



[TRANSLATION]

Citation: *CJ v Canada Employment Insurance Commission*, 2022 SST 608

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

Decision

Appellant: C. J.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (458587) dated February 24, 2022 (issued by Service Canada)

Tribunal member: Normand Morin
Type of hearing: Teleconference
Hearing date: June 2, 2022
Hearing participants: Appellant
A witness supporting the Appellant
Decision date: June 30, 2022
File number: GE-22-1039

Decision

[1] The appeal is allowed in part. I find that the Appellant is not entitled to receive Employment Insurance (EI) compassionate care benefits (special benefits) as of August 30, 2021.¹ However, he does not have to pay back the amount of money that the Canada Employment Insurance Commission (Commission) is asking him to repay for the compassionate care benefits he received for the period from August 30, 2021, to December 11, 2021.² The Commission says that the compassionate care benefits he was overpaid were converted to sickness benefits (special benefits) because of the medical evidence he provided.³

Overview

[2] From April 19, 2021, to July 23, 2021, inclusive, the Appellant worked as a farmhand for the employer X. He stopped working for that employer for “Compassionate care/Family caregiver” reasons.⁴

[3] On August 1, 2021, he made a renewal application for EI benefits to receive “Compassionate Care benefits” to care for or support a family member who was gravely ill with a significant risk of death within 26 weeks.⁵ The claim was reactivated on August 1, 2021.⁶

[4] On August 19, 2021, the Commission told him that his claim for compassionate care benefits had been approved for a period of 26 weeks starting August 1, 2021. It also instructed him to let it know as soon as possible if: he worked, received income or any other money, or attended a training program; the patient died or was getting better

¹ See section 23.1 of the *Employment Insurance Act* (Act) and section 1 of the *Employment Insurance Regulations* (Regulations).

² See sections 43, 44, and 52 of the Act.

³ See GD20-1.

⁴ See GD3-21 and GD3-22.

⁵ See GD3-3 to GD3-10.

⁶ See GD4-1.

and no longer required care or support; anything else happened that could affect his benefits.⁷

[5] On January 12, 2022, after the Appellant had informed it of his partner's death, the Commission told him that he was not entitled to compassionate care benefits as of August 30, 2021, because the person he had been caring for or supporting had died. The Commission explained to him that, if he owed money, he would receive a notice of debt.⁸

[6] The Appellant was sent a notice of debt, dated January 15, 2022, asking him to pay back the compassionate care benefits he had received, since he was not entitled to them.⁹

[7] On February 24, 2022, after a request for reconsideration, the Commission told him that it was upholding the January 12, 2022, decision about his disentitlement to compassionate care benefits.¹⁰

[8] On June 28, 2022, in response to a request from the Tribunal, the Commission said that the Appellant had provided medical documents indicating a medical leave of absence for the period from May 25, 2021, to December 11, 2021.¹¹ It explained that, because of those documents, the compassionate care benefits the Appellant had received for the period from May 29, 2021, to December 11, 2021, had been converted to sickness benefits.¹²

[9] According to the Appellant, the Commission told him that he was entitled to receive compassionate care benefits for a period of 26 weeks. He says that he was not aware of the requirement to notify the Commission in the event of the death of his spouse or common-law partner; no one had explained this to him. He says that he did

⁷ See GD3-11 and GD3-12.

⁸ See GD3-14 and GD3-23.

⁹ See the document entitled "Notice of Debt / *Avis de dette*" issued by Employment and Social Development Canada / *Emploi et Développement social Canada* on January 15, 2022—GD3-15 and GD3-16.

¹⁰ See GD3-26 and GD3-27.

¹¹ See GD20-1.

¹² See GD20-1.

not bother to complete his claimant reports, since he did not have to do so. He says that his partner died on August 25, 2021. He argues that he was unable to work for medical reasons during the period from July 23, 2021, to November 29, 2021. He says that he submitted documents to the Commission in that regard. He argues that he is entitled to EI regular benefits or sickness benefits (special benefits) if he cannot receive compassionate care benefits. On March 16, 2022, the Appellant challenged the Commission's reconsideration decision before the Tribunal. That decision is now being appealed to the Tribunal.

