



[TRANSLATION]

Citation: *DB v Canada Employment Insurance Commission*, 2022 SST 160

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: D. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (441005) dated November 16, 2021 (issued by Service Canada)

Tribunal member: Charline Bourque

Type of hearing: Teleconference

Hearing date: February 9, 2022

Hearing participant: Appellant

Decision date: February 25, 2022

File number: GE-22-171

Decision

[1] The appeal is dismissed.

[2] The Claimant isn't eligible for the five additional weeks of benefits for seasonal workers because he doesn't meet the criteria set out in the *Employment Insurance Act* (Act) to qualify.

[3] In addition, the Claimant would not meet the criteria to get the five additional weeks of benefits for seasonal workers even if he had submitted his claim in July 2021.

Overview

[4] The Claimant applied for Employment Insurance (EI) regular benefits. He says he is a seasonal worker and should therefore be eligible for five additional weeks of benefits because he lives in one of the economic regions affected by the pilot project.

[5] The Commission is of the opinion that the Claimant doesn't meet the established criteria to be considered a seasonal worker. Specifically, the Commission finds that the Claimant hasn't established two benefit periods at about the same time of year as the current claim, in the last five years.

[6] The Claimant disagrees with this situation. He says he always applied for benefits in late July or early August. He says it was only because of the EI Emergency Response Benefit (EI ERB) that his claim for benefits was made in October. Therefore, he is asking to be eligible for the five weeks of benefits, since it was only because of the EI ERB that he was unable to apply in July. If this isn't possible, he would like to end his claim in July so that he can submit a new claim on that date and be eligible for the additional weeks for seasonal workers.

[7] I therefore have to determine whether the Claimant is eligible for the five additional weeks of benefits as a seasonal worker. I also have to assess whether the Claimant's claim for benefits could end in July 2021 for the current claim to be submitted and established on that date.

Issues

[8] Is the Claimant eligible for the five additional weeks of benefits as a seasonal worker?

[9] Can the Claimant's claim for benefits end in July 2021 to allow him to establish a new claim on that date and get the five additional weeks of benefits?

Analysis

Issue 1: Is the Claimant eligible for the five additional weeks of benefits as a seasonal worker?

[10] The maximum number of weeks for which benefits can be paid in a benefit period is based on the regional rate of unemployment and the number of hours he worked in insurable employment during his qualifying period.¹

[11] The Claimant applied for EI starting October 3, 2021. On that date, the unemployment rate for his economic region, Gaspésie/Iles de la Madeleine,² was 11.8%.³

[12] The Claimant had 881 hours of insurable employment in his qualifying period. So, the Claimant is eligible for 28 weeks of benefits.⁴

[13] However, for EI claims starting between September 26, 2021, and October 29, 2022, the Act provides an exception for seasonal workers. This exception provides eligibility for five additional weeks of benefits.⁵

[14] To benefit from this exception, a claimant must meet the following four criteria:

- a) Establish a claim for benefits between September 26, 2021, and October 29, 2022.

¹ See section 12(2) of the *Employment Insurance Act* (Act).

² See the table corresponding to the economic region (GD3-18).

³ See the table showing the unemployment rate by economic region (GD3-19).

⁴ See Schedule 1 of section 12(2) of the Act.

⁵ See section 12(2.3) of the Act.

- b) Reside in a region set out in Schedule VI.
- c) Have established at least three benefit periods during which regular benefits were paid in the 260 weeks (five years) preceding the start date of the benefit period.
- d) At least two of the previous benefit periods must have begun at about the same time of year as the benefit period for the current claim began.

[15] I am of the opinion that the Claimant doesn't meet the criteria provided. I find that the Claimant meets only the first three criteria.

[16] I note that the Claimant is applying for EI benefits as of October 3, 2021, and that he lives in one of the regions identified to take advantage of this exception. In addition, the Claimant has established at least three benefit periods in the last five years.⁶

[17] However, I find that the Claimant doesn't meet the last criterion, since at least two of these previous benefit periods didn't begin at about the same time of year as the current benefit period starting October 3, 2021.

[18] In the last five years, the Claimant has established four claims for benefits on the following dates:

- July 23, 2017
- July 22, 2018
- July 21, 2019
- October 4, 2020

[19] For a benefit period from an earlier year to be considered to have begun at around the same time of year, it must have begun eight weeks before or end eight weeks after it.⁷

⁶ The Claimant established claims for benefits on July 23, 2017; July 22, 2018; July 21, 2019; and October 4, 2020.

⁷ See section 12(2.5) of the Act.

[20] Therefore, only the claim starting October 4, 2020, meets this condition. The Claimant therefore doesn't meet criterion d) of section 12 (2.3) of the Act, since two of the benefit periods weren't submitted at the same time of year as the current claim.

Issue 2: Can the Claimant's claim for benefits end in July 2021 to allow him to establish a new claim on that date and get the five additional weeks of benefits?

[21] The Claimant asked me, if he wasn't entitled to the five additional weeks, to look into whether he could have started his claim for benefits in July 2021 instead of October 2021 to be eligible for the five additional weeks.

[22] The Claimant is of the opinion that it is only because of the EI ERB that he finds himself in this situation, since his October 2020 claim was automatically submitted.⁸ His claim therefore ended in October 2021 and prevented him from applying for EI. However, I find that even if the Claimant had asked to end his previous claim for benefits to establish a new one,⁹ he would not be able to get the five additional weeks of benefits for seasonal workers.

[23] According to the first criterion to get the five additional weeks for seasonal workers, the claim for EI benefits has to start between September 26, 2021, and October 29, 2022.¹⁰

[24] Therefore, even if the Claimant's EI claim began at the end of July 2021 as usual, the Claimant would not be eligible for the five additional weeks of benefits for seasonal workers.

[25] I understand the Claimant's misunderstanding as he usually files a new EI claim every year or so in July and qualifies for benefits. Unfortunately, I can't change the Act.

⁸ See the letter from the Employment Insurance Commission informing the Claimant that when his CERB ends, his file will automatically be reviewed and a new claim for benefits will begin if he is eligible (GD3-16).

⁹ See section 10(6) of the Act, which indicates that, at the claimant's request, the Commission can cancel part of a benefit period under certain conditions.

¹⁰ See the first criterion listed in section 12(2.3)(a) of the Act.

EI is an insurance plan and, like any other insurance plan, you have to meet conditions to be able to get benefits.

[26] In this case, the Claimant doesn't meet the conditions. Therefore, he isn't eligible for benefits. Even though I am sensitive to the Claimant's situation, I can't change the law.

Conclusion

[27] The appeal is dismissed.

[28] The Claimant doesn't meet the criteria set out in the Act to be eligible for the five additional weeks of benefits for seasonal workers.

[29] In addition, the Claimant would not meet the criteria to get the five additional weeks of benefits for seasonal workers even if he had submitted his claim in July 2021.

Charline Bourque
Member, General Division – Employment Insurance Section