



[TRANSLATION]

Citation: *SP v Canada Employment Insurance Commission*, 2022 SST 256

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

Decision

Appellant: S. P.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (412418) dated March 25, 2021 (issued by Service Canada)

Tribunal member: Normand Morin
Type of hearing: Teleconference
Hearing date: March 3, 2022
Hearing participant: Appellant
Decision date: March 10, 2022
File number: GE-22-287

Decision

[1] The appeal is dismissed. I find that the Canada Employment Insurance Commission (Commission) was justified in deciding not to pay the Appellant Employment Insurance (EI) regular benefits until she had served a waiting period of one week for her benefit period starting November 15, 2020.¹

[2] I point out that, in its arguments, the Commission says that starting the Appellant's new benefit period on October 11, 2020,² the last day she worked before applying for benefits on November 25, 2020, is [translation] "always an option." I find that it is therefore up to the Appellant to discuss with the Commission how it might be worthwhile to start her benefit period on October 11, 2020, or on another possible date in her case, so that she does not have to serve a waiting period.

Overview

[3] From June 10, 2020, to October 11, 2020, inclusive, the Appellant worked as a cook for the employer X. She stopped working for it because of a shortage of work.

[4] On November 25, 2020, she applied for EI regular benefits.³

[5] A benefit period was established effective November 15, 2020.⁴

[6] On December 7, 2020, after it had finished processing the Appellant's claim for benefits, the Commission paid her two weeks of benefits for the three-week period from November 15, 2020, to December 5, 2020, inclusive. Based on the Commission's explanations in response to a request from the Tribunal, I find that the decision the Commission made on December 7, 2020, when finalizing the Appellant's claim for

¹ See sections 13, 152.15, and 153.191(1) of the *Employment Insurance Act* (Act) and section 39.01 of the *Employment Insurance Regulations* (Regulations).

² See GD7-2.

³ See GD3-3 to GD3-12.

⁴ See GD4-1.

benefits, serves as the initial decision, even though no written notice was sent to the Appellant.⁵

[7] On March 25, 2021, after a request for reconsideration, the Commission informed the Appellant that it was upholding the December 7, 2020, decision about her waiting period.⁶

[8] The Appellant explains that she stopped working on October 11, 2020, because of the COVID-19 pandemic.⁷ She says that she takes issue with the fact she had to serve a one-week waiting period, from November 15 to 21, 2020, before being paid benefits. According to the Appellant, the Commission told her that she would not have to serve a waiting period before getting benefits. She says that she was penalized by the fact that she had to serve one. On January 21, 2022, the Appellant challenged the Commission's reconsideration decision before the Tribunal. That decision is now being appealed to the Tribunal.

Issue

[9] I have to decide whether the Commission was justified in deciding not to pay the Appellant EI regular benefits until she had served a waiting period of one week for her benefit period starting November 15, 2020.⁸

Analysis

[10] The general rule is that, after a benefit period has been established for a claimant, the claimant is not entitled to be paid EI benefits until they have served a

⁵ In supplementary representations made in response to a request from the Tribunal, the Commission says that it cannot provide a copy of the December 7, 2020, decision because the computer system did not generate a record of decision in this case. The Commission explains that December 7, 2020, is when the Automated Claims Processing system finalized the claim for benefits and that the payments pending since December 5, 2020, were issued—GD7-1.

⁶ See GD3-17 and GD3-18.

⁷ Coronavirus disease 2019.

⁸ See sections 13, 152.15, and 153.191(1) of the Act and section 39.01 of the Regulations.

waiting period of one week of unemployment for which benefits would otherwise be payable.⁹

[11] After changes were made to the *Employment Insurance Act* (Act), temporary measures were put in place to facilitate access to benefits.¹⁰

[12] For example, under these measures, a claimant does not need to serve a waiting period if the claim is for benefits under Part I, VII.1, or VIII of the Act and the benefit period begins on or before October 25, 2020.¹¹

[13] A section of the *Employment Insurance Regulations* (Regulations) was also changed to permit the Commission to waive the waiting period for any benefit period that begins on a day that is not earlier than the day on which that section comes into force and not later than September 25, 2021.¹² That section was in force from January 31, 2021, to September 25, 2021, inclusive.¹³

[14] In this case, based on a benefit period established effective November 15, 2020, I find that there needs to be a one-week waiting period before the Appellant can be paid benefits.¹⁴

[15] The Appellant says that there should not have been a one-week waiting period after she applied for benefits on November 25, 2020. Her testimony and statements indicate the following:

- a) The last day she worked before applying for benefits on November 25, 2020, was October 11, 2020, for her period of employment with X.¹⁵ She also worked as a food bar server for another employer and stopped working for it on March 13, 2020. She lost both jobs because of the COVID-19 pandemic.¹⁶

⁹ See section 13 of the Act.

¹⁰ See Part VIII.5 of the Act.

¹¹ See section 153.191(1) of Part VIII.5 of the Act.

¹² See section 39.01 of the Regulations.

¹³ See section 39.01 of the Regulations.

¹⁴ See sections 13, 152.15, and 153.191(1) of the Act and section 39.01 of the Regulations.

¹⁵ See GD3-3 to GD3-12.

¹⁶ See GD2-6, GD3-13, and GD3-16.

