



Citation: *JK v Canada Employment Insurance Commission*, 2023 SST 1136

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: J. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (571410) dated February 27, 2023 (issued by Service Canada)

Tribunal member: Teresa M. Day

Type of hearing: Teleconference

Hearing date: June 14, 2023

Hearing participant: Appellant

Decision date: June 15, 2023

File number: GE-23-700

Decision

[1] The appeal is dismissed.

[2] The Appellant is entitled to 15 weeks of regular employment insurance (EI) benefits. He has received these 15 weeks. He is not entitled to any additional weeks of regular EI benefits on his claim.

Overview

[3] The Appellant applied for regular EI benefits. The Respondent (Commission) determined he was entitled to 15 weeks of regular EI benefits. His claim started on September 18, 2022 and, after serving a one-week waiting period, he received EI benefits from September 25, 2022 until the week of January 1, 2023.

[4] The Appellant asked the Commission to reconsider its decision to pay him 15 weeks of EI benefits. He said he should be paid additional weeks of benefits because there was a period of time he was unable to work at his truck driving job because the provincial Ministry of Transportation (MTO) delayed processing the renewal of his commercial driving licence. He asked the Commission to add another 400 hours to the 804 insurable hours reported on his Record of Employment. With these additional hours included in the calculation of his entitlement, he would get more weeks of EI benefits on his claim. The Commission declined his request. It said it must calculate his weeks of entitlement based on the law and cannot adjust the result because of the Appellant's unfortunate circumstances.

[5] The Appellant appealed to the Social Security Tribunal (Tribunal). He asked the Tribunal to add the 400 hours he would have worked if the MTO had not delayed his licence renewal. He says the decision to pay him only 15 weeks of EI benefits is unfair and that the Commission should take responsibility for the MTO's negligence and the serious financial difficulties he experienced as a result.

[6] I wish I could assist the Appellant, but I must agree with the Commission. The Tribunal does not have discretion to vary the formula in the *Employment Insurance Act* (EI Act) for calculating weeks of entitlement.

[7] The Appellant is only entitled to 15 weeks of regular EI benefits on his claim. This decision explains why.

Issues

[8] How many weeks of regular EI benefits is the Appellant entitled to receive?

[9] Can he be paid any additional weeks of regular EI benefits?

Analysis

[10] The law sets out a specific formula for determining how many weeks of regular EI benefits a claimant is entitled to¹.

[11] The calculation involves considering the following factors:

- a) the Regional Rate of Unemployment (RRU) in the Appellant's area,
- b) the dates of the Appellant's qualifying period,
- c) the hours of insurable employment the Appellant accumulated within his qualifying period, and
- d) the maximum weeks of entitlement according to the Table in Schedule 1 of the EI Act.

[12] I will determine how many weeks of regular EI benefits the Appellant can receive according to the law.

[13] Then I will consider whether he can be paid any more regular EI benefits on his claim.

¹ The formula is set out in section 12(2) of the *Employment Insurance Act* (EI Act).

Issue One: Weeks of entitlement to EI benefits

A) What is the RRU in the Appellant's area?

[14] The Commission determined the Appellant was residing in the Central Ontario region when he applied for EI benefits on October 3, 2022². This is supported by the address and postal code the Appellant gave on his application for EI benefits.

[15] The Government of Canada determines the monthly RRU for each region. When the Appellant submitted his application for EI benefits, the RRU in his region was 5.1%³.

[16] The Appellant does not dispute either of these determinations and I see no evidence that contradicts them. Therefore, I accept that the Appellant resided in the Central Ontario region and that the RRU in that region was 5.1% at the time he applied for regular EI benefits.

B) What is the Appellant's qualifying period?

[17] The law says a claimant's qualifying period is the shorter of:

- a) The 52-week period immediately before the start of the claim (benefit period),
and
- b) The first day of an immediately preceding benefit period and ends with the day before the beginning of the new benefit period⁴.

[18] The Commission says the Appellant previously established a benefit period starting on November 28, 2021⁵. He confirmed this at the hearing⁶.

[19] This means the Appellant's qualifying period starts on November 28, 2021 and runs until September 18, 2022⁷. He does not dispute this.

² See GD3-20 and GD3-21.

³ See GD3-22 to GD3-25.

⁴ This is set out in section 8(1) of the EI Act.

