



Citation: *EL v Canada Employment Insurance Commission*, 2023 SST 1118

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

Decision

Appellant: E. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (431303) dated August 18, 2021 (issued by Service Canada)

Tribunal member: Teresa M. Day

Type of hearing: Teleconference

Hearing date: May 24, 2023

Hearing participant: Appellant

Decision date: August 8, 2023

File number: GE-22-1252

Decision

[1] The appeal is allowed in part.

[2] The Appellant was paid 49 weeks of combined regular and special employment insurance (EI) benefits to December 18, 2021, when the Respondent (Commission) determined that her benefit period expired.

[3] On appeal to the Tribunal, the Appellant proved she was entitled to an extension of her benefit period. The Tribunal extended it to January 15, 2022.

[4] The law allows a claimant to collect a maximum of 50 weeks of combined regular and special EI benefits within a single benefit period. This means the Appellant has until January 15, 2022 to collect 50 weeks of combined benefits. She has only been paid 49 weeks to December 18, 2021, so she is entitled to one (1) more week of benefits on her claim.

[5] The Respondent (Commission) must pay the Appellant 1 more week of standard parental benefits for the week of December 19 – 25, 2022.

Overview

[6] The Appellant started a claim for regular EI benefits on December 20, 2020. She received 21 weeks of regular EI benefits¹ on her claim.

[7] On June 28, 2021, she renewed her claim as a claim for EI maternity and parental benefits. Maternity and parental benefits are special EI benefits².

¹ Regular EI benefits provide financial support for people who lose their jobs through no fault of their own and are available for work and able to work but can't find a job.

² **Special benefits are different from regular EI benefits.** Special benefits have specific requirements for payment and limits on the number of weeks that can be paid. Maternity and parental benefits are a type of special EI benefits (see . They provide financial assistance to people who are away from work because they're pregnant or have recently given birth; and parents who are away from work to care for their newborn or newly adopted child.

[8] The Appellant asked for 35 weeks of standard parental benefits, but the Commission decided she could only be paid 13 weeks. She appealed to the Social Security Tribunal (Tribunal).

[9] The Tribunal decided she was entitled to receive 4 more weeks of parental benefits, but the Commission disagreed and appealed that decision to the Tribunal's Appeal Division (the AD).

[10] The AD decided the Tribunal made a mistake by not considering section 12(6) of the *Employment Insurance Act* (EI Act)³. This section of the law says a claimant who receives regular EI benefits on their claim cannot be paid more than 50 weeks of combined regular and special benefits in a single benefit period. The AD returned the appeal to the Tribunal with instructions to consider the implications of section 12(6) of the EI Act on the Appellant's claim.

[11] The appeal was assigned to me, and I scheduled a pre-hearing case conference with the Appellant to clarify the issue under appeal.

[12] At the case conference, the Appellant said she was interested in making an argument based on the Canadian Charter of Rights and Freedoms (Charter) in support of her appeal⁴.

[13] There is a special process for making a Charter argument before the Tribunal. As part of that process, the Appellant was required to file a Charter Challenge Notice setting out the specific sections of the EI Act (or related legislation) she says breach her Charter rights and brief submissions in support of the constitutional argument she wanted to make.

[14] I was not satisfied the Appellant's Charter Challenge Notice was sufficient to raise a constitutional issue before the Tribunal. On April 4, 2023, I issued an

³ See the April 14, 2022 decision issued by the AD in appeal file AD-22-16.

⁴ The Appellant said she wanted to consider the comments the AD made about the Charter. At paragraph 26 of the April 4, 2022 decision issued by the AD in appeal file AD-22-16, the AD member noted there had been a recent decision by a Tribunal member who found that section 12(6) of the EI Act violated the right to equality protected by section 15 of the Charter.

interlocutory decision rejecting her Charter Challenge Notice and returning her appeal to the regular appeal process.

[15] A hearing to consider the implications of section 12(6) of the EI Act on the Appellant's claim – as directed by the AD⁵ – was held on May 24, 2023.

[16] At the hearing, the Appellant said she intended to appeal the interlocutory decision rejecting her Charter Challenge Notice. I agreed to delay issuing my decision on the implications of section 12(6) of the EI Act until after the AD dealt with her appeal of the interlocutory decision.

[17] On July 24, 2023, the AD issued a decision on the Appellant's application for leave to appeal the interlocutory decision rejecting her Charter Challenge Notice. It dismissed the application as premature. It said the Tribunal should give its final decision in the appeal and, after that, the Appellant could bring another application to the AD⁶.