- b) After she applied for benefits on November 25, 2020, she received benefits for a brief period of about two months. She went back to work around January 2021.
- c) When she applied for benefits, the Commission told her that she would not have to serve a waiting period after applying.¹⁷
- d) She contacted the Commission again after accessing her EI account (My Service Canada Account) and seeing that she had not received benefits for a week after the beginning of her benefit period on November 15, 2020.
- e) The Commission told her that she would recover an amount of money equal to one week of benefits and corresponding to the length of her waiting period, but she never received it.¹⁸
- f) The Commission did not tell her that a new benefit period could be established for her effective October 11, 2020. The Commission told her that she could file a notice of appeal with the Tribunal.
- g) She argues that she is entitled to benefits for the week of the waiting period she had to serve. All she wants is to recover the amount of benefits related to the week of her waiting period.
- h) She says that she was penalized because she had to serve a waiting period before she could be paid benefits. She feels that the Act is unfair.¹⁹

[16] The Commission, on the other hand, argues as follows:

- a) A claimant whose benefit period starts between September 27, 2020, and October 25, 2020, or between January 31, 2021, and September 19, 2021,

¹⁷ See GD2-6 and GD3-13.

¹⁸ See GD2-6.

¹⁹ See GD3-13 and GD3-16.

qualifies for a waiting period waiver, regardless of the type of benefit claimed.²⁰

- b) The Appellant had a claim for benefits that started on December 15, 2019. She received payments until November 14, 2020, for that claim. She completed her reports every two weeks without interruption throughout her benefit period. When her employment ended on October 11, 2020, she continued completing her reports for the weeks of October 11, 2020, to November 21, 2020. Her last report, covering the two-week period from November 8, 2020, to November 21, 2020, was submitted on November 23, 2020. The payments were issued until November 14, 2020, because the Appellant had received regular benefits for all 26 weeks of entitlement payable.²¹
- c) When she applied for benefits, the Appellant indicated an employment end date of October 11, 2020. This means that a claim effective October 11, 2020, would have qualified for a waiting period waiver, which might explain the information she received from a Commission agent to the effect that she would not have to serve a waiting period.²²
- d) There is nothing in the Act or Regulations that makes it possible to waive the waiting period that the Appellant had to serve for her claim made on November 25, 2020.²³
- e) Apparently, starting the new benefit period on October 11, 2020, by ending the previous claim on October 10, 2020, is always an option. This means cancelling the payments issued for the five-week period from October 11,

²⁰ See GD4-2.

²¹ See GD7-2.

²² See GD4-3.

²³ See GD4-3.

2020, to November 14, 2020. The overpayment will have to be recovered on the subsequent claim.²⁴

[17] I find that, with the Commission's establishing a new benefit period effective November 15, 2020, the Appellant cannot take advantage of the provisions of the Act or Regulations about not having to serve a waiting period of one week before she can receive benefits.

[18] Only benefit periods beginning on or before October 25, 2020, can spare a claimant from having to serve a waiting period of one week before they can receive benefits.²⁵

[19] Similarly, the Commission may waive a claimant's waiting period only for benefit periods whose start dates fall in the period from January 31, 2021, to September 25, 2021, inclusive.²⁶

[20] The Appellant's benefit period does not fall into either situation, since it was established effective November 15, 2020.

[21] However, in its arguments, the Commission explains that starting the Appellant's new benefit period on October 11, 2020, by ending her previous claim on October 10, 2020, is [translation] "always an option."²⁷

[22] The Commission says that this change would mean cancelling the payments that were issued to the Appellant for the five-week period from October 11, 2020, to November 14, 2020, and that the resulting benefit overpayment would have to be recovered [on] her subsequent claim for benefits.²⁸

²⁴ See GD7-2.

²⁵ See section 153.191(1) of Part VIII.5 of the Act.

²⁶ See section 39.01 of the Regulations. This section was in force from January 31, 2021, to September 25, 2021, inclusive.

²⁷ See GD7-2.

²⁸ See GD7-2.

[23] I find that, if the Appellant's benefit period were established effective October 11, 2020, or on another possible date falling on or before October 25, 2020, she would not have to serve a waiting period of one week, in accordance with the Act.²⁹

[24] In the circumstances, I find that it is up to the Appellant to discuss with the Commission how it might be worthwhile in her case to establish her benefit period effective October 11, 2020, or on or before October 25, 2020.

[25] In my view, this discussion should cover the fact that, after she applied for benefits on November 25, 2020, the Appellant received benefits for only about two months, as she says, before going back to work. Such a discussion should also cover the difference between the weekly benefit rate established with the Appellant's benefit period that started in December 2019 and the weekly benefit rate applicable based on a benefit period established effective October 11, 2020, or on or before October 25, 2020.

[26] In summary, I find that the Appellant cannot be excused from serving a waiting period of one week for her claim for benefits effective November 15, 2020.³⁰ However, starting this benefit period on October 11, 2020, is [translation] "always an option," according to the Commission.³¹

Conclusion

[27] I find that the Commission was justified in deciding not to pay the Appellant EI regular benefits until she had served a waiting period of one week for her benefit period starting November 15, 2020.

[28] This means that the appeal is dismissed.

²⁹ See section 153.191(1) of Part VIII.5 of the Act.

³⁰ See sections 13, 152.15, and 153.191(1) of the Act and section 39.01 of the Regulations.

³¹ See GD7-2.

[29] However, given that starting her benefit period on October 11, 2020, is always an option, it is up to the Appellant to discuss with the Commission how such a change might benefit her.

Normand Morin
Member, General Division – Employment Insurance Section