⁵ See GD4-1.

⁶ I read the Commission's statement to the Appellant and he said it was correct.

⁷ This is the effective date of the Appellant's new claim.

C) How many hours of insurable employment does the Appellant have in his qualifying period?

[20] The Appellant's Record of Employment (ROE) lists his first day worked as April 11, 2022 and his last paid day as September 14, 2022. The ROE says he accumulated 804 hours of insurable employment during this period.

[21] The Appellant had no other employment during his qualifying period⁸.

[22] The Commission determined the Appellant had 804 hours between November 28, 2021 and September 18, 2022. The Appellant does not dispute this determination and I see no evidence that contradicts it.

[23] Therefore, I find as fact that the Appellant has 804 hours of insurable employment in his qualifying period.

D) How many weeks of regular EI benefits is the Appellant entitled to according to the Table?

[24] The Table in Schedule 1 of the EI Act sets out the maximum number of weeks of benefits a claimant can receive. This table lists the entitlement weeks based on a claimant's RRU and the number of hours of insurable employment in their qualifying period⁹.

[25] The Appellant's RRU is 5.1% and he has 804 hours of insurable employment in his qualifying period. The Table in Schedule 1 clearly sets out that with these variables the Appellant is entitled to 15 weeks of EI benefits¹⁰.

[26] The Appellant agrees this is what the Table says he is entitled to.

[27] I therefore find that the Appellant is entitled to 15 weeks of regular EI benefits for the claim he started on September 18, 2022.

⁸ He confirmed this at the hearing.

⁹ See section 12(1) of the EI Act.

¹⁰ See GD4-5.

Issue Two: Can the Appellant be paid any more weeks of EI benefits?

[28] The calculation to determine the number of weeks of EI benefits a claimant is entitled to is purely mathematical. The caselaw tells us this determination is not a discretionary decision¹¹.

[29] At the hearing, the Appellant acknowledged he has received 15 weeks of regular EI benefits on his claim. He also said he understands how the Commission came up with that number.

[30] But he is asking for more weeks of EI benefits because of what he went through when he stopped working¹².

[31] He estimates he would have had at least 400 additional hours of insurable employment in his qualifying period if the MTO had not taken so long to process the renewal of his driver's licence¹³. He asked me to add these 400 hours to the 804 hours reported on his ROE so he can receive additional weeks of EI benefits on his claim¹⁴.

[32] He also said he experienced serious financial problems because of the MTO's actions, including the premature end of his driving season when the employer was forced to replace him with another driver. He is asking for "fairness" and for the Commission to take responsibility for the problems caused by the MTO, which he says is just another part of the government.

[33] I appreciate that the Appellant was hoping the Tribunal had some discretion to order the Commission to pay further weeks of EI benefits to him. However, the law doesn't allow any discretion with respect to the calculation of a claimant's weeks of entitlement to EI benefits.

¹¹ See *CUB 63948*.

¹² He described what happened at GD3-26, GD3-28, GD2 and GD2A.

¹³ See also GD3-26, GD3-28, GD2 and GD2A.

¹⁴ According to the Table in Schedule 1, the Appellant could have received 21 weeks of EI benefits if he had 400 more hours of insurable employment in his qualifying period.

[34] The number of weeks a claimant can receive is prescribed by subsection 12(2) of the EI Act and there is no room to consider anything but the factors I have identified in paragraph 11 above.

[35] This means the calculation in subsection 12(2) of the EI Act must be strictly applied and I cannot make an exception for the Appellant¹⁵. I do not have discretion to vary the clear wording in the EI Act, no matter how compelling the Appellant's arguments or circumstances may be¹⁶. 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.

[36] I have found that the Appellant's maximum entitlement to regular EI benefits on his claim is 15 weeks. He has received 15 weeks of regular EI benefits. This means he cannot receive any further weeks on this claim.

Conclusion

[37] The Commission correctly determined that the Appellant is entitled to receive 15 weeks of regular EI benefits for the claim he started on September 18, 2022. He has received these 15 weeks. This means he is not entitled to any further weeks of regular EI benefits on this claim.

[38] The appeal is dismissed.

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

¹⁵ Either by adding in the 400 hours of employment he estimates he missed out on – or otherwise.

¹⁶ See *Canada (Attorney General) v. Knee*, 2011 FCA 301.