[18] This means I must now issue my decision on the implications of section 12(6) of the EI Act on the Appellant's claim, as originally directed by the AD⁷.

Issues

[19] The AD directed me to consider section 12(6) of the EI Act. To do this, I must answer two questions:

- a) What is the period during which EI benefits can be paid to the Appellant on her claim?
- b) How many weeks can the Appellant be paid for regular, maternity, and standard parental benefits during her benefit period?

⁵ See paragraph 27 of the April 14, 2022 decision issued by the AD in appeal file AD-22-16.

⁶ See paragraphs 21 and 22 of the July 24, 2023 decision issued by the AD in appeal file AD-23-630.

⁷ See footnote 5 above.

Analysis

Issue 1: What is the Appellant's benefit period?

[20] A benefit period is the period in which benefits may be paid⁸.

[21] A benefit period is normally 52 weeks but it may be extended in certain circumstances⁹.

[22] In this case, the Tribunal has already decided the Appellant is entitled to a 4-week extension of her benefit period¹⁰. The Commission agreed, and the AD did not disturb this finding¹¹.

[23] This means the original findings **with respect to the length of the Appellant's benefit** period remain in full and force and effect: the Appellant's benefit period is extended by 28 days so that it runs from December 20, 2020 (when her claim started) to January 15, 2022¹².

[24] This 56-week period is when EI benefits may be paid to her.

[25] Now I must decide how many weeks of benefits she can receive within this window of time.

⁸ See sections 9 and 10 of the EI Act.

⁹ See sections 10(10), 10(12.1) and 10(13.02) of the EI Act.

¹⁰ In the original decision on this appeal (namely, the December 20, 2021 decision issued by the Tribunal in appeal file GE-21-1785), the Tribunal found the Commission had correctly determined that the Appellant's benefit period ran from December 20, 2020 to December 18, 2021, but decided she was entitled to have her benefit period extended by 4 weeks because her child was hospitalized for 28 days. It further found that, with this extension of her benefit period, she could receive 4 more weeks of benefits.

¹¹ See paragraphs 15 and 27 of the April 14, 2022 decision issued by the AD in appeal file AD-22-16.

¹² See the findings in paragraphs 2, 15, 17 and 24 of the December 20, 2021 decision issued by the Tribunal in appeal file GE-21-1785.

Issue 2: How many weeks of combined benefits can the Appellant receive?

a) My findings

[26] The Appellant can receive up to 50 weeks of regular and special EI benefits on her claim.

[27] Even though her benefit period is extended so that it runs for 56 weeks, the law does not allow her to be paid more than 50 weeks of combined benefits in a single benefit period.

[28] The 50 weeks of combined EI benefits must be paid within her 56-week benefit period, namely between December 20, 2020 and January 15, 2022.

[29] The Appellant has received 49 weeks of combined regular and special benefits to December 18, 2021. This means she is entitled to 1 more week of benefits.

b) The law

[30] When special EI benefits, like maternity and parental benefits, are combined with regular EI benefits in the same benefit period, the total number of weeks of benefits cannot exceed 50 weeks¹³.

[31] When the Appellant started her claim for **regular** EI benefits on December 20, 2020, this was a new initial claim for EI benefits **and** the start of a new 52-week benefit period¹⁴ in which it was possible for her to receive a combination of regular and special EI benefits¹⁵ for up to 50 weeks.

[32] An extension of a benefit period does not change the maximum number of weeks of combined benefits a claimant can receive. It only changes the window of time to collect those benefits.

¹³ Subsection 12(6) of the EI Act.

¹⁴ In the Appellant's case, the 52-week period ran from December 20, 2020 to December 18, 2021.

¹⁵ As set out in footnote 2 above, maternity and parental benefits are considered special EI benefits (as are sickness benefits, compassionate care benefits and other similar leave supports).

[33] So extending the Appellant's benefit period to 56 weeks doesn't change the maximum number of weeks of combined benefits she can receive on her claim. The Appellant still can only receive a maximum of 50 weeks of combined regular and special benefits – she just gets a longer period of time in which to collect them.

c) Payment History

[34] I asked the Commission to provide a history of the benefits paid to the Appellant on her claim¹⁶.

[35] The payment history shows the following:

- a) She served her waiting period¹⁷ the week of December 20, 2020.
- b) She was paid 10 weeks of regular EI benefits from December 27, 2020 to March 6, 2021.
- c) She worked for the next 2 weeks, so no benefits were paid to her.
- d) She was paid a further 11 weeks of EI benefits from March 21, 2021 to June 5, 2021.
- e) She was paid 15 weeks of maternity benefits from June 6, 2021 to September 18, 2021.
- f) She was paid 13 weeks of standard parental benefits from September 19, 2021 to December 18, 2021.

