



Citation: *BK v Canada Employment Insurance Commission*, 2022 SST 549

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

Decision

Appellant: B. K.
Representative: J. H.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (441830) dated December 8,
2021 (issued by Service Canada)

Tribunal member: Gary Conrad
Type of hearing: Videoconference
Hearing date: February 8, 2022
Hearing participant: Appellant's representative
Decision date: February 15, 2022
File number: GE-21-2597

Decision

[1] The appeal is allowed.

[2] The Claimant can terminate her benefit period starting October 4, 2020, and start a new benefit period on April 18, 2021, as she meets the criteria to do so.

Overview

[3] The Canada Employment Insurance Commission (Commission) automatically started a claim for regular employment insurance benefits on October 4, 2020, for the Claimant, after her employment insurance emergency response benefits ran out.

[4] The Claimant ended up filing a claim for sickness benefits on April 30, 2021, and wanted maternity and parental benefits after her sickness benefits, which the Commission made effective April 18, 2021.

[5] The Claimant asked for this claim to be antedated, which the Commission did.

[6] The Commission paid the Claimant some weeks of sickness benefits and then, as of the date of her child's birth, paid the Claimant maternity benefits and then some parental benefits, but not all the parental benefits the Claimant requested.

[7] The Commission says it cannot pay all the parental benefits the Claimant wants as her benefit period expired before they could do so, since her April 2021, application was a renewal of her October 4, 2020, benefit period.

[8] The Claimant then tried to terminate her October 4, 2020, benefit period in order to start a new period in April 2021, but the Commission said the Claimant did not have enough hours of insurable employment to establish a new benefit period on that date. So, they could not terminate her October 4, 2020, benefit period.

[9] The Claimant argues that when she applied in April 2021, she wanted to start a new benefit period, not reactivate an old one.

[10] The Claimant says this is why she sent in a Record of Employment (ROE) with her April 2021, claim.

[11] The Claimant also argues that with her ROE and the one-time hours credit she does have enough hours to start a new claim in April 2021, and disputes the Commission using the one-time hours credit on the October 4, 2020, claim.

Issue

[12] Can the Claimant get all the parental benefits she is requesting in her October 4, 2020, benefit period?

[13] Can the Claimant terminate her October 4, 2020, benefit period and start a new claim in April 2021?

Analysis

October 4, 2020, benefit period parental benefits

[14] The Claimant cannot get all the benefits she is requesting within the October 4, 2020, benefit period.

[15] A benefit period is the time in which you can collect employment insurance benefits.

[16] Generally, a benefit period lasts 52 weeks.¹

[17] There are some exceptions to this rule,² but there is no evidence to support any of the circumstances mentioned in these exceptions were present in the Claimant's situation.

[18] So, I accept the submission from the Commission that the Claimant's benefit period started on October 4, 2020, and ended 52 weeks later on October 2, 2021.³

¹ Subsection 10(2) of the *Employment Insurance Act*

² See subsections 10(10) to 10(15) of the *Employment Insurance Act*

³ GD04-10

[19] Unfortunately, this prevented the Claimant from collecting all the benefits she requested but, as the law states, with no circumstances to extend the benefit period, it ends after 52 weeks.

Termination of the October 4, 2020 claim

[20] The Commission says they considered an early termination of the Claimant's file to start a new claim for her maternity and parental benefits effective April 18, 2021, rather than treating her April 30, 2021, application as a renewal effective April 18, 2021, but they could not do so as the Claimant did not qualify for benefits on April 18, 2021.⁴

[21] I find the Claimant does qualify for benefits on April 18, 2021, so the Claimant can terminate her claim starting October 4, 2020, and start a new claim for benefits on April 18, 2021, as the Commission has offered.

