



Citation: *TB v Canada Employment Insurance Commission*, 2023 SST 974

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: T. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (544734) dated October 25, 2022 (issued by Service Canada)

Tribunal member: Mark Leonard

Type of hearing: Teleconference

Hearing date: January 30, 2023

Hearing participants: Appellant

Decision date: February 13, 2023

File number: GE-22-3491

Decision

[1] The appeal is dismissed. The Appellant's benefit period was correctly determined by the Canada Employment Insurance Commission (Commission). Further, the Appellant's benefit period cannot be extended to permit the payment of additional weeks of Employment Insurance (EI) of benefits.

Overview

[2] The Canada Employment Insurance Commission (Commission) established an initial claim for EI benefits for the Appellant effective September 5, 2021. It established the Appellant's benefit period as September 5, 2021, to September 3, 2022. The Commission stopped paying the Appellant EI benefits after September 3, 2022, because the benefit period had ended.

[3] The Appellant believes he is entitled to at least one more week of EI benefits. He says that he was told by Commission representatives that his benefit period would end on September 24, 2022, because he had worked some weeks during his benefit period and did not receive EI for those weeks.

[4] The Appellant started a new job on September 13, 2022. He believes that he is entitled to be paid EI benefits from September 4, 2022, to September 12, 2022.

[5] The Commission says that it cannot pay benefits beyond the end of the established benefit period and that the Claimant has received all the weeks of benefits to which he is entitled.

Issue

[6] Is the Appellant entitled to additional weeks of EI benefits or an extension of his benefit period?

Analysis

[7] EI benefits are paid to claimants for each week of unemployment that falls within their benefit period.¹ A benefit period is set at 52 weeks unless a claimant qualifies for an extension.² The benefit period begins on the *later* of

- the Sunday of the week in which the interruption of earnings occurs, and
- the Sunday of the week in which the initial claim for benefits is made.³

[8] For EI purposes, a week begins on a Sunday and ends the following Saturday.

So, what is the Appellant's benefit period?

[9] I find that the Commission correctly established the Appellant's benefit period as September 5, 2021, to September 3, 2022.

[10] The Commission submitted documentation that detailed that the Appellant made his claim for EI benefits on Saturday, September 11, 2021. His Record of Employment noted his last paid day at his job was September 10, 2021, which means that the first day of his interruption of earnings was also September 11, 2021. Since both his interruption of earnings and application for benefits occurred in the same week, his benefit period would begin on the previous Sunday of that week.

[11] Therefore, the Appellant's benefit period began on Sunday, September 5, 2021. This means that his benefit period would end after 52 weeks on September 3, 2022. The established benefit period is consistent with the provisions of the Act.

[12] The Appellant did not dispute the calculation of his benefit period. But he says that he spoke with Commission representatives who told him that because he had worked a month during his claim, his benefits would end on September 24, 2022.

¹ See Section 12(1) of the *Employment Insurance Act*.

² See Section 10(2) of the *Employment Insurance Act*.

³ See Section 10(1)(a)(b) of the *Employment Insurance Act*.

[13] The Appellant also submitted that he received pay from his employer as late as the week of September 24, 2021, and questions the statements of the Commission that his last paid day was September 10, 2021.⁴

[14] The Appellant noted that he obtained this information from his bank which would be consistent with when the payment was received, but not necessarily when the work was completed that earned that pay.

[15] The Appellant's Record of Employment (RoE) notes that his last day of work was September 10, 2021. The Appellant did not dispute that his last working day was September 10, 2021. The Act is clear that it is the last working day that established the interruption in earnings, not the last day pay is received by a claimant.

[16] Further, the Commission submitted a recap of the benefits paid to the Appellant that clearly shows it started his claim and paid him benefits effective September 5, 2021.⁵ This date is consistent with the date of interruption of earnings and the Appellant's initial claim for benefits dated September 11, 2021.

[17] I am satisfied that the Appellant's last working day was September 10, 2021, and that any pay he received after this date was due to the delay between earning pay and receiving pay often referred to as "Pay in Arrears."

[18] Ordinarily, EI benefits can only be paid for weeks of unemployment that fall within the 52-week benefit period. For the Appellant, this would be from September 5, 2021, to September 3, 2022. However, the Act provides for extension to the benefit period under specific circumstances.

⁴ See GD8-1

⁵ See GD3-32 to 34

Is the Appellant entitled to an extension of his benefit period?

[19] I find that the Appellant is not entitled to an extension of his benefit period. The Appellant has not shown that his circumstances meet any of the legislative requirements.

[20] The Act details the circumstances under which an extension of a benefit period can be approved.⁶ Essentially, there are only four that could apply to the Appellant that would allow for an extension of his benefit period.⁷

[21] Responding to the Appellant's request for redetermination, the Commission verified with the Appellant that none of the enumerated circumstances matched his situation. It determined that it could not extend the Appellant's benefit period and maintained its original decision to end EI benefit payments for any period of unemployment after September 3, 2022.

[22] During testimony, I also covered the four possible circumstances that might support the granting of an extension to the Appellant's benefit period. He confirmed that none applied to him, except one. The Appellant revealed that he had received a severance payment but that it had been paid long after he had left his employer.

