



Citation: *AP v Canada Employment Insurance Commission*, 2022 SST 1249

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

Decision

Appellant: A. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (459165) dated March 14, 2022 (issued by Service Canada)

Tribunal member: Mark Leonard

Type of hearing: In person

Hearing date: July 5, 2022

Hearing participants: Appellant

Decision date: July 12, 2022

File number: GE-22-1181

Decision

[1] The Appeal is dismissed. The Canada Employment Insurance Commission (Commission) correctly calculated the Claimant's (Appellant's) weekly benefit rate.

Overview

[2] The Claimant established an initial claim January 23, 2022. The Commission determined the Claimants' qualifying period as January 24, 2021, January 22, 2022.

[3] During that period, the Claimant worked for five employers. The Commission took all the earnings from the five employers and calculated her Employment Insurance (EI) benefit rate as \$251.00 per week. It says that it applied the Act correctly when it calculated the Claimant's benefit rate.

[4] The Claimant disagrees with the benefit rate calculation. She says that only one of her Records of Employment (RoE) should be used to calculate her benefit rate and that this would increase her weekly benefit amount. At the very least, her last RoE should be removed because it had a negative effect on her benefit rate.

[5] I must decide whether the Commission correctly calculated the Claimant's benefit rate.

Matter I have to consider first

[6] At the outset of the hearing, the Claimant stated that she had received an e-mail from the Social Security Tribunal (Tribunal) containing attachments including the Commission's representations. She says that she was unable to open the attachments. She says she called the Tribunal asking for the attachments but never received anything.

[7] I examined the file record and confirmed that the Commission's reconsideration file and representations were forwarded to the Claimant on May 3, 2022. The e-mail clearly informs the Claimant that the transmission contains important information. I was able to open the attachments contained in that transmission.

[8] On May 5, 2022, the Claimant sent an e-mail to the Tribunal confirming receipt of the e-mail and only questions when she would receive an answer on her appeal. There is no mention of difficulty opening the attachments. There is no other recorded correspondence or telephone calls from the Claimant informing the Tribunal that she had been unable to open the attachments.

[9] I am satisfied that Claimant received the e-mail and should have been able to open attachments. If not, she could have communicated that she had difficulty and the Tribunal would have resent them giving her plenty of time to review and prepare for the hearing.

[10] However, in the interest of procedural fairness, I offered the Claimant the option of an adjournment to give her time to review the documents. The Claimant declined the adjournment. She said that she had waiting a long time for a decision and wanted to proceed with the hearing.

[11] I agreed to her request and the hearing proceed as scheduled.

Issue

[12] Did the Commission calculate the Claimant's weekly EI benefit rate correctly?

Analysis

[13] The weekly EI benefits rate is the maximum amount they can receive for each week in their benefit period. The Commission calculates the benefit rate based on 55% of a claimant's weekly earnings.¹

[14] To obtain the weekly earnings, the Commission uses a variable number of weeks that represent the claimant's highest earnings within their qualifying period. The qualifying period is generally the 52 weeks immediately prior to the date they establish the claim and their benefit period begins.²

¹ See Section 14(1) and 17 of the *Employment Insurance Act*.

² See Section 8 of the *Employment Insurance Act*.

[15] The variable number of weeks used to calculate the average earnings ranges from 14 to 22 weeks depending on the regional rate of unemployment where the claimant lives.³ The Act contains a table that sets the number of weeks to be used based on the corresponding specific range of the unemployment rate.

[16] The weekly earnings are an average determined by dividing the *total* insurable earnings in the weeks taken into account by the number of weeks identified in the table

Issue 1: Did the Commission calculated the Appellant's weekly EI benefit rate correctly?

[17] Yes. The Commission properly applied the provisions of the Employment Insurance Act (Act) when it calculated the Appellant's weekly benefit rate.

Date of Claim

[18] The Commission established the Claimants benefit period beginning January 23, 2022, based on her initial claim for benefits files dated February 14, 2022.

[19] The Commission had reason to believe that the Claimant had filed an earlier claim dated January 4, 2022. This claim was in the name of the Claimant and contained information consistent with the claimant's home address and telephone number. It also noted that the Claimant had worked at Subway and provided a direct deposit code.

[20] The Commission contacted the Claimant to confirm her application. The Claimant informed them that she had not filed the claim. She told the Commission that she had never worked for Subway and the banking information was incorrect.

[21] The Commission conducted an investigation and accepted that the Claimant had not filed the claim dated January 4, 2022. It noted that the Claimant had made a pervious initial claim on December 8, 2021, but deemed the Claimant ineligible because she did not have enough hours to qualify.

³ See Section 14(2) and 14(4) of the *Employment Insurance Act*.

[22] The Claimant called the Commission to ask about the status of her claim. Having determined that the Claimant had not filed the January 4, 2022, claim, the Commission told the Claimant on February 14, 2022, that she must file a new claim.