Issues

[10] I have to decide whether the Appellant is entitled to compassionate care benefits (special benefits).¹³

[11] I also have to decide whether the Appellant has to pay back the compassionate care benefits he was overpaid.¹⁴

Analysis

Entitlement to compassionate care benefits

[12] The *Employment Insurance Act* (Act) says that compassionate care benefits are payable to a claimant if a medical doctor or nurse practitioner has issued a certificate stating that:

- a) a family member of the claimant has a serious medical condition with a significant risk of death within 26 weeks from the day the certificate is issued, in the case of a claim that is made before the day on which the certificate is issued, from the day from which the medical doctor or nurse practitioner certifies the family member's medical condition, or in the case of a claim that

¹³ See section 23.1 of the Act and section 1 of the Regulations.

¹⁴ See sections 43, 44, and 52 of the Act.

is regarded to have been made on an earlier day under subsection 10(4) or (5), from that earlier day; and¹⁵

- b) the family member requires the care or support of one or more other family members.¹⁶

[13] The Act also says that, for compassionate care benefits to be payable after the end of the 26-week period, it is not necessary for a medical doctor or nurse practitioner to issue an additional certificate under section 23.1(2) of the Act.¹⁷

[14] In relation to an individual (claimant), “family member” means, among other things, the individual’s spouse or common-law partner.¹⁸

[15] “Care” means all care that is required because of a family member’s state of health, other than the care provided by a health care professional. “Support” means all psychological or emotional support that is required because of a family member’s state of health.¹⁹

[16] In this case, the Appellant has not shown that he may be entitled to receive compassionate care benefits as of August 30, 2021.

[17] The Appellant’s testimony and statements indicate the following:

- a) The Commission told him that he was entitled to receive compassionate care benefits for a period of 26 weeks starting August 1, 2021.²⁰
- b) He continued to receive compassionate care benefits after his partner’s death on August 25, 2021.²¹

¹⁵ See section 23.1(2)(a) of the Act.

¹⁶ See section 23.1(2)(b) of the Act.

¹⁷ See section 23.1(4.1) of the Act.

¹⁸ See section 1(3) of the Regulations.

¹⁹ See section 1(5) of the Regulations.

²⁰ See GD3-11, GD3-12, and GD3-25.

²¹ See GD3-19.

- c) On December 22, 2021, he contacted the Commission to inform it of his partner's death.²²
- d) He was not aware of the requirement to notify the Commission in the event of his partner's death. This was not explained to him, so he did not bother to do so, especially since he did not have to complete his claimant reports.²³
- e) He was unable to work for medical reasons during the period from July 23, 2021, to November 29, 2021.²⁴
- f) If he cannot receive compassionate care benefits, he should be entitled to EI regular benefits or sickness benefits (special benefits). He forgot to apply to receive a different type of benefit than compassionate care benefits as of August 30, 2021.²⁵

[18] The Commission, on the other hand, says that the Appellant has failed to prove his entitlement to compassionate care benefits as of August 30, 2021, because his partner died on August 25, 2021.²⁶

[19] According to the Commission, this means that he was not entitled to receive compassionate care benefits during the period from August 30, 2021, to December 11, 2021.²⁷

[20] I find that the Appellant's explanations and documents cannot entitle him to receive compassionate care benefits as of August 30, 2021, following his partner's death on August 25, 2021.

[21] In short, I find that the disentitlement to compassionate care benefits imposed on the Appellant as of August 30, 2021, is justified in the circumstances. He does not meet

²² See GD3-13 and GD3-25.

²³ See GD2-5, GD3-19, and GD3-25.

²⁴ See the medical certificate from Polyclinique Wabakin [Wabakin outpatient clinic] – Florence B Couturier, indicating that the Appellant was unable to work for health reasons from July 23, 2021, to November 29, 2021, inclusive—GD9-6, GD10-2, GD14-3, and GD17-2.

²⁵ See GD3-17 to GD3-19.

²⁶ See GD4-3.

²⁷ See GD4-1 and GD20-1.

the criteria to receive compassionate care benefits as of that date, since his partner died on August 25, 2021.