[36] By December 18, 2021, the combined total of these regular and special benefits added up to **49 weeks**.

¹⁶ The payment history is at RGD15-2 to RGD15-3.

¹⁷ The waiting period is a period of time that must be served **before** a claimant can begin to receive EI benefits. It must be served during the claimant's benefit period. For claims starting January 1, 2017 or later, the waiting period is 1 week. So before the Appellant could start receiving EI benefits on her claim, she had to serve a 1 week waiting period for which she was not paid.

[37] The Commission says it stopped paying the Appellant because her benefit period exhausted on December 18, 2021¹⁸.

[38] But this doesn't take into account the benefit period extension granted by the Tribunal on December 20, 2021¹⁹ (and which the Commission agreed with before the AD²⁰).

[39] The benefit period extension allows the Appellant **until January 15, 2022** to collect the maximum 50-week entitlement of combined regular and special benefits on her claim. Since she was only paid 49 weeks of combined benefits to December 18, 2021, she is allowed to collect 1 more week of benefits on her claim.

[40] This means the Commission must pay her 1 week of standard parental benefits for the week of December 19 - 25, 2021.

d) What about the other weeks of parental benefits the Appellant requested?

[41] In order to receive the balance of the 35 weeks of parental benefits the Appellant wants²¹, she would need to establish a new initial claim starting after her benefit period expired on January 15, 2022. To do this, she would have to satisfy the qualifying requirements in place at that time.

[42] The Appellant will require hours of insurable employment in her qualifying period to establish a new initial claim for parental benefits. But she has not worked since her child was born in June 2021. Therefore, she has no hours of insurable employment that could be used to establish a new claim.

[43] The Appellant testified about how her on-going struggles to manage her baby's illness. She also said that having her parental benefits end early has caused her

¹⁸ See RGD15-1.

¹⁹ See paragraph 2 of the December 20, 2021 decision issued by the Tribunal in appeal file GE-21-1785.

²⁰ See paragraph 15 of the April 14, 2022 decision issued by the AD in appeal file AD-22-16.

²¹ The payment of the additional week of standard parental benefits I have ordered will bring the total number of weeks of parental benefits on the Appellant's claim to 14 weeks.

considerable additional stress and significant financial difficulty. She does not think the application of the law, in particular section 12(6) of the EI Act, is fair in her situation.

[44] I am sympathetic to the Appellant's circumstances and acknowledge her frustration at not being able to collect parental benefits beyond the additional week I have ordered (December 19 - 25, 2021).

[45] I appreciate that she was hoping the Tribunal had some discretion to order the payment of further weeks of parental benefits to her. However, neither the EI Act nor its regulations allow any discretion with respect to the determination of a claimant's weeks of entitlement to benefits.

[46] The number of weeks of benefits the Appellant can receive is prescribed by sections 10 and 12 of the EI Act and there is no room to consider anything but the rules set out in these sections. Her benefit period commenced on December 20, 2020 and must end on January 15, 2022. She has until January 15, 2022 to collect the 50-week maximum entitlement for the combination of regular and special EI benefits paid on her claim.

[47] The weeks of entitlement calculation must be strictly applied and I do not have discretion to vary the clear wording in the legislation, no matter how challenging and compelling the Appellant's circumstances may be. I must be guided by the Supreme Court of Canada's statement in *Granger v. Canada (CEIC)*, [1989] 1 S.C.R. 141, that a decision-maker is bound by the law and cannot refuse to apply it, even on grounds of equity or fairness.

[48] This means I cannot grant the relief the Appellant is asking for. Only Parliament can amend the EI Act to provide additional flexibility for parents in her circumstances. There have been no amendments to the EI Act that would allow the Appellant to be paid any additional parental benefits on her claim.

Conclusions

[49] The Appellant is allowed receive a maximum of 50 weeks of combined regular and special EI benefits within her benefit period.

[50] Her extended benefit period runs from December 20, 2020 to January 15, 2022.

[51] She was paid 49 weeks of combined regular and special EI benefits to December 18, 2021. This means she can receive 1 more week of benefits on her claim.

[52] The Commission must pay the Appellant 1 more week of standard parental benefits for the week of December 19 – 25, 2022.

[53] The appeal is allowed in part.

Teresa M. Day
Member, General Division – Employment Insurance Section