earnings for a period of seven consecutive days in respect of which no earnings that arise from that employment, other than those paid in respect of a holiday, are payable or allocated.

[15] It shows that the Record of Employment on file indicates that the Appellant received a salary between July 23, 2017, and July 29, 2018, and that there was no interruption of earnings between July 23, 2017, and December 3, 2017.

[16] The Appellant admits that she was on leave, but she argues that she hadn't accumulated the hours of work allowing her to self-finance this leave before taking it. She explains that, in most cases, when the employer authorizes a differed salary leave, employees have already accumulated the required hours of work, which wasn't her case.

[17] The Appellant explains that her leave was between July 31, 2017, and July 29, 2018, and that it wasn't decided in advance; the leave was decided urgently. She says that she asked her employer for permission to take leave and that an agreement was reached. This agreement guaranteed her the payment of periodic amounts, which she committed to repay once her leave was over.

[18] She says she started to repay, out of her salary, the amounts paid in advance by the employer only once she returned to work at the end of July 2018. For this reason, she compares the payment of the amounts by the employer during her leave to a loan rather than a salary.

[19] I agree with the Commission.

[20] The Act says that benefits are paid to a family member of a critically ill adult, to care for and support that adult, if a medical doctor or nurse practitioner has issued a certificate. The Appellant asked for these special benefits, but as this section says, she must meet the eligibility requirements.<sup>3</sup>

[21] According to section 14(1) of the *Employment Insurance Regulations* (Regulations),

[...] an interruption of earnings occurs where, following a period of employment with an employer, an insured person is laid off or separated from that employment and has a period of seven or more consecutive days during which no work is performed for that employer and in respect of which no earnings that arise from that employment, other than earnings described in subsection 36(13), are payable or allocated.

[22] The Appellant wasn't laid off, and she was paid during her leave. While I understand that the employer agreed to a differed salary leave even though the Appellant hadn't accumulated the required hours of work before the leave, she assured the employer that she would repay the amounts received, out of her salary, after her leave. The Appellant was in an urgent situation, and this situation allowed her to receive earnings in advance for which she hadn't yet worked or provided services.

[23] This situation shows the relationship between the Appellant and her employer. There was no interruption of earnings during this period. On the contrary, it was agreed that she would be granted a differed salary leave from July 31, 2017, to July 29, 2018. The agreement provided that the Appellant would be paid at 80% of her salary for the duration of her leave.<sup>4</sup>

[24] On this point, section 14(6) of the Regulations says that a period of leave referred to in section 11(3) of the Act doesn't constitute an interruption of earnings, regardless of the time at which or the manner in which earnings are paid.

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<sup>3</sup> Section 23.3(1) of the Act.

<sup>4</sup> GD3-19.

[25] In addition, even though the earnings the Appellant received were paid during a leave and they were differed (even though the earnings were repaid after the leave), the Appellant isn't considered unemployed during the weeks for which she had such an agreement with her employer.<sup>5</sup>

[26] The Appellant doesn't qualify to establish a benefit period. There was no interruption of earnings from December 4, 2017.

[27] While I understand the Appellant's explanations and the reasons she took such a leave, the facts show that, during her leave, she received earnings from her employer. As the Commission argues, section 11(3) of the Act says that a period of leave doesn't constitute an interruption of earnings, regardless of the time at which or the manner in which earnings are paid.

[28] Since the first criterion of section 10(4) of the Act isn't met, there is no need to meet the second criterion of whether the Appellant had good cause for the delay because a benefit period can't be established.

[29] However, I would still like to give the Appellant some answers. And I point out that, even though she didn't know that she was entitled to special benefits, good faith and ignorance of the [Act](#) aren't, in themselves, good cause for a delay in filing a claim.

[30] On this point, at the hearing, the Appellant mentioned that she hadn't applied for benefits before July 27, 2021, because she didn't know this information and she didn't know these benefits existed.

[31] I find that the Appellant's application for benefits can't be considered as though it was made on December 4, 2017.

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<sup>5</sup> Section 11(3) of the Act.

## **Conclusion**

[32] The appeal is dismissed.

Josée Langlois  
Member, General Division – Employment Insurance Section