[22] The law states that it is possible to terminate a benefit period if:

- The Claimant requests their benefit period end;
- They make a new initial claim for benefits; and
- They qualify to receive benefits⁵

[23] However, in the Claimant's case there is one more thing that must be considered. The Commission says the new benefit period would be started on April 18, 2021, but the Claimant did not ask for a termination until November 1, 2021.⁶

[24] The law says that if there is a delay between when the termination was asked for and when the new benefit period would start, the Claimant needs to show good cause for this delay throughout the entire period, starting from the day the benefit period would start, April 18, 2021, to when the request was made, November 1, 2021.

⁴ GD04-8

⁵ Paragraph 10(8)(d) of the *Employment Insurance Act*

⁶ GD03-101

[25] So, I will now look at that the points necessary for the Claimant to terminate her claim.

Requests benefit period to end

[26] I find the Claimant did request her benefit period end. Her request is clearly articulated in her November 1, 2021, phone call with the Commission.⁷ The Commission agrees she requested her benefit period end as well.⁸

New Initial Claim for Benefits

[27] I find the Claimant has made a new initial claim for benefits as that is what she argues the April 30, 2021, claim, which the Commission initially made effective April 18, 2021, always was,⁹ and what she always intended to do with it, which is why she included an ROE.

[28] I accept this was her intention with that claim and that she was unaware a new claim was not started as, when I look at the application, it talks about being able to terminate an old claim rather than reactivate it, but it is not clear how a claimant would ever know if they are filing a new claim or reactivating an old one.

[29] Without knowing whether they have an old claim that will be reactivated I do not see how this generic information about being able to terminate a claim would ever let a claimant know that in their particular case they are reactivating an old claim, rather than starting a new one.

Qualify to receive benefits

[30] I find the Claimant does qualify to receive benefits as of April 18, 2021.

[31] The Commission says they considered an early termination of the Claimant's October 4, 2020 benefit period in order to start a new claim for special benefits effective

⁷ GD03-101

⁸ GD04-5

⁹ In both her testimony and her request for reconsideration on GD03-109

April 18, 2021, rather than treating it as a renewal, but they cannot terminate the Claimant's October 4, 2020 claim as she does not qualify for benefits on April 18, 2021, as she does not have enough hours to qualify on that date.

[32] The Commission says the Claimant's qualifying period would be from October 4, 2020, to April 17, 2021, and she only has 320 hours of work in that period and she needs 600 to qualify for special benefits.¹⁰

[33] The Claimant says she does not need 600 hours to qualify for benefits, only 420, and disputes the Commission using her one-time hours credit on the October 4, 2020, claim.

[34] The law says that since the Claimant would have an immediately proceeding benefit period if she terminated the October 4, 2020, benefit period and started a new one on April 18, 2021, the qualifying period is from the first day of that immediately proceeding benefit period, so October 4, 2020, to the end of the week of the other benefit period.¹¹

[35] Since in EI a week ends on Saturday,¹² that would mean the qualifying period ends on April 17, 2021, the day right before the start of the other benefit period.

[36] So, I accept the submission from the Commission the Claimant's benefit period would be from October 4, 2020, to April 17, 2021.

[37] I accept the submission from the Commission that the Claimant, without the one-time hours credit, only has 320 hours of insurable employment in her qualifying period as the only work shown in that period is the 320 hours.¹³ The Claimant has also not disputed this.

¹⁰ GD04-8

¹¹ Paragraph 8(1)(b) of the *Employment Insurance Act*

¹² Subsection 2(1) of the *Employment Insurance Act* says a week starts on Sunday, which means a week ends on Saturday.

¹³ GD03-67 shows her ROE from January 2, 2021 to February 28, 2021, and says she earned 320 insurable hours.

[38] If the Claimant is looking to collect maternity and parental benefits in this new benefit period starting April 18, 2021, then she needs 600 hours of insurable employment, not 420.

[39] The law says that maternity benefits and parental benefits are payable to “major attachment claimants”.¹⁴

[40] A “major attachment claimant” is defined as someone who has 600 or more hours of insurable employment in their qualifying period.¹⁵

[41] So, we can see the Claimant needs 600 hours of insurable employment in her qualifying period in order to get maternity and parental benefits, which she does not have without the one-time hours credit.

