



Citation: *TD v Canada Employment Insurance Commission*, 2021 SST 916

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Claimant: T. D.

Commission: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (434418) dated September 22,
2021 (issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: Videoconference

Hearing date: December 9, 2021

Hearing participant: Claimant

Decision date: December 14, 2021

File number: GE-21-2065

Decision

[1] The appeal is dismissed.

Overview

[2] The Claimant works in the retail industry. Her employer laid her off due to the pandemic. She returned to work twice and her employer laid her off again twice. The Claimant's doctor told her not to return to work due to pregnancy-related illness. She received sickness benefits. The Claimant then applied for maternity and parental benefits.

[3] The Commission determined that because they paid the Claimant a combination of regular and special employment insurance (EI) benefits, her benefit period ends once they have paid her 50 weeks of benefits or the end date of her claim, whichever comes first. The Claimant argues that the pandemic affected her job, but she worked as much as she could. She says that she applied for maternity and parental benefits before the end of September 2021 to get a credit of insurable hours as discussed with Service Canada.

Issue

[4] Is the Claimant entitled to parental benefits beyond December 11, 2021?

Analysis

Is the Claimant entitled to parental benefits beyond December 11, 2021?

[5] I find that the Claimant is not entitled to parental benefits beyond December 11, 2021.

[6] The Commission can pay a claimant benefits in a period that's called a benefit period.¹

[7] Parental benefits are special benefits that are payable to a claimant to care for a newborn child.² The maximum of weeks of combined regular and special benefits (this includes sickness, maternity and parental benefits) in a benefit period can't be more than 50 weeks.³

[8] The Claimant testified that she applied for EI regular benefits on December 23, 2020 after her employer laid her off due to the pandemic. She returned to work on March 15, 2021 and worked to April 7, 2021 when the place she worked closed again. The Claimant's employer re-opened at the end of June 2021, but the Claimant did not return to work after April 7, 2021.

[9] The Claimant confirmed at the hearing that she received 28 weeks of regular benefits in the period from December 27, 2020 to July 10, 2021 and five weeks of sickness benefits from July 11, 2021 to August 14, 2021.

[10] The Commission submits that the Claimant can get only 50 weeks of benefits in her benefit period. As noted above, the law confirms this when claimants get a combination of regular and special benefits.

[11] I find from the Claimant's testimony that her benefit period started on December 20, 2020. This is because she applied for benefits on December 23, 2020. She got EI sickness benefits starting on July 11, 2021. For this reason, I find that she got a combination of regular and special benefits. Because of this, I find that she is entitled to a maximum of 50 weeks of benefits.

¹ Subsection 12(1) of the *Employment Insurance Act* (Act).

² Subsection 23(1) of the Act.

³ Subsection 12(6) of the Act.

[12] The Commission considered whether the Claimant could terminate her benefit period to start a new one. As noted above, the Claimant said that a Service Canada agent told her about a credit of insurable hours.

[13] The Commission can cancel a benefit period. They can do so if they didn't pay a claimant any benefits, or if the claimant can establish a new benefit period.⁴

[14] A claimant has to have enough hours to establish a new benefit period.⁵ Claimants who want special benefits can qualify if they have 600 or more insurable hours.⁶ A new section of the law gives an additional 300 or 480 hours for claimants who apply for regular or special benefits, respectively, on or after September 27, 2020.⁷

[15] The Claimant worked 77 insurable hours from March 15, 2021 to April 7, 2021. She testified that she called Service Canada to ask if she would be eligible for maternity and parental benefits. She says that they told her that she would be okay because she could get a credit of insurable hours up to September 25, 2021. She added that they said that the government would probably have something in place specifically for women who are having children.

[16] The Commission says they used the 300-hour credit of insurable hours to establish the Claimant's benefits period that started on December 20, 2020. The Claimant rightly states that she didn't need the credit because she had enough insurable hours to qualify for benefits without it. She says that she should be able to use the credit now.

[17] As noted above, the law says that a claimant who makes a claim on or after September 27, 2020 "is deemed to have" either 300 or 480 additional insurable hours. I find from the specific language of the section in question that once a claimant makes a

⁴ Subsection 10(6) of the Act.

⁵ Section 48 of the Act.

⁶ Subsection 93(1) of the *Employment Insurance Regulations*; the hours need to be hours of insurable employment.

⁷ Paragraph 153.17(1) of the Act.

claim for benefits on or after September 27, 2020, the increase of the additional hours is automatic. I find this is the case whether a claimant needs the additional hours or not.

[18] I agree that the Claimant had enough insurable hours to establish a claim on December 20, 2020. She did not need additional hours then. However, I have already found that she established a claim on December 20, 2020, after the September 27, 2020 date referred to in the law. Because of this, I find that the law deems the Claimant to have the additional 300 insurable hours on December 20, 2020.

[19] I find that because the Claimant is deemed to have received the additional 300 insurable hours for his October 11, 2020 claim, she can't get an additional 480 hours to start a new claim so she can get 35 weeks of parental benefits. The law does not allow this. For this reason, I find that the Claimant doesn't have enough insurable hours to start a new benefit period. She has only 77, but needs 600.

[20] I acknowledge that the Claimant is in a near impossible situation. She had two children before giving birth to twins in August 2021. She said that she looked into the cost of daycare for her twins. She testified that the cost of \$1,300 per child per month is unrealistic. The Claimant said that she understands that the law exists, but asks for an adjustment given her situation.

[21] I sympathize with the Claimant given the difficult decisions she will have to make. She referred to unprecedented times, and she is right. Her inability to work to get insurable hours to qualify for the normal entitlement of parental benefits is not her fault. Rather, it is because of the pandemic, temporary closures, and her need of months of regular and sickness benefits, followed by maternity and parental benefits. While I sympathize with the Claimant's situation, I can't change the law, but must apply it as written.⁸

⁸ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

Conclusion

[22] The appeal is dismissed. The Claimant is not entitled to parental benefits beyond December 11, 2021.

Audrey Mitchell
Member, General Division – Employment Insurance Section