



Citation: *CL v Canada Employment Insurance Commission*, 2022 SST 869

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

Decision

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

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (441754) dated January 18, 2022
(issued by Service Canada)

Tribunal member: Raelene R. Thomas
Type of hearing: Teleconference
Hearing date: April 6, 2022
Hearing participant: Appellant
Decision date: April 22, 2022
File number: GE-22-660

Decision

[1] The appeal is allowed in part.

[2] The Claimant's benefit period should start on March 28, 2021, which is the week the interruption of earnings occurred.

[3] The Claimant is entitled to be paid \$210 in EI benefits during the week of March 28, 2021. As a result, the amount owing to the Commission is reduced by that amount.

Overview

[4] The Claimant stopped working on January 19, 2021 and applied for employment insurance benefits on April 4, 2021. Later, he reached an agreement with his former employer where his employer agreed to pay him bi-weekly amounts until March 30, 2021.

[5] The Commission asked the Canada Revenue Agency (CRA) whether the money paid to the Claimant was insurable earnings. The CRA decided that the money was insurable earnings. The Commission decided to change the start date of the Claimant's benefit period from February 14, 2021 to April 4, 2021. This meant the Claimant owed \$4,165 for EI benefits he was not entitled to receive.

[6] The Claimant does not agree that he should have to repay the EI benefits. He says that the money was from a termination package and is not a continuation of his salary. He was told by a Service Canada agent that he was qualified for benefits and the only impact of the money would be extra taxes on his income.

[7] The Claimant said when the money was allocated that he did not receive EI benefits for some weeks when he was unemployed. He is asking that he receive those benefits.

Matters I have to consider first

I will accept the documents sent in after the hearing

[8] The Claimant explained at the hearing that he had pay stubs from his employer for the period when he was paid bi-weekly. The stubs show that his last cheque was for the period ending March 30, 2021. The Claimant provided those pay stubs after the hearing. I am accepting those pay stubs into evidence because the stubs are directly relevant to the money the Claimant received once he stopped working and the effect of that money on his entitlement to benefits.

My jurisdiction is limited

[9] The Claimant said that he returned to work on April 18, 2021, but he did not receive any benefits after April 4, 2021.

[10] I asked the Commission if the Claimant had received benefits from April 4 to 17, 2021. I also asked, if he had not received benefits during that period, whether I had jurisdiction to make a decision whether the Claimant should have received EI benefits during that time.

[11] The Commission replied that the Claimant was paid one week of benefits from April 4, 2021 to April 10, 2021. He was not paid benefits for the week of April 11, 2021 because his claim report was late. The Commission said that the Claimant had not yet requested reconsideration of its decision to not pay him benefits for the week of April 11, 2021.

[12] My jurisdiction, in other words my ability to make a ruling on an appeal, comes only after the Commission makes a decision on reconsideration that the Claimant then chooses to appeal.¹ In this case, the Commission has only reconsidered its decision to change the start date of the Claimant's benefit period. So, I will issue a decision on that issue only.

¹ Section 113 of the *Employment Insurance Act* (Act), says that a party, who is dissatisfied with a decision of the Commission made under section 112, may appeal that decision to the Tribunal

[13] The Claimant is free to ask the Commission to reconsider its decision to not pay him EI benefits from April 4 to 11, 2021. If he is not satisfied with the Commission's answer he may appeal to the Social Security Tribunal.

The Canada Revenue Agency Ruling

[14] The EI Act says that an employee, an employer or the Commission may request a ruling from the CRA as to whether an employment is insurable and the period of that employment.² The EI Act also says CRA rulings may be appealed to the Minister of National Revenue by the Commission or any other person.³ If the Commission or any other party is not satisfied with the Minister's response they may appeal to the Tax Court of Canada.⁴

[15] Because the EI Act names the Minister and court to whom an appeal of CRA rulings must be made, that means appeals can only be made to that office and that court. This means that, for the purposes of the appeal to the Social Security Tribunal, I must accept the CRA ruling.⁵

Issue

[16] When should the Claimant's benefit period start – February 14, 2021 or April 3, 2021?

Analysis

Background

[17] The Claimant testified that he stopped working for his employer on January 19, 2021. His employer presented him with a separation package. He was to be paid his vacation pay and bi-weekly amounts equal to his salary until March 30, 2021. He did not immediately agree to the package when it was presented. The Claimant wanted a reference from his former employer and his lawyer sent the employer a letter asking for

² See section 90(1) of the *Employment Insurance Act* (EI Act)

³ See section 91 of the EI Act.

⁴ See section 103 of the EI Act.

⁵ This is explained in the Federal Court of Appeals (FCA) decision *Canada (Attorney General) v Romano*, 2008 FCA 117.

a reference. The employer declined to provide a reference and the Claimant agreed to the package in February 2021. He received one cheque that was retroactive to January 19, 2021 and then received other cheques.

