



[TRANSLATION]

Citation: *LG v Canada Employment Insurance Commission*, 2023 SST 289

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

Decision

Appellant: L. G.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (511581) dated August 8, 2022 (issued by Service Canada)

Tribunal member: Normand Morin
Type of hearing: In person
Hearing date: January 19, 2023
Hearing participant: Appellant
Decision date: March 3, 2023
File number: GE-22-3016

Decision

[1] The appeal is dismissed. I find that the Canada Employment Insurance Commission (Commission) was justified in denying the Appellant Employment Insurance (EI) special benefits (sickness benefits) from May 1, 2022, because she got this type of benefit for the maximum number of weeks she was entitled to.¹

Overview

[2] On December 22, 2021, the Appellant applied for EI sickness benefits (special benefits) after she stopped working as a legal assistant for the employer X on December 22, 2021.²

[3] A benefit period was established effective January 9, 2022.³

[4] On May 1, 2022, the Appellant made a renewal claim for EI benefits (sickness benefits).⁴

[5] On May 30, 2022, the Commission told her that she wasn't entitled to EI sickness benefits from May 1, 2022, because she had received such benefits for the maximum number of weeks she was entitled to them, that is, 15 weeks.⁵

[6] On August 8, 2022, after a request for reconsideration, the Commission told her that it was upholding the May 30, 2022, decision.⁶

[7] The Appellant argues that she should be entitled to get sickness benefits for more than the 15 weeks she got. She says that she stopped working on December 22, 2021, for medical reasons. She was supposed to have surgery in January 2022, but

¹ See the provisions of section 12(3)(c) of the *Employment Insurance Act* (Act), in force until December 17, 2022.

² The Record of Employment (ROE) that the employer issued on January 14, 2022, says that the Appellant's last day paid was January 7, 2022. In a statement to the Commission on March 7, 2022, the Appellant said that she had stopped working on December 22, 2021, but that the employer had paid her vacation pay for the period from December 24, 2021, to January 7, 2022, which explains why the ROE indicates January 7, 2022, as the last day paid—GD3-3 to GD3-14.

³ See GD3-1 and GD4-1.

⁴ See GD3-15 to GD3-24.

⁵ See GD2-12, GD3-25, and GD3-28.

⁶ See GD3-33.

because of the COVID-19⁷ pandemic, she had the surgery on April 11, 2022. After her surgery, she convalesced until July 15, 2022. She went back to work on July 18, 2022, but she stopped receiving sickness benefits on April 30, 2022. She argues that it isn't her fault that she was unable to work for health reasons for longer than expected. She says that this situation has hurt her financially. She argues that, as compensation, she should be afforded a measure similar to the ones that made it easier for people who had lost their jobs to access EI benefits because of the pandemic. She also argues that she should be entitled to get sickness benefits for more than 15 weeks, given that the Government of Canada announced measures relating to this as early as 2021. In addition, she argues that the government should be flexible for those unable to enrol in a sickness benefit plan with their employer, given how costly such coverage can be because of their age. On September 12, 2022, the Appellant challenged the Commission's reconsideration decision. That decision is now being appealed to the Tribunal.

Issue

[8] I have to decide whether the Commission was justified in denying the Appellant EI special benefits (sickness benefits) from May 1, 2022.⁸

Analysis

[9] Under the *Employment Insurance Act* (Act), the maximum number of weeks for which sickness benefits (special benefits) could be paid in a benefit period because of illness, injury, or quarantine was 15 until legislative changes came into force for claims for EI benefits made before [sic] December 18, 2022.⁹

[10] For claims made on or after December 18, 2022, legislative changes came into force that increased the maximum to 26 weeks.¹⁰

⁷ Coronavirus disease 2019.

⁸ See the provisions of section 12(3)(c) of the Act, in force until December 17, 2022.

⁹ See the provisions of section 12(3)(c) of the Act, in force until December 17, 2022.

