



Citation: *DB v Canada Employment Insurance Commission*, 2022 SST 1451

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

## Decision

**Claimant:** D. B.

**Commission:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (447588) dated January 28, 2022 (issued by Service Canada)

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**Tribunal member:** Audrey Mitchell

**Type of hearing:** Videoconference

**Hearing date:** April 5, 2022

**Hearing participant:** Claimant

**Decision date:** April 6, 2022

**File number:** GE-22-728

## **Decision**

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

## **Overview**

[2] The Claimant applied for Employment Insurance (EI) benefits after losing his job. He lost the job when the company he worked for restructured. The Claimant signed a notice of termination letter that gave details of a severance package. The package included severance pay in the form of continued salary, vacation pay, and benefits.

[3] The Canada Employment Insurance Commission (Commission) notified the Claimant that because of the salary continuance, his benefit period (period in which benefits are paid) would start on October 10, 2021. This meant that the Claimant would be entitled to 20 weeks of EI benefits.

[4] The Claimant argues that his claim for EI benefits should have been established while pandemic-related temporary measures were in place. This would mean that he is entitled to 50 weeks of EI benefits based on information he got from agents of the Commission.

[5] The Commission says that the Claimant was still considered to be involved in insurable employment until the end of his salary continuance. The say he could not establish a claim for benefits until then.

## **Issue**

[6] How many weeks of EI benefits is the Claimant entitled to?

## **Analysis**

### **How many weeks of EI benefits is the Claimant entitled to?**

[7] The Claimant is entitled to 50 weeks of EI benefits.

[8] The Commission may pay a claimant for each week of unemployment in a benefit period.<sup>1</sup>

[9] The number of weeks of benefits paid in a benefit period depends on the unemployment rate in your region and the number of hours worked.<sup>2</sup> But, for a claimant who applies for EI regular benefits, whose benefit period starts between September 27, 2020 and September 25, 2021, the maximum number of weeks of benefits is 50.<sup>3</sup>

[10] A benefit period starts on the later of two dates. One is the Sunday of the week in which an interruption of earnings occurs. The other is the Sunday of the week that a claimant applies for benefits.<sup>4</sup>

[11] The Commission argues that the Claimant didn't have an interruption of earnings until his salary continuance ended. The Claimant says that his claim should be established while the government's pandemic-related temporary measures were in effect. I will first look at when the Claimant had an interruption of earnings.

[12] An interruption of earnings can occur when a claimant is separated from their job, doesn't work for the employer for at least seven days, and has no earnings from that job other than those that are payable or allocated.<sup>5</sup>

[13] The Claimant applied for EI benefits on August 24, 2021. He said that the last day he worked was July 7, 2021. The Claimant's employer issued a record of employment (ROE) showing that the last day for which he was paid was July 15, 2021.

[14] The employer issued an amended ROE. This one shows that the last day for which they paid the Claimant was October 7, 2021. In the comments, they said that the Claimant got a salary continuance and car allowance. It shows insurable earnings corresponding to weekly pay periods up to the one that ends October 9, 2021.

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<sup>1</sup> See section 12(1), *Employment Insurance Act* (Act).

<sup>2</sup> See section 7(2)(b) of the Act and section 17 of the *Employment Insurance Regulations* (Regulations).

<sup>3</sup> See section 12(2.1) of the Act.

<sup>4</sup> See section 10(1) of the Act.

<sup>5</sup> See section 14(1) of the Regulations.

[15] The Claimant sent the Commission a copy of a notice of termination letter. The letter states that the Claimant's employment is terminated effective July 15, 2021. It also gives details of a severance package the employer would pay the Claimant, to include 12 weeks' salary, vacation pay and benefits.

[16] The Claimant testified that his former employer offered to pay him the severance package as a lump sum. He said that he chose not to take it because the continued dental benefits were important to him.

[17] I find that the Claimant experienced an interruption of earnings on July 15, 2021. This is the date that the employer identified as the effective date of the Claimant's termination. I find that they paid the Claimant money by reason of his separation from his job.

[18] I don't find that the continued two weeks of group insurance benefits, or the continued extended health and dental benefits to October 7, 2021 the Claimant's former employer paid him changes the date of his interruption of earnings. The Claimant testified that he had negotiated the benefits and car allowance to be included in the severance package. But I still find that the relationship with his employer was severed on July 15, 2021. I find that the notation in the letter that not all of the Claimant's usual benefits continue supports the Claimant's testimony about what he negotiated.

[19] I have found above that the Claimant had an interruption of earnings on July 15, 2021. He also has to prove that he has enough insurable hours of employment as of that date to qualify for benefits. The number of required hours is 420.<sup>6</sup>

[20] In their initial calls with the Claimant, the agents of the Commission do not question if the Claimant worked enough insurable hours. The ROE shows that he worked 672 insurable hours between March 22, 2021 and July 15, 2021. So, I'm satisfied that he has enough insurable hours to establish a claim for benefits.

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<sup>6</sup> See section 7(2) of the Act.

[21] The Claimant didn't apply for benefits until August 24, 2021. However, the Commission's notes say that they allowed his request for an antedate due to severance earnings. For this reason, since he had an interruption of earnings on July 15, 2021, I find that his benefit period starts on July 18, 2021. This means that the Claimant is entitled to the 50 weeks of benefits because the benefit period starts within the dates identified in the temporary measures.

## **Conclusion**

[22] The appeal is allowed. The Claimant experienced an interruption of earnings on July 15, 2021. This means he is entitled to 50 weeks of EI benefits.

Audrey Mitchell

Member, General Division – Employment Insurance Section