[23] The Claimant made the new initial claim February 14, 2022, and the Commission elected to backdate her claim to January 23, 2022, as this was the first Sunday immediately following her last day of work (January 19, 2022). The Claimant does not dispute these facts.

[24] I am satisfied that the Commission used its discretionary authority when it established the initial claim on January 23, 2022, based on the Claimants February 14, 20232 initial claim.⁴ It had accepted the Claimant's statements that she had not filed the January 4, 2022, claim and as such, the Claimant needed to file a new claim.

Qualifying Period

[25] The Commission identifies the Claimant's qualifying period as January 24, 2021, to January 22, 2022. The dates are consistent with a 52-week period immediately preceding the establishment of the claim.⁵ The Commission further concluded that the Claimant was not entitled to any extension to the qualifying period. The Claimant did not provide any submissions or testimony that would support an extension of the qualifying period.

[26] Therefore, I am satisfied that the qualifying period established by the Commission is correct.

Regional Rate of Unemployment

[27] The Commission identified the Claimant's EI economic region as Windsor, Ontario. On January 23, 2022, the date the Claimant's initial claim was established, the unemployment rate was 7.1%.

⁴ See Section 10(4) of the *Employment Insurance Act*.

⁵ See Section 8(1) of the *Employment Insurance Act*.

[28] The Claimant does not dispute the rate. She confirmed that she lives in X, which falls within the Windsor EI economic region.

[29] I am satisfied that the Commission identified the correct economic region and applied the correct unemployment rate of 7.1%. There is no evidence that would support a different conclusion.

Weekly Earnings and Benefit Rate

[30] The Act includes a Table that sets out how many weeks of earnings will be included in the calculation of the Claimant's benefit rate.⁶ For an unemployment rate of 7.1%, the number of weeks of earnings is twenty (20). This number is referred to as the "divisor."

[31] I am satisfied that the Commission correctly identified the number of weeks of earnings to be included. Ordinarily this means that the Commission would total the *best* 20 weeks of the Claimant's earnings then average it to calculate her weekly earnings.

[32] However, in the Claimant's case, she only had a total of nineteen (19) weeks of earnings resulting from employment with five different employers during her qualifying period. So, the Commission used the RoE's from all five employers and totalled all 19 weeks of earnings.⁷ The Claimant had total earnings of \$9,130.68. It used the "divisor" and divided the total by 20 to establish her weekly earnings at \$456.53.

[33] The Commission then applied the usual 55% of weekly earnings to establish the Claimant's rate of weekly benefits at \$251.00.

[34] The Claimant says that the benefit rate should be higher. She contends that the Commission should not have included the last RoE she received for work performed between January 6, 2022, and January 22, 2022.

⁶ See Section 14(2) of the *Employment Insurance Act*.

⁷ See Section 14(4) of the *Employment Insurance Act*.

[35] She offered that the only reason she took that job was that her December 2021 claim was denied and she needed the money while her new claim was being sorted out.

[36] She expected that the Commission would only use one of her RoE's related to her employment from December 8, 2021, to December 21, 2021. She says that if the Commission used this RoE, then her benefit rate would be higher.

[37] I offered the explanation that the Commission was obligated to include all earnings from employment during her qualifying period. The Claimant said that she understood that but reaffirmed that the last RoE from January 2022 should not be used because it was not a good employment and caused her hardship.

[38] I disagree with the Claimant. The Commission could not pick and choose which of the RoE's recorded earnings it would include in her benefit calculation. It was obligated to start with all of the Claimant earnings in her qualifying period and then identify the best (highest earning) 20 weeks and apply the legislated divisor to obtain her weekly earnings and ultimately her benefit rate. The Claimant only had 19 weeks of earnings in total. Hence, all 19 weeks were her highest weekly earnings and were included in the calculation.

[39] Regardless of the reasons the Claimant may have had to accept the employment in January 2022, once her claim was established on January 23, 2022, the Commission was obligated to identify her best 20 weeks of earnings and average them. In her qualifying period, the Claimant only had 19 weeks of earnings from five employers. The Commission had no choice but to count all weeks of earnings including that from her last employment in its calculations.

[40] The Claimant could offer no other reasons why her benefit rate was incorrect. Therefore, I am satisfied that the Commission correctly established the initial claim, qualifying period, and applied the correct unemployment rate based on her economic region. I have verified the calculations used by the Commission and I am satisfied that it correctly calculated the Claimant's rate of weekly benefit's as \$251.00.

[41] I empathize with the Claimant concerning her financial difficulties. She is experiencing financial hardship and difficulties maintaining accommodation and other necessities. However, the EI benefit rate is a mathematical calculation based on legislative provisions. I am not at liberty to rewrite or interpret the legislation in any other manner than its plain meaning.⁸

Conclusion

[42] The Claimant's week benefit rate of \$251.00 is correct.

[43] The appeal is dismissed.

Mark Leonard

Member, General Division – Employment Insurance Section

⁸ See (*Canada (A.G.) v, Kne*, 2011 FCA 301)