¹⁰ See the provisions of section 12(3)(c) of the Act, in force as of December 18, 2022. See also the *Budget Implementation Act, 2021, No. 1*, chapter 23 of the Statutes of Canada, 2021.

[11] In this case, given that the Appellant's benefit period was established effective January 9, 2022, and she made her renewal claim for benefits on May 1, 2022, I find that she can't get sickness benefits (special benefits) for more than the 15 weeks she got.

[12] The Appellant's testimony and statements indicate the following:

- a) She should be entitled to get sickness benefits for more than the 15 weeks she got.¹¹
- b) She can't be blamed for the wait time for her surgery or for the amount of time she was unable to work for medical reasons after she stopped working on December 22, 2021.¹²
- c) On October 28, 2021, the surgery and perioperative department at the CHU de Québec-Université Laval [Québec university medical centre-Laval University] told her that it was planning her surgery for January 2022. It said that the six-month wait time based on her status had been exceeded at that point (October 28, 2021).¹³
- d) Because of the COVID-19 pandemic, the wait time for her right hip surgery was extended. She had the surgery on April 11, 2022.¹⁴
- e) Because of the amount of time that passed before she had surgery, her physical condition deteriorated, and her health problems worsened (mobility issues).¹⁵
- f) She then convalesced until July 15, 2022. She went back to work on July 18, 2022.¹⁶

¹¹ See GD5-1 and GD5-2.

¹² See GD5-1 and GD5-2.

¹³ See GD2-13 and GD3-29.

¹⁴ See GD2-10, GD2-14, GD3-26, GD3-31, GD5-1, and GD5-2.

¹⁵ See GD2-14, GD3-30, GD5-1, and GD5-2.

¹⁶ See GD2-10, GD2-14, GD2-15, GD3-26, GD3-31, and GD3-32.

- g) She stopped receiving sickness benefits on April 30, 2022.
- h) She should not be subject to the 15-week limit set out in the Act for sickness benefits, since she had no control over the wait times imposed by the health system. She points out that it isn't her fault that she was unable to work for health reasons for longer than expected.¹⁷
- i) The people who lost their jobs after businesses, stores, and public places closed weren't the only ones affected by the consequences of the pandemic.¹⁸
- j) Although she didn't lose her job because of the pandemic, she could not work in her job anymore for medical reasons. The pandemic is also one of the reasons why her surgery was delayed (for example, health service backlogs due to COVID-19, problem with hospital room availability, understaffed operating rooms).¹⁹
- k) She says the fact she could not have surgery within a reasonable time because of the COVID-19 outbreaks has hurt her financially. In her view, it would be fair to be financially compensated, like the people who suffered financial losses as a result of the pandemic (for example, closures of businesses, stores, and public places) and who benefited from the government measures to facilitate access to EI benefits.²⁰
- l) The health care delays related to COVID-19 should have led to government measures being also adopted for claimants entitled to sickness benefits (special benefits), so as not to limit their entitlement to such benefits to 15 weeks.²¹

¹⁷ See GD3-32, GD5-1, and GD5-2.

¹⁸ See GD5-1 and GD5-2.

¹⁹ See GD5-1 and GD5-2.

²⁰ See GD5-1 and GD5-2.

²¹ See GD5-1 and GD5-2.

- m) In November 2022, the Government of Canada announced changes to the Act to increase the maximum number of weeks for which sickness benefits could be paid to more than 15 weeks. These changes were already included in the government's 2021 budget and were supposed to come into force in January 2022. Given that she had no control over the time it would take for the changes to come into force, the 15-week limit for sickness benefits should not apply to her, especially since it was already considered insufficient when the budget was passed in 2021.²²
- n) Even though the announced legislative changes weren't yet in force when she received 15 weeks of sickness benefits (from January 16, 2022, to April 30, 2022), they could apply to her.²³
- o) Because of her age, she was no longer covered by her employer's sickness benefit plan when she stopped working in December 2021.²⁴ To have such insurance coverage, she would have had to buy a private plan that was too expensive.²⁵
- p) As a result, she considers herself a victim of ageism when it comes to group insurance. You are more likely to need medical care when you are older or near the end of your career than when you are starting your career. So, she should get financial support from the government. She argues that the government should be flexible when someone has a health problem associated with aging.²⁶

[13] Based on the provisions of the Act that apply to the Appellant's case, when her benefit period was established effective January 9, 2022, and when she applied to

²² See GD5-1 and GD5-2.

