



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *FA v Canada Employment Insurance Commission*, 2015 SSTGDEI 1488

Date: July 10, 2015

File number: GE-15-941

GENERAL DIVISION - Employment Insurance Section

Between:

F. A.

Claimant

and

Canada Employment Insurance Commission

Respondent

Decision by: Grant Smith, Member, General Division - Employment Insurance Section

Heard by Teleconference on July 10, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

F. A. - Claimant

INTRODUCTION

[1] The Claimant applied for employment insurance sickness benefits (EI benefits) on January 6, 2015. The Respondent informed the Claimant “We have approved your Employment Insurance sickness benefits from December 28, 2014 to March 24, 2015. If you are still unable to work after the end of this period, you will have to provide additional medical evidence”.

[2] On February 2, 2015 the Claimant requested reconsideration / recalculation of his weekly benefit rate and on February 13, 2015 the Respondent denied the application at the reconsideration level. The Claimant appealed that decision on March 19, 2015.

[3] The hearing was held by Teleconference for the following reasons:

- (a) The complexity of the issue(s) under appeal.
- (b) The fact that the credibility is not anticipated to be a prevailing issue.
- (c) The information in the file, including the need for additional information.
- (d) The form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[4] The Claimant is appealing the Commission’s decision resulting from his request for reconsideration under section 112 of the *Employment Insurance Act* (the Act) regarding the calculation of his weekly benefit rate pursuant to section 14 of the Act.

THE LAW

[5] Subsection 8(1) of the Act:

(1) Subject to subsections (2) to (7), the qualifying period of an insured person is the shorter of

(a) the 52-week period immediately before the beginning of a benefit period under subsection 10(1), and

(b) the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period under subsection 10(1).

[6] Section 14 of the Act:

(1) The rate of weekly benefits payable to a Claimant is 55% of their weekly insurable earnings.

(1.1) The maximum weekly insurable earnings is

(a) \$750 if the Claimant's benefit period begins during the years 1997 to 2000; and

(b) if the Claimant's benefit period begins in a subsequent year, the maximum yearly insurable earnings divided by 52.

(2) A Claimant's weekly insurable earnings are their insurable earnings in the calculation period divided by the number of weeks determined in accordance with the following table by reference to the applicable regional rate of unemployment.

Table

<u>Regional Rate of Unemployment</u>	<u>Number of Weeks</u>
not more than 6%	22
more than 6% but not more than 7%	21
more than 7% but not more than 8%	20
more than 8% but not more than 9%	19

more than 9% but not more than 10%	18
more than 10% but not more than 11%	17
more than 11% but not more than 12%	16
more than 12% but not more than 13%	15
more than 13%	14

EVIDENCE

[7] On the date of his application for EI sickness benefits the Claimant resided in the Vancouver Region and the rate of unemployment was 6.2%.

[8] The Claimant was approved for sickness benefits from December 28, 2014 to March 24, 2015.

[9] The Claimant's qualifying period was determined to be the period from December 29, 2013 to December 27, 2014 and in that qualifying period the Claimant submitted Records of Employment (ROEs) per GD3-16, GD3-17, GD3-18 and GD3-19 demonstrating an accumulation of 600 hours of insured employment.

[10] In his application for benefits (GD3-8) the Claimant indicated that he had variable best weeks. The Claimant was asked to provide the details for each week his earnings were at their highest. The Claimant only provided the details for the week of July 21, 2013(GD3-9). The Claimant later submitted additional variable best weeks (GD3-23 to GD3-25 and GD3-28 to GD3-31).

[11] Based upon the facts on file and pursuant to subsections 14(1) and (2) of the Act, the Commission calculated the Claimant's weekly benefit rate at \$149.00.

[12] The Claimant requested reconsideration of the calculation of his weekly rate of employment insurance benefits. In support of his request, the Claimant argued that the amount of \$457.00 for July 21 was for 2014 not 2013. The Claimant states that his former employer, Staffing Edge, is giving him trouble (GD2-2). He explains that Staffing Edge denies paying him for 10 hours (GD2-2). He argues that his payment has to be 457.60 x 55%. The Claimant states his highest weekly earnings are really on July 2014.

[13] Within the qualifying period, the 21 weeks containing the highest insurable earnings were determined by reviewing the Records of Employment and the information provided by the Claimant in the form of the Highest Weeks Questionnaire.