[18] The Claimant testified that he waited to apply for EI benefits because he was not sure if he qualified. He read on-line that he was qualified, which he thought confusing given that he was still receiving cheques from his former employer. The Claimant applied for EI benefits on March 4, 2021. With his first claim report the Claimant indicated that he received money during the second week of the report.⁶⁷

[19] The Claimant's former employer issued a Record of Employment (ROE) on February 19, 2021. This ROE showed the Claimant's final pay period end date as February 12, 2021. The employer then issued an amended ROE on April 12, 2021 showing the final pay period as April 9, 2021. There was no change to the total insurable earnings or total insurable hours.

[20] The Commission contacted the Claimant's former employer. The former employer said the earnings were top-up salary owed to the Claimant, there were no separation monies and that the Claimant's last day paid was March 30, 2021.

[21] The Commission asked the CRA whether the money paid to the Claimant from January 20, 2021 to March 30, 2021 was insurable earnings. This is called "an insurability ruling." The CRA determined that the money the Claimant received from January 20, 2021 to March 30, 2021 was made from an employment and are insurable earnings under section 2(1)(a) of the *Insurable Earnings and Collection of Premiums Regulations* (IECP Regulations).

[22] As a result of the CRA ruling the Commission concluded that the Claimant's interruption of earnings occurred on March 30, 2021 and that his benefit period should commence on April 4, 2021. This meant the Claimant had received EI benefits from

⁶ The first claim report covering the period February 14, 2021 to February 27, 2021 was filed on March 27, 2021.

⁷ A Supplementary Record of Claim says the earnings apply from September 27, 2020 to September 19, 2021, no allocation required.

February 14, 2021 to April 3, 2021, that he was not entitled to receive and had to repay those benefits.

What does the law say?

[23] The law says that for the purposes of the *Employment Insurance Act* (EI Act) a week is a period of seven consecutive days that begin on a Sunday.⁸

[24] Claimants receive EI benefits during their benefit period. The law says that a benefit period begins on the later of either the Sunday of the week in which the interruption of earnings occurs or the Sunday of the week in which the initial claim for benefits is made.⁹

[25] An interruption of earnings happens when a claimant stops working in a job, does not perform any work in that job for a period of seven days and in respect of which no earnings arise from that job.¹⁰ A Claimant must prove that he meets all three of these conditions to show an interruption in earnings.

[26] The law says that earnings are the entire income that you get from any employment.¹¹ The law defines both “income” and “employment.”

[27] **Income** can be anything that you got or will get from an employer or any other person. It doesn't have to be money, but it often is.¹²

[28] **Employment** is any work that you did or will do under any kind of service or work agreement.¹³

⁸ See section 1(2) of the EI Act.

⁹ See section 10(1) of the EI Act.

¹⁰ See section 14(1) of the Employment Insurance Regulations (EI Regulations). This is one circumstance that meets the definition of an interruption of earnings in section 14 of the EI Regulations. There are more circumstances that meet the definition of an interruption of earnings, but those circumstances do not apply to this appeal.

¹¹ See section 35(2) of the EI Regulations.

¹² See section 35(1) of the EI Regulations.

¹³ See section 35(1) of the EI Regulations.

How does the law apply to the Claimant's circumstances?

[29] The Claimant stopped working on January 19, 2021.

[30] The CRA determined that the money the Claimant received from his employer from January 20, 2021 to March 30, 2021 was insurable earnings.

[31] The CRA made its determination in accordance with the IECR Regulations. The IECR Regulations define insurable earnings as the total of all amounts ... that are paid to the person by the person's employer in respect of that employment.¹⁴

[32] The Claimant was paid by his former employer for the period January 20, 2021 to March 31, 2021. The money that he received during that period arose because he had been employed by his former employer. This means that the money the Claimant received was earnings both in the context of the EI Regulations and the IECR Regulations.

[33] The Claimant, who stopped working on January 19, 2021, received earnings from his former employment until March 30, 2021. He testified that he returned to work on April 18, 2021. This means the Claimant experienced an interruption of earnings on March 30, 2021.

[34] As noted above, a Claimant's benefit period starts on the later of the Sunday of the week in which the application for benefits was made and the Sunday of the week in which the interruption of earnings occurred.

[35] The application for benefits was made on March 4, 2021. The interruption of earnings was on Tuesday, March 30, 2021. This means the Claimant's benefit period should begin on Sunday, March 28, 2021.

Does the Claimant owe money to the Commission?

[36] Yes, the Claimant received EI benefits before the start of the benefit period. You can only receive EI benefits during a benefit period.¹⁵ This means that the Claimant

¹⁴ See section 2(1) of the IECR Regulations.

¹⁵ Section 9 of the EI Act

received EI benefits that he was not entitled to receive and he must repay those benefits.

[37] I have decided the Claimant's benefit period should start on March 28, 2021.

[38] The Commission says that because the Claimant had earnings of \$2,020.62 in the week of March 28, 2021, he could not be paid any benefits in that week. As a result, it determined that the Claimant's benefit period should start on April 4, 2021 and that he would have to repay 7 weeks of benefits.

[39] I do not agree the Claimant had \$2,020.62 in earnings in the week of March 28, 2021. Instead, I think he had earnings of \$769.81 in that week. The reasons for my findings follow.