[42] The Commission says they cannot use the one-time hours credit to help the Claimant qualify as that was already used on her October 4, 2020, claim and it can only be used once¹⁶ and the legislation says it must be used on the first claim on or after September 27, 2020.¹⁷

[43] I find I disagree with the Commission’s submission regarding the one-time hours credit.

[44] I find the one-time hours credit should not have been applied to the Claimant’s October 4, 2020, claim. The legislation does not explicitly say it must be applied to the first claim made on or after September 27, 2020, and to automatically do so would produce an absurd result that is illogical and not in line with the intentions of the legislation.

[45] The part of the law dealing with the one-time hours credit resides in Part VIII.5 of the *Employment Insurance Act* (Act) and reads as follows:

¹⁴ See subsections 22(1) and 23(1) of the *Employment Insurance Act*.

¹⁵ Subsection 6(1) of the *Employment Insurance Act*.

¹⁶ GD04-8

¹⁷ GD04-7

153.17 (1) A claimant who makes an initial claim for benefits under Part I on or after September 27, 2020 or in relation to an interruption of earnings that occurs on or after that date is deemed to have in their qualifying period

(a) if the initial claim is in respect of benefits referred to in any of sections 21 to 23.3, an additional 480 hours of insurable employment; and

(b) in any other case, an additional 300 hours of insurable employment.

[46] I find that subsection 153.17(1) of the Act does not explicitly say that the one-time credit of hours must be applied to the first claim made on or after September 27, 2020. While that is how the Commission interprets this section of the legislation, I find that interpretation cannot stand.

[47] The Supreme Court of Canada (SCC) has said that "...statutory interpretation cannot be founded on the wording of the legislation alone. The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament."¹⁸

[48] The SCC stated that the grammatical and ordinary sense of a section is not determinative and does not constitute the end of the inquiry as the total context of the provisions to be interpreted must be considered no matter how plain the disposition may seem upon initial reading.¹⁹

[49] The SCC said that when interpreting a statute, the words, if clear, will dominate; if not they yield to an interpretation that best meets the overriding purpose of the statute.²⁰

[50] The *Interpretation Act* states that every enactment shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.²¹

¹⁸ *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27

¹⁹ *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*, 2006 SCC 4, paragraph 48

²⁰ *Celgene Corp. v Canada (Attorney General)*, 2011 SCC 1 paragraph 21

²¹ Section 12 of the *Interpretation Act*

[51] So, what is the overall purpose of the Act?

[52] The Federal Court of Appeal (FCA) has said that the Act is "...a contributory scheme providing social insurance for those who lose their jobs..."²² and for "...compensating unemployed workers for their loss of employment income and ensuring their economic and social security for a time, thus assisting them in returning to the labour market."²³

[53] The SCC has said that the overall purpose of the Act is to make benefits available to the unemployed and that it should be liberally interpreted and any doubt arising from the difficulties of the language should be resolved in favour of the claimant.²⁴

[54] I find that the words of subsection 153.17(1) are not clear. They do not explicitly state that the one-time credit must be used on the first claim made on or after September 27, 2020. Since they are not clear, they must yield to an interpretation that best meets the overriding purpose of the statute.²⁵

[55] The SCC and FCA have said that the purpose of the Act is to provide benefits to people who are unemployed.

[56] With that purpose in mind, I note that the title to the section of the Act the one-time hours section falls into, Part VIII.5, has the title of "Temporary Measures to Facilitate Access to Benefits." I find this shows that the purpose of the sections under this title are to help workers access unemployment benefits.

[57] The SCC has said that it is a well established principle of statutory interpretation that the legislature does not intend to produce absurd consequences.²⁶

²² *Canada (Attorney General) v Lesiuk*, 2003 FCA 3

²³ *Canada (Attorney General) v Jean*, 2015 FCA 242, paragraph 26

²⁴ *Abrahams v Attorney General of Canada*, 1983 1 SCR 2

²⁵ *Celgene Corp. v Canada (Attorney General)*, 2011 SCC 1 paragraph 21

²⁶ *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, paragraph 27.

[58] The SCC says an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment.²⁷

[59] The Claimant did not need the one-time hours credit to qualify on October 4, 2020. The information from the Commission says the Claimant had 1,001 insurable hours²⁸ which is significantly more than she needed to qualify for benefits at that time.

[60] I find that interpreting subsection 153.17(1) in the way the Commission has, that the one-time credit of hours must be applied to the first claim on or after September 27, 2020, whether the Claimant needs it or not, leads to an absurd result, as it is illogical and incompatible with the object of the legislative enactment.

[61] The object of the Act is to provide benefits to people who are unemployed. Parliament added sections to the Act under a title Temporary Measures to Facilitate Access to Benefits, showing they wanted the sections under it help people access benefits.

[62] I find that interpreting subsection 153.17(1) as the Commission does, that the one-time credit of hours must be applied to the first claim on or after September 27, 2020, whether the claimant needs it or not, is also incompatible with the object of the legislative enactment. The title of the section in which 153.17(1) is in is clear these sections are to help people access benefits. Applying the one-time hours credit when it is not needed would go against that objective.

[63] Such an action would also be illogical. It does not make any sense to give a claimant additional hours they do not need to qualify, as that would take away the chance of helping them qualify when they do need it.

[64] Further, the wording of subsection 153.17(1) itself shows that it is intended to help people qualify for benefits by giving them additional hours to help meet the

²⁷ *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, paragraph 27.

²⁸ GD04-7

qualifying requirements. Applying those additional hours when they are not needed would not only do nothing to help people qualify, but would actually harm people as it would remove a chance for them to qualify at a later date when they actually need the additional hours. Interpreting this section the way the Commission does would go against the object of the legislative enactment since it would not help people qualify as it is intended to.

[65] I also find that the word 'deemed' in subsection 153.17(1) does not mean the one-time hours credit must be applied to the first claim made on or after September 27, 2020.

[66] The word 'deemed' simply creates a rebuttable presumption, that is, something that is presumed unless the contrary is proven.

[67] In this sense the legislation says it is 'deemed', in other words assumed, the Claimant has extra hours in her qualifying period for a claim made on or after September 27, 2020.

[68] I find that assumption in no way mandates the hours be added to the first claim made on or after September 27, 2020, as doing so produces an absurd result and would go against object of the legislative enactment as I have noted above.

[69] Why would Parliament want the Commission to assume a person has additional hours in their qualifying period if not but to help them qualify when the actual amount of hours they have is not enough?

[70] I find that nothing in the legislation prevents the Commission from deeming, in other words assuming, the Claimant has an extra amount of hours in her qualifying period for a claim other than the first one made on or after September 27, 2020; a claim where she actually needs the assumed hours to qualify.

[71] Finally, I keep in mind the words of the SCC, that the overall purpose of the Act is to make benefits available to the unemployed, and that it should be liberally interpreted and any doubt arising from the difficulties of the language should be resolved in favour

of the claimant.²⁹ This lends further support that subsection 153.17(1) should not be interpreted the way the Commission wants, as it would not provide the help it could to make benefits available to the unemployed. Further, since there are difficulties in the language, I would resolve it in favour of the Claimant.

[72] I find the Commission's interpretation of subsection 153.17(1), that the one-time credit of hours must be applied to the first claim made on or after September 27, 2020, whether a claimant needs it or not, cannot stand.

[73] I find subsection 153.17(1) should be interpreted as being used only if the Claimant needs the additional hours to qualify. This interpretation prevents absurd results and is more compatible with the object of the legislative enactment.

