



Citation: *FM v Canada Employment Insurance Commission*, 2023 SST 967

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

Decision

Appellant: F. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (527969) dated September 1, 2022 (issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Videoconference

Hearing date: January 25, 2023

Hearing participant: Appellant

Decision date: January 31, 2023

File number: GE-22-3197

Decision

[1] The appeal is dismissed.

[2] The Claimant's benefit period cannot be extended to allow her to collect all the weeks of benefits she is entitled to.

[3] This means she will not be able to collect all 50 weeks of benefits.

Overview

[4] The Claimant applied for employment insurance (EI) benefits on September 21, 2021; however, she was not paid any benefits until December 2021, because the Canada Employment Insurance Commission (Commission) decided they could not pay the Claimant benefits until December 2021 because the Claimant was in school.

[5] The Claimant says she is entitled to 50 weeks of benefits, but has not been paid them. She says her claim ended before she got all 50 weeks.

[6] The Commission says they cannot extend the Claimant's benefit period to allow her to collect more benefits.¹ They say the reason she did not collect all her benefits is due to their decision they could not pay her benefits for the months she was in school.

[7] I have to decide if the Claimant's benefit period can be extended to allow her to collect all 50 weeks of benefits she is entitled to.

Matter I have to consider first

Post-hearing documents

[8] At the hearing the Claimant asked if she could send in some extra documents she says she sent to the Commission, which explained what her problem was with their original decision to not pay her 50 weeks of benefits.

¹ See GD03-29 and the Commission's reconsideration decision on the length of the Claimant's benefit period.

[9] I told the Claimant I would allow her to send in these documents and asked her if she could have them to me by January 27, 2023. She said it would not be a problem to send them in by that date, so I confirmed the deadline of January 27, 2023 to send me the documents.

[10] The Claimant did not send the documents by January 27, 2023, nor even by the date of this decision. So, I moved forward with making my decision without the documents the Claimant had asked to send in.

Issues

[11] The length of the Claimant's benefit period.

[12] The issue of the disentitlement for being in school.

Analysis

The length of the Claimant's benefit period.

[13] A benefit period is the time where a claimant can collect their EI benefits. Generally, a benefit period lasts 52 weeks.²

[14] Once a benefit period ends, unless a person starts a new one, they cannot keep collecting EI benefits.

[15] It is possible that a benefit period can end before a person can collect all the weeks of benefits they are entitled to. This is what happened to the Claimant.

[16] The Claimant says she is entitled to 50 weeks of EI benefits, but only collected 41 weeks of benefits. She wants the missing weeks she is entitled to.

² See section 10(2) of the *Employment Insurance Act*

[17] I accept the Claimant is entitled to 50 weeks of EI, but only collected 41 weeks, as no party disputes these facts.³

[18] So, the real issue is not how many weeks of benefits the Claimant can get (since everyone agrees she could theoretically get 50 weeks) the real issue is what can be done to allow the Claimant to actually collect those 50 weeks?

[19] The Commission says there is nothing that can be done to allow the Claimant to collect all 50 weeks, because the Claimant's benefit period ended before she could collect all her weeks of benefits, and her benefit period cannot be extended.

[20] I find I agree with the Commission's submissions; the Claimant's benefit period cannot be extended.

[21] Generally, a benefit period (the time where you can collect EI benefits) lasts 52 weeks.⁴ Although there are a few reasons that would allow for a benefit period to be extended.

[22] Those reasons are:

[23] If, during the benefit period, the Claimant was in jail, in receipt of workers' compensation payment for an illness or injury, or was being paid under a provincial plan because they had to stop work due to their work being a risk to their unborn or nursing child.⁵

[24] The Claimant testified that none of these situations existed during her benefit period.

³ See GD04-3 where the Commission states as fact that the Claimant is entitled to 50 weeks of benefits, but only got paid 41 weeks of benefits.

⁴ Section 10(2) of the *Employment Insurance Act*

⁵ See section 10 of the *Employment Insurance Act*

[25] There is also the possibility to extend a benefit period, for certain reasons, if the Claimant was in receipt of what are called special benefits, but that is not relevant in the Claimant's case as she applied for, and received, regular benefits.⁶

[26] I find, that since it is 52 weeks between September 19, 2021 (the start date of the Claimant's benefit period) and September 17, 2022 (the date the Claimant's benefit period ended) and there are no grounds to extend the Claimant's benefit period, the benefit period cannot be extended beyond September 17, 2022.

[27] I understand this means the Claimant will not get a chance to collect all 50 weeks of her EI benefits, but there is nothing I can do, her benefit period cannot be extended.

The issue of the disentitlement for being in school.

[28] The Commission says the reason the Claimant did not collect all 50 weeks of her benefits before her benefit period ended is that they disentitled (in other words decided they could not pay the Claimant benefits) from September 20, 2021, to December 2, 2021, because she was in school.⁷

[29] It seems clear to me that if the Claimant had not been disentitled, she would have been able to collect all 50 weeks of benefits.

[30] However, I can only look at an issue the Commission has done a reconsideration on,⁸ so the Commission would have needed to have done a reconsideration on the issue of paying the Claimant benefits while she was in school in order for me to make a decision on it.

⁶ See her application on GD03-5 and the payment information on GD03-31 and 32.

⁷ See GD04-3 and GD04-4

⁸ See section 113 of the *Employment Insurance Act* which says I can only look at a decision made under section 112 of the *Employment Insurance Act* and a decision under section 112 is a reconsideration decision.

[31] The Commission says they did not do a reconsideration on the issue of the Claimant's availability while in school.⁹

[32] The Claimant argues that she did talk all about her schooling in her reconsideration request form, and I agree that she did; however, while she may have spoken about it, I do not see any official reconsideration decision from the Commission on that issue, nor do I see discussion about the Claimant's availability during the reconsideration process.¹⁰

[33] I find, that since no reconsideration decision was ever done on the issue of the Claimant's availability while in school, and the Commission did not even turn their mind to it during the reconsideration process, I do not have the jurisdiction to consider that issue.

[34] While it is a shame the Commission did not address the issue of the Claimant's availability while in school when the Claimant sent in her original request for reconsideration, since the Claimant did raise those issues, it is possible for the Claimant to request a reconsideration of the issue of her being paid benefits while in school, if she wants to.

[35] If she wanted the Commission to look at whether she was available while in school, and whether they can pay her benefits for those weeks, she would need to complete a request for reconsideration form (which can be found on the Commission's website, or she could call them, or visit a Service Canada Centre) and ask the Commission to reconsider their decision that she was not available from September 20, 2021, to December 2, 2021.

[36] There is no guarantee the Commission will do a reconsideration request, or if they do that, they will find in her favour, but the Claimant can ask if she wants, as it is an

⁹ See GD06 where I explicitly asked the Commission if they did a reconsideration request for the issue of the Claimant's availability.

¹⁰ GD03-28

option she could explore to see about getting all the weeks of benefits to which she is entitled.

Conclusion

[37] The appeal is dismissed.

[38] While the Claimant was not able to collect all her weeks of benefits before her benefit period ended, I cannot extend her benefit period.

[39] This means her benefit period ends on September 17, 2022, and she will not be able to collect all 50 weeks of