[23] The Appellant testified that he filed a complaint with the Alberta Employment Standards Program claiming he was entitled to severance pay. After Employment Standards completed a review, it obtained a voluntary payment of "Termination Pay" in the amount of \$1,694.17 for the Appellant from the employer. The Appellant was notified of this decision and the payment effective April 1, 2022. The Appellant confirmed that he did receive it. The Appellant also affirms that he immediately contacted the Commission when he received this payment.

[24] Termination pay is defined as a payment that reflects the amount of pay an employee would have received had they worked through a period of reasonable notice

⁶ See Subsections 10(10) to 10(15) and Section 24, of the *Employment Insurance Act*.

⁷ See Subsection 10(10) of the *Employment Insurance Act*.

before termination. When that notice of termination is not given and the termination of work is immediate, termination pay is given in lieu of that notice.

[25] The Employment Insurance Regulations (Regulations) detail what monies received by an employee are considered income.⁸ Further, it details what income is considered earnings for EI purposes.⁹ The Federal Court of Appeal has confirmed that severance or termination pay constitutes earnings resulting from employment.¹⁰

[26] The Regulations also detail what must be done with these earnings.¹¹ Ordinarily, these earnings must be allocated to weeks of unemployment. In practice it means that when termination pay is received. It is allocated to the week of unemployment when it is received, and to subsequent weeks based on the claimant's average weekly earnings until the total amount has been exhausted. If the allocation amount is large enough, there can be weeks when no EI benefits are payable.

[27] However, when this allocation of severance or termination pay results in weeks when a claimant is not entitled to receive EI benefits, the benefit period can be extended by the number of weeks for which EI benefits were not paid.¹²

[28] I said earlier that ordinarily this is the case. However, during the Covid-19 pandemic the Act was amended to change this process.¹³ The Commission rightly points out that between September 27, 2020, and September 24, 2021, payments consistent with Section 36(9) of the Act were to be excluded from earnings.¹⁴

[29] Further, from September 25, 2021, until September 24, 2022, Section 36(9) of the Regulations was removed. Both actions mean that earnings that would ordinarily fall under the meaning of Section 36(9) were not to be allocated and therefore would not

⁸ See Section 35(1) of the *Employment Insurance Regulations*.

⁹ See Section 35(2) of the *Employment Insurance Regulations*.

¹⁰ See (*Canada (A.G.) v Savarie*, 1996 FCJ No. 1270)

¹¹ See Section 36(9) of the *Employment Insurance Regulations*.

¹² See Section 10(10)(b)

¹³ See Interim Order 10 Amending the *Employment Insurance Act*.

¹⁴ See Section 153.193 (a) of the *Employment Insurance Act*.

affect EI benefits payable. The Commission's submissions confirm that the Appellant's termination pay was not allocated to any weeks of unemployment.¹⁵

[30] Since these earnings would not impact EI benefits payable and create weeks when no benefits would be paid, the provisions of Section 10(10)(b) are not activated.

[31] What this means is that the Appellant's benefit period cannot be extended because he was in receipt of earnings paid resulting from the complete severance of his employment. Nor did any of the other provisions in the Act that support an extension to his benefit period apply to the Appellant.

[32] But the Appellant contends that regardless of these facts, he believes that he was not given accurate information by the Commission regarding the end date of his claim. He says that because they told him his claim would end on September 24, 2022, he should receive benefits at least up until he started working again on September 13, 2022.

Is the Appellant entitled to EI benefits by virtue of erroneous information from the Commission?

[33] I find that regardless of what the Commission may have told the Appellant regarding the end date of his claim. He is not entitled to receive EI benefits for weeks of unemployment beyond September 3, 2022.

[34] I have already found above that the Commission correctly established the Appellant's benefit period as ending September 3, 2022. I have also found that he is not eligible to have his benefit period extended. So, all that remains is whether an error in information provided by the Commission is sufficient to allow the payment of EI benefits beyond the end date of his claim.

[35] The Appellant says that he was told by Commission representatives that his claim would end on September 24, 2022. He says that he called the Commission to

¹⁵ See GD3-32 to 34

report that he had received the termination pay. He claims that he was told that there would not be any impact on his benefits and that because he had worked during his claim that his benefit period would end on September 24, 2022. He says that he should be paid at least one more week of benefits to account for the period of unemployment between September 4, 2022, and September 12, 2022, the day before he returned to work.

[36] I am inclined to believe that the Appellant called the Commission, and some reference was made to September 24, 2022, and he came away from the conversation with the belief that his claim was valid until then.

[37] However, the payment of EI benefits is not based on what the Commission representative says, nor what the Appellant understood, but on whether the Appellant is entitled to benefits. It is well-established law that even if the Commission should provide erroneous information, benefits cannot be paid to a claimant who is not entitled.¹⁶

[38] Further, it is not within my jurisdiction to rewrite nor interpret the Act in any manner contrary to its plain meaning even in the interest of equity or compassion.¹⁷

[39] Simply, the Appellant's benefit period correctly ended September 3, 2022, and no further EI benefits can be paid for weeks of unemployment beyond that date.

Conclusion

[40] The appeal is dismissed. The Appellant is not entitled to EI benefits for a week of unemployment beyond September 3, 2022, based on this established claim.

Mark Leonard

Member, General Division – Employment Insurance Section

¹⁶ See (*Granger v. C.E.I.C.*, A-684-85)

¹⁷ See (*Canada (A.G.) v. Knee*, 2011 FCA 301)