²³ See GD5-1 and GD5-2.

²⁴ See GD3-6.

²⁵ See GD5-1 and GD5-2.

²⁶ See GD5-1 and GD5-2.

renew her claim for benefits on May 1, 2022, the maximum number of weeks for which she could get sickness benefits (special benefits) was 15.²⁷

[14] The Appellant received such benefits for the period from January 16, 2022, to April 30, 2022,²⁸ that is, for the maximum 15 weeks she was entitled to them.

[15] I can't accept the Appellant's argument that she should get sickness benefits for more than 15 weeks because the surgery delay was related to the pandemic, so she should be afforded measures to facilitate access to benefits, like the people who lost their jobs because of the pandemic.

[16] Despite the relevance of her comments on this point, I note that when the Government of Canada changed the Act to mitigate the economic effects of the pandemic and to facilitate access to benefits with the implementation of "temporary measures," it didn't include provisions to increase the maximum number of weeks for which sickness benefits (special benefits) could be paid.²⁹ The number remained at 15.

[17] I don't accept the Appellant's argument that the maximum number of weeks of sickness benefits she can get should be more than 15, given that the Government of Canada announced changes to the Act relating to this in November 2022, that these changes were already included in the Government of Canada's 2021 budget, and that they were supposed to come into force in January 2022.

[18] On this point, I am of the view that, even though Parliament expressed the intention to increase the number of weeks for which claimants could receive sickness benefits (special benefits) to more than 15 weeks as early as 2021, the fact is that all the legislative steps had to be completed first before measures relating to this could come into force.³⁰

²⁷ See the provisions of section 12(3)(c) of the Act, in force until December 17, 2022.

²⁸ See GD4-1.

²⁹ See Part VIII.5 of the Act: Temporary Measures to Facilitate Access to Benefits.

³⁰ See the *Budget Implementation Act, 2021, No. 1*, chapter 23 of the Statutes of Canada, 2021.

[19] I note that, following the Canadian government's announcement on this issue in November 2022, claimants are able to get sickness benefits (special benefits) for up to 26 weeks for claims made on or after December 18, 2022. There is nothing in the Act to suggest that this measure has a retroactive effect, for claims made before December 18, 2022.

[20] I also can't accept the Appellant's argument that the government should be flexible and provide financial support to workers who can't afford to enrol in their employer's sickness benefit plan because of their age, among other things. There are no such provisions in the Act.

[21] In summary, the Appellant can get sickness benefits for only up to 15 weeks, even though she was still unable to work for medical reasons after the period for which she received sickness benefits, that is, the period from January 16, 2022, to April 30, 2022.³¹

[22] The Appellant got all the sickness benefits she was entitled to.³²

[23] While I wholly sympathize with the Appellant's case, the Federal Court of Appeal (Court) tells us that adjudicators, including the Tribunal, aren't permitted to rewrite the Act or to interpret it in a manner that is contrary to its plain meaning.³³

Conclusion

[24] I find that the Commission was justified in denying the Appellant EI special benefits (sickness benefits) from May 1, 2022, because she got this type of benefit for the maximum number of weeks she was entitled to.

[25] This means that the appeal is dismissed.

Normand Morin

Member, General Division – Employment Insurance Section

³¹ See the provisions of section 12(3)(c) of the Act, in force until December 17, 2022.

³² See the provisions of section 12(3)(c) of the Act, in force until December 17, 2022.

³³ The Court established this principle in *Knee*, 2011 FCA 301.