



Citation: *DP v Canada Employment Insurance Commission*, 2022 SST 881

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: D. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (447563) dated January 18, 2022
(issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Teleconference

Hearing date: March 10, 2022

Hearing participant: Appellant

Decision date: March 11, 2022

File number: GE-22-542

Decision

[1] The appeal is dismissed.

[2] The Claimant cannot get emergency response benefits, and he was only entitled to 36 weeks of regular employment insurance benefits.

Overview

[3] The Claimant applied for employment insurance benefits (EI) on February 28, 2020, and his benefit period started on March 1, 2020.

[4] On December 14, 2021, the Claimant filed a reconsideration request stating that his claim should have started on March 15, 2020, so that he could get the EI Emergency Response Benefit (ERB) and should have gotten extended benefits up to 54 weeks instead of the 36 weeks of benefits he was paid.

[5] The Commission reviewed their decision and informed the Claimant that his claim was received prior to the start of ERB coming into effect, and based on his hours of work and the unemployment rate in his economic region 36 weeks was the correct amount of weeks of benefits he was entitled to.

[6] The Claimant says it is not fair that he missed out on so many potential benefits simply because he filed his claim a little early.

Issues

[7] Can the Claimant get ERB benefits?

[8] Can the Claimant get more than 36 weeks of benefits?

Analysis

Can the Claimant get ERB benefits?

[9] No, the Claimant cannot get ERB benefits.

[10] In response to the COVID-19 pandemic the Government of Canada introduced ERB which allowed Canadians to potentially collect up to 28 weeks of benefits with a benefit period starting on or after March 15, 2020.

[11] The Claimant argues that it is not fair that if he had simply waited a few weeks to file his EI claim after he lost his job, as he usually did in other years, he would have been able to get ERB instead of the regular benefits he was paid.

[12] The Commission says that they followed the law and properly established the Claimant's benefit period starting on March 1, 2020.

[13] While I could talk about the law which says that a person who could have had a benefit period for regular benefits established on or after March 15, 2020, could get ERB¹ and note the Claimant's benefit period was established prior to March 15, 2020.

[14] I could talk about the law regarding the establishment of a benefit period which says a benefit period starts on the later of, the week of the interruption of earnings or, the week the claim is made.²

[15] And then I could point out the Claimant last worked on February 25, 2020,³ made his claim on February 28, 2020, and thus his benefit period would start prior to March 15, 2020, there is a more relevant section of the law blocking the Claimant from getting ERB; the section of the law that says no claim for ERB may be made after December 2, 2020.⁴

[16] As the Claimant made his claim for ERB on December 14, 2021, which is well after the December 2, 2020, deadline to make a claim for ERB, I find he cannot get ERB benefits.

¹ Subsection 153.5(2)(b) of the *Employment Insurance Act*

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

³ GD03-33

⁴ Subsection 153.8(2) of the *Employment Insurance Act*

Can the Claimant get more than 36 weeks of benefits?

[17] The Claimant says that he knows people who got 50 weeks of benefits or even more, and it is not fair that he was cut off from benefits after only 36 weeks.

[18] The Claimant is not wrong that some people got up to 50 weeks of benefits. The law says that it was possible for a person to get 50 weeks of benefits if that person's benefit period began during the period beginning on September 27, 2020 and ending on September 25, 2021.

[19] However, since the Claimant's benefit period started on March 1, 2020, this section of the law does not allow him to get 50 weeks of benefits as his benefit period started well before September 27, 2020.

[20] However, that is not the end of the analysis.

[21] The weeks of benefits the Claimant is entitled to is based on the unemployment rate in his economic region and the amount of hours of insurable employment he accumulated in his qualifying period.⁵ The law says you look at a table and cross-reference the hours of employment with the unemployment rate and that says how many weeks of benefits a claimant is entitled to.⁶

[22] The Commission says the Claimant's qualifying period is March 3, 2019, to February 29, 2020, and he had 1,688 hours of insurable employment in that period.⁷

[23] I accept as fact that the Claimant's qualifying period is from March 3, 2019, to February 29, 2020, and that he had 1,688 hours of insurable employment in his qualifying period as he has not disputed this. Further, I see no evidence to make me doubt the Commission's submissions on the Claimant's qualifying period and hours of insurable employment.

⁵ Section 12(2) of the *Employment Insurance Act*

⁶ Schedule I of the *Employment Insurance Act*

⁷ GD04-3

[24] The Commission says that the unemployment rate for the week of March 1, 2020, in the Claimant's economic region of Calgary was 7.5%.

[25] The Commission says when you look at the table, and take the 1,688 hours of insurable employment the Claimant has, along with the unemployment rate of 7.5%, he was entitled to 36 weeks.⁸

[26] I accept the Claimant's economic region was Calgary. I note he did not dispute this and I see no evidence to support otherwise.

[27] I had a concern with the Commission's submission on the rate of unemployment as the law says that the rate to be used is from the week **preceding** the week the Claimant's benefit period starts,⁹ which would be the week of February 23, 2020, so I asked them about it.

[28] On the morning of March 9, 2022, the Commission got back to me. They sent me the information for the week of February 23, 2020, which says that the unemployment rate for that week was 7.5% as well.¹⁰

[29] I find that the Commission made an error when they originally calculated the Claimant's entitlement to benefits as they used the unemployment rate for the wrong week.

[30] The law says that the unemployment rate to be used is the average of the seasonally adjusted monthly rates of unemployment for the last three-month period for which statistics were produced by Statistics Canada that **precedes** the week which is the start of the Claimant's benefit period.¹¹

[31] I find that since the Claimant's benefit period started the week of March 1, 2020, the Commission should have used the average of the seasonally adjusted monthly rates

⁸ GD04-3

⁹ Section 17(1)(a) of the *Employment Insurance Regulations*

¹⁰ GD06-6

¹¹ Section 17(1)(a) of the *Employment Insurance Regulations*

of unemployment for the last three-month period for which statistics were produced by Statistics Canada for the week of February 23, 2020.

[32] The Court supports as such as well.¹²

[33] However, I accept the submission of the Commission that the unemployment rate for the week of February 23, 2020, is also 7.5%, I see nothing to support their information is incorrect.

[34] So, when looking at the table in the law,¹³ with an unemployment rate of 7.5% and 1,688 insurable hours of employment, the Claimant was entitled to 36 weeks of benefits.

[35] I understand his argument that there were many hours he worked in the past and never used to claim for benefits so why can't those be used to pay him more weeks of benefits, but the Court has said hours outside of the qualifying period cannot be used to qualify for benefits.¹⁴

Summary

[36] So, while it is understandably very frustrating for the Claimant that based on when his claim was filed he missed out on a lot of possible benefit payments, there is nothing I can do for him.

Conclusion

[37] The appeal is dismissed. The Claimant cannot be paid ERB benefits and he is only entitled to 36 weeks of EI benefits.

Gary Conrad

Member, General Division – Employment Insurance Section

¹² *Canada (Attorney General) v Jewett*, 2013 FCA 243 para. 11

¹³ Schedule I of the *Employment Insurance Act*

¹⁴ *Haile v Canada (Attorney General)*, 2008 FCA 193