[22] While I sympathize with the Appellant's case, the Federal Court of Appeal (Court) tells us that adjudicators, including the Tribunal, are not permitted to rewrite legislation or to interpret it in a manner that is contrary to its plain meaning.²⁸

Repaying the compassionate care benefits that were overpaid

[23] If a person has received EI benefits—including compassionate care benefits—they were not entitled to or because [*sic*] they were disqualified from receiving those benefits, they have to repay those benefits or the resulting overpayment.²⁹

[24] The Commission has 36 months to reconsider a claim for benefits paid or payable to a claimant. The Commission has 72 months if, in its opinion, a false or misleading statement or representation has been made in connection with a claim.³⁰

[25] The Court tells us that the amount of an overpayment specified in a notice of debt becomes repayable on the date of the notification of the amount of the overpayment and that a person who receives an overpayment of benefits is required to return the amount of the overpayment without delay.³¹

[26] In supplementary representations made in response to a request from the Tribunal, the Commission says that the Appellant provided it with medical documents indicating a medical leave of absence for the period from May 25, 2021, to December 11, 2021.³² It says that those documents were processed [translation] "by Employment Insurance processing services on May 27, 2022."³³

[27] The Commission argues that, even though the Appellant was not entitled to receive compassionate care benefits for the period from August 30, 2021, to

²⁸ The Federal Court of Appeal (Court) established this principle in *Knee*, 2011 FCA 301.

²⁹ See sections 43 and 44 of the Act.

³⁰ See section 52 of the Act.

³¹ The Court established this principle in *Braga*, 2009 FCA 167. See also sections 43 and 44 of the Act.

³² See GD20-1.

³³ See GD20-1.

December 11, 2021, he has shown that he was entitled to sickness benefits for that period.³⁴

[28] The Commission explains that, after the Appellant submitted the medical documents, it converted his compassionate care benefits to sickness benefits for the period from May 29, 2021, to December 11, 2021.³⁵

[29] It says that, because of this conversion, the overpayment in the Appellant's file related to the compassionate care benefits he received for the period from August 30, 2021, to December 11, 2021,³⁶ was written off in its entirety.

[30] In this case, the Appellant received compassionate care benefits he was not entitled to for the period from August 30, 2021, to December 11, 2021.

[31] The Commission issued a decision telling him that he was not entitled to those benefits, and he was sent a notice to repay the benefits he was overpaid.

[32] I find that the notice of debt sent to the Appellant forms part of the Commission's January 12, 2022, decision, given that, in that decision, it told him that he would receive a notice of debt if he owed money.³⁷ Which is what happened.

[33] However, I find that, afterward, the Commission correctly determined that the Appellant did not have to pay back the amount of money it had asked him to repay, given the medical evidence he had submitted to it.

[34] I would point out that, as the Commission indicated,³⁸ this evidence was processed [translation] "by Employment Insurance processing services on May 27, 2022," after the Appellant filed his appeal with the Tribunal.

³⁴ See GD20-1.

³⁵ See GD20-1.

³⁶ See GD20-1.

³⁷ See GD3-14 to GD3-16.

³⁸ See GD20-1.

[35] The Court tells us that, when a decision by the Commission is appealed, that decision is out of its hands, and any change to a decision after it has been appealed is invalid.³⁹

[36] However, I agree with the Commission's finding that, because of the medical documents he submitted to it, the Appellant does not have to pay back the amount of money he was overpaid in compassionate care benefits.

[37] I would point out that the medical evidence that the Appellant also submitted to the Tribunal indicating that he was unable to work for medical reasons during the period from July 23, 2021, to November 29, 2021, supports the evidence he initially submitted to the Commission, despite differences in terms of the length of his period of incapacity.⁴⁰

[38] In short, I find that the Commission is no longer justified in asking the Appellant to pay back the compassionate care benefits he was overpaid.

Conclusion

[39] I find that the Appellant is not entitled to receive compassionate care benefits for the period from August 30, 2021, to December 11, 2021.

[40] However, since the Commission determined that he was entitled to sickness benefits for that period, he does not have to pay back the amount of money that he was overpaid in compassionate care benefits for the period in question.

[41] This means that the appeal is allowed in part.

Normand Morin

Member, General Division – Employment Insurance Section

³⁹ The Court established or reiterated this principle in the following decisions: *Wakelin*, A-748-98; *Poulin*, A-516-91; and *Von Findenigg*, A-737-82.

⁴⁰ See GD9-6, GD10-2, GD14-3, and GD17-2.