May 4 -10, 2014	\$341.12
May 18 - 24, 2014	\$207.88
June 1 - 7, 2014	\$267.56
June 8 - 14, 2014	\$223.86
June 22 - 28, 2014	\$255.84
July 13 - 19, 2014	\$319.80
July 27 - August 2, 2014	\$426.19
August 3 - 9, 2014	\$355.01
August 10 -16, 2014	\$441.24
August 17 - 23, 2014	\$163.42
August 24 - 30, 2014	\$206.68
September 7 - 13, 2014	\$303.82
September 14 - 20, 2014	\$234.52
September 21 - 27, 2014	\$160.16
September 28 - October 4, 2014	\$261.56
October 19 - 25, 2014	\$180.96
October 26 - November 12014	\$367.78

SUBMISSIONS

[14] The Claimant submitted that his payment must be \$457.60 X 55% which would make his benefit rate \$252.00. The Commission did use the Claimant's weeks in July and August in the calculation of his rate.

[15] The Respondent submitted that the Records of Employment from Trades Labour Corporation and 501546 BC Ltd Labour Unlimited have calendar weekly pay periods and thus reflect gross earnings for each week. As a result, some of the variable 'best weeks' information submitted by the Claimant could not be used as it conflicted with the pay period information captured on the Record of Employment. The Claimant had total insurable earnings of \$5694.61 in the 21 week calculation period. When this total was divided by 21 weeks, it resulted in weekly insurable earnings of \$271.19.

ANALYSIS

[16] In the instant case the Tribunal finds the Commission correctly determined the Claimant's qualifying period to be the period from December 29, 2013 to December 27, 2014 in accordance with paragraph 8(1) of the Act.

[17] The Tribunal also finds the number of 'best weeks' required for the calculation of the Claimant's weekly benefit rate was 21 pursuant to the Table in subsection 14(2) of the Act with an unemployment rate for the region in which the Claimant resided at 6.2%.

[18] From the information provided by the Claimant he had total insurable earnings of \$5694.61 in the 21 week calculation period. Divided by 21 weeks, it results in weekly insurable earnings of \$271.19. [$\5695 (insured earnings in calculation period) divided by 21 (required weeks) = \$271.19 (weekly insurable earnings) X 55% = \$149 (the Claimant's benefit rate)].

[19] While the Claimant has argued that his best week was \$457.60 and that multiplied by 55% it equals a benefit rate of \$252.00 per week the Tribunal finds that using this highest week on its own cannot be allowed by legislation. Clearly subsection 14(2) of the Act provides that the best 21 weeks must be used in the calculation of the weekly benefit rate.

[20] While the Tribunal is sympathetic to the Claimant's situation the Federal Court of Appeal in **Canada (AG) v. Knee, 2011 FCA 301** confirmed the principle that adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.

[21] the Federal Court of Appeal in **Manoli v. Canada (AG), 2005 FCA 178** re-affirmed the principle that a Claimant's weekly rate of benefits is based on his or her weekly insurable earnings and that the rate of these benefits and the method used to calculate them are the same for all Claimants: 55% of weekly insurable earnings under subsection 14(1) of the Act.

[22] The weekly rate of benefit is the maximum amount a Claimant may receive for each week in the benefit period. The basic benefit rate is 55% of the weekly insurable earnings as specified under subsection 14(1.1) of the Act.

[23] Effective April 7, 2013, the benefit rate of Claimants (excluding fishers and self-employed) is calculated using a variable number of best (highest) weeks of insurable earnings during the

qualifying period as defined in subsection 8(1) of the Act. The number of best weeks required for the calculation period as defined in subsection 14(4) of the Act will range from 14 to 22, depending on the unemployment rate in the area of the Claimant's usual place of residence. The weekly insurable earnings amount will be determined by using the total insurable earnings in the best weeks divided by the number of weeks specified in the Table set out in subsection 14(2) of the Act according to the unemployment rate in the area of the Claimant's usual place of residence.

[24] In this case the Tribunal finds the Commission has correctly applied the legislation. Further the Tribunal finds the Commission's calculation of the Claimant's weekly benefit rate correctly determined the Claimant's weekly benefit rate to be \$271.19

CONCLUSION

[25] The appeal is dismissed.

Grant Smith
Member, General Division - Employment Insurance Section