[40] The Claimant was paid bi-weekly. He testified that there was delay in his pay periods. The Claimant's former employer's amendment to the ROE stated the Claimant's last day for which he was paid was March 30, 2021 and the final pay period ending date was April 9, 2021. The CRA ruled the Claimant's insurable employment ended on March 30, 2021.

[41] The Claimant provided copies of his paystubs from March 12, 2021 to April 9, 2021 with his appeal to the Tribunal. The stubs for March 12, 2021 and March 26, 2021, indicate that he was paid for 80 hours in each bi-weekly period. The Claimant's paystub for the period ending on April 9, 2021 shows that he was paid \$769.81 for 16 hours for "this period." This evidence tells me that the Claimant did not receive \$2,020.62 in earnings for the week of March 28, 2021, but actually received \$769.81 in earnings for that week.

[42] But having earnings in the last week of employment is not a reason to start a benefit period at a later date.

[43] Temporary measures provided for the waiving of the waiting period for all EI claims established between September 27, 2020 and September 25, 2021.¹⁶ Because the Claimant's claim starts within this period he can take advantage of this provision.

[44] Earnings received while also receiving EI benefits are allocated to (deducted from) EI benefits at the rate of 50 cents for every dollar earned up to 90% of a claimant's weekly insurable earnings used to establish the claim. Earnings above 90% of a claimant's weekly insurable earnings are deducted dollar for dollar.¹⁷

[45] The Commission said the Claimant had a weekly earnings threshold of \$1,082 when no benefits would be payable.¹⁸

[46] The Claimant earned \$769.81 from March 28, 2021 to March 30, 2021. This means the Claimant would be entitled to receive \$210 in EI benefits for the week of March 28, 2021.¹⁹

[47] The Commission says the Claimant must repay 7 weeks of benefits (\$4,165) for the period February 20, 2021 to April 3, 2021. The Claimant is entitled to \$210 EI benefits for the week of March 28, 2021. This means the Claimant must repay \$3,955 in EI benefits that he was not entitled to receive.²⁰

Other matters

[48] The Commission says that it reassessed the Claimant's benefit period in accordance with section 52 of the EI Act. That section of the law allows the Commission to review any claims within 36 months of EI benefits being paid. The Claimant received EI benefits from February 14, 2021 to April 4, 2021. The Commission reviewed the claim and made its initial decision on October 5, 2021. As a

¹⁶ See section 153.191 of the EI Act.

¹⁷ See section 77.99(3) of the EI Regulations. See also Section 19(2), EI Act, which is the current legislation.

¹⁸ The Claimant's weekly benefits were \$595, which is 55% of the maximum weekly insurable earnings. $\$595 \div 55\% = \$1,082$

¹⁹ $\$595 - (\$769.81 \times 50\%) = \$595 - \$384.91 = \$210.09$. Amounts greater than 50¢ are rounded down to the nearest dollar. Amounts greater than 50¢ are rounded up to the nearest dollar.

²⁰ $\$4,165 - 210 = \$3,955$

result, I find that it was within the Commission's authority to review the claimant's benefits because it did so within the time limits set by the law.

[49] The Claimant submitted that the money he received was a separation package. He views it as severance pay and does not think that it should impact his EI benefits. As noted above the CRA insurability ruling must be accepted by the Tribunal. If the Claimant does not agree with that ruling he may appeal to the Minister of National Revenue within the time limits set for that appeal.

[50] I recognize the Claimant was told by a Service Canada agent that the only impact of receiving the separation package would be an increased amount of taxes owing. I recognize the Claimant submits that he spoke to a Commission agent who provided incorrect information. While this may be true, the Federal Court of Appeal has found that it is obvious that Commission agents have "no power to amend the [law]," so any interpretation they make of the law does not, by itself, "have the force of law."²¹

[51] The Court also stated that any commitment the Commission's representatives might make, "whether in good or bad faith, to act in a way other than" written in the law, is "absolutely void." This means that even if the Claimant did receive incorrect information from Commission agents, what is important is what is written in the EI Act, and whether the Commission and the Claimant complied with those provisions.

[52] The Claimant says that repaying the EI benefits has caused him and his family financial hardship. They spent the benefits based on the information received from a Service Canada agent.

[53] Nothing in my decision prevents the Claimant from writing the Commission directly to ask that it reduce or write off the debt.²² If he is not satisfied with their answer, he can appeal to the Federal Court.

²¹ *Granger v. Employment and Immigration Commission*, A-684-85 at paragraph 7

²² I do not have the authority to write off a debt owing to the Commission. *Arksey v. Canada (Attorney General)* 2019 FC 1250

Conclusion

[54] The appeal is allowed in part.

[55] The Claimant's benefit period should start on March 28, 2021, which is the week the interruption of earnings occurred.

[56] The Claimant is entitled to be paid \$210 in EI benefits during the week of March 28, 2021. As a result, the amount owing the Commission is reduced by that amount.

Raelene R. Thomas
Member, General Division – Employment Insurance Section