[74] I therefore find the one-time credit of hours should not have been applied to the Claimant's claim starting October 4, 2020, as she did not need them to qualify. This means the one-time hours credit is available for the Claimant to use on a claim starting April 18, 2021.

[75] I find, that with the one-time hours credit added to the Claimant's 320 hours of insurable employment in her qualifying period, she has more than 600 hours so she can qualify for a claim for maternity and parental benefits starting on April 18, 2021.

Good cause for the delay

[76] There is still one more hurdle the Claimant must overcome if she wants to have her October 4, 2020, benefit period terminated and a new one started on April 18, 2021. She must show good cause for the delay in asking for the termination.

[77] To show good cause, the Claimant has to prove she acted as a reasonable and prudent person would have acted in similar circumstances. In other words, she has to show she acted reasonably and carefully just as anyone else would have if they were in a similar situation.

²⁹ *Abrahams v Attorney General of Canada*, 1983 1 SCR 2

[78] The Claimant has to show she acted this way for the entire period of the delay. That period is from the day the new benefit period would start, so April 18, 2021, to the day she actually asked for the termination, November 1, 2021.

[79] The Claimant also has to show she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law. This means the Claimant has to show she tried to learn about her rights and responsibilities as soon as possible and as best she could. If the Claimant didn't take these steps, then she must show that there were exceptional circumstances that explain why she didn't do so.

[80] The Claimant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not she had good cause for the delay.

[81] I find the Claimant has shown good cause for the delay.

[82] The Claimant says that when she applied in April 2021, she assumed she was starting a new claim and that was always her intention. The Claimant says there is nothing in the application process that lets you know whether you are reactivating an old claim or starting a new one.

[83] The Claimant says she got her last payment of benefits on October 3, 2021, and then waited for her next payments to come, but they did not. The Claimant says she called the Commission on November 1, 2021, after continuing to wait for her payments.³⁰

[84] I agree with the submission of the Claimant that she could not have known when she applied in April 2021, that she was reactivating an old claim.

[85] When I look at the application the Claimant completed,³¹ it talks about being able to terminate an old claim rather than reactivate it, but it is not clear how a claimant would ever know if they are filing a new claim or reactivating an old one.

³⁰ GD03-109

³¹ GD03-73

[86] Without being told whether or not they have an old claim that is within the time limit that would result in it being reactivated with that particular application, I do not see how this generic information about being able to terminate a claim would ever let a claimant know that in their particular case they are reactivating an old claim, rather than starting a new one.

[87] I find, that when the Claimant got her last payment of benefits on October 3, 2021, she could not, at that time or prior to that, have known it was her last payment as she expected to get all the weeks of benefits she asked for. Benefit payments are bi-weekly so the Claimant would have been expecting her next payment in the week of October 17, 2021, and could not have known until after that week something was wrong.

[88] I do not see a reasonable and prudent person taking action on their claim before they were aware something is wrong.

[89] I further find the Claimant's actions of continuing to wait another week to see if her benefits would come in before calling the Commission are the actions of a reasonable and prudent person as I find waiting an extra week to be sure of no benefits, is not unreasonable or imprudent.

[90] I find that after that extra week of waiting the Claimant did take prompt steps to find out what was going on by calling the Commission on November 1, 2021, to determine her rights and obligations where she was informed about a termination and requested it.³²

[91] So, since I have found the Claimant took reasonable and prompt steps to contact the Commission as to her rights and obligations and acted on them as soon as she ascertained them and acted as a reasonable and prudent person would have for the entire time of the delay, she has good cause for the delay.

³² GD03-101

[92] Thus, the Claimant has satisfied all the steps required to termination her October 4, 2020, claim and start a new claim for maternity and parental benefits on April 18, 2021, as the Commission has offered.

Conclusion

[93] The appeal is allowed.

[94] The Claimant meets all the criteria to terminate her October 4, 2020 benefit period and start a new one for maternity and parental benefits on April 18, 2021, as the Commission has offered.

Gary Conrad
Member, General Division – Employment Insurance Section