



Citation: *XZ v Canada Employment Insurance Commission*, 2022 SST 599

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

Decision

Appellant: X. Z.
Appellant's witness G. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (458447) dated February 22, 2022
(issued by Service Canada)

Tribunal member: Linda Bell

Type of hearing: Videoconference
Hearing date: June 2, 2022
Hearing participants: Appellant
Appellant's witness

Decision date: June 3, 2022
File number: GE-22-1157

Decision

[1] I am dismissing the appeal. I don't agree with the Claimant.

[2] The claim (benefit period) is effective November 28, 2021, with a maximum benefit rate of \$595. The Claimant can't choose to postdate her claim to receive a higher benefit rate. This means their weekly benefit rate remains at \$595.

Overview

[3] On December 2, 2021, the Claimant applied for maternity and parental EI benefits. The Commission established the benefit period effective November 28, 2021, with the maximum weekly benefit rate of \$595.

[4] On February 4, 2020, the Claimant submitted a request for reconsideration. They asked the Commission to pay them the 2022 weekly benefit rate of \$638 because the Commission didn't finish setting up their claim until the end of January 2022. Upon reconsideration, the Commission upheld their decision to pay the Claimant the 2021 maximum weekly benefit rate of \$595.

[5] The Claimant appeals to the Social Security Tribunal (Tribunal). They argue that a Service Canada agent told them to ask about postdating their claim to get the 2022 benefit rate, but the Commission refused their request. They say the benefit rate they receive is "discriminated" because other people who worked during the same time receive the higher benefit simply because their claim starts after January 1, 2022.

Matters I must consider first

Appeal process

[6] During the hearing, the Claimant stated that they were not interested in filing a charter appeal. I discussed their use of the word "discriminated" in their appeal documents. I briefly explained the process of filing a constitutional challenge (charter appeal). The Claimant replied that they wished to proceed through the regular appeal process. So the hearing continued as scheduled.

Issues under appeal

[7] Upon review of the appeal documents, the Claimant stated that they were not disputing the Commission's weekly benefit rate calculation of \$595. Specifically, they were not disputing the Commission's determination of their region, the regional rate of unemployment, their qualifying period, or their best 21 weeks of earnings.

[8] The Claimant states they are disputing the Commission's refusal to pay them the higher weekly benefit rate of \$638. This would be the benefit rate if they postdated the start of their benefit period to January 2022.

Issues

[9] What is the start date of the Claimant's benefit period?

[10] Can the Claimant postdate the start date of their benefit period in order to receive a higher benefit rate?

Analysis

[11] To be eligible for benefits, a claimant must have suffered an interruption of earnings and have enough hours of insured employment.¹ An interruption of earnings occurs when the following criteria are met:

- the claimant is laid off, terminated, or takes a leave from their employment,
- the claimant doesn't work for seven consecutive days for that employer, and
- the claimant doesn't receive any earnings arising from that employment.²

[12] An interruption of earnings occurs at the beginning of the week in which the claimant's earnings reduce more than 40% of their normal weekly earnings.³ This usually occurs at the time of lay-off or separation from employment.

¹ See section 7 of the *Employment Insurance Act* (Act).

² See section 14(1) of the Regulations.

³ See section 14(2) of the Regulations. Also, section 2 of the Act states that a week is seven consecutive days and starts on a Sunday.

[13] In this case, the Claimant's last day worked before going on maternity leave, was Tuesday November 30, 2021. They normally worked a full workweek. So, I find that the Claimant suffered an interruption of earnings the week starting on Sunday November 28, 2021.

Benefit period start date

[14] A benefit period begins on the later of

- the Sunday of the week in which the interruption of earnings occurs, and
- the Sunday of the week in which the initial claim for benefits is made.⁴

[15] The Claimant submitted their application (initial claim) for benefits on December 2, 2021. As stated above, they suffered an interruption of earnings in the week of November 28, 2021. So I find that their claim (benefit period) is effective on Sunday, November 28, 2021.

Annual EI Benefit rate

[16] Usually in the fall, the government announces what the maximum insurable earnings will be, effective in January of the following year. This determines the EI premiums to be paid by employers and employees. It also determines the maximum weekly EI benefit rate.

[17] In the fall of 2021, the government announced that effective January 1, 2022, the maximum insurable earnings will increase from \$56,300 to \$60,300. As a result, beginning in January 2022, the maximum weekly EI benefit rate will increase from \$595 to \$638 per week. The government also announce that, "claims established before December 31, 2021, will not be affected by the 2022 MIE increase."⁵

⁴ See section 10 of the Act.

⁵ See sections 66.32 and 82 of Part IV of the Act. See also <https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/ei-employers/2022-maximum-insurable-earnings.html>

[18] So in this case, the Claimant's benefit rate is the 2021 weekly rate of \$595. This is because their claim (benefit period) was established November 28, 2021, before the December 31, 2021, cut off.

Post dating a benefit period

[19] There is no provision in the Act that would allow a claimant to decide to postdate the start of their claim, after benefits were paid, for the purpose of taking advantage of a benefit rate increase applicable to claims established in the following year.

[20] Nor is there a provision in the Act that would allow for different benefit rates based on the year in which the Commission issues the weekly benefit payments. This means the Claimant can't request to be paid two different benefit rates during the same benefit period.

[21] Instead, as set out above, the benefit rate is determined based on the rate for the maximum insurable earnings, that is in effect in the year that the benefit period is established.

[22] I sympathize with the Claimant given the circumstances they presented. But my decision is not based on fairness or financial hardship. Instead, my decision is based on the facts before me and the application of the EI law. There are no exceptions and no room for discretion. I cannot interpret or rewrite the Act in a manner that is contrary to its plain meaning, even in the interest of compassion.⁶

Conclusion

[23] The appeal is dismissed.

Linda Bell
Member, General Division – Employment Insurance Section

⁶ *Canada (Attorney General) v Knee*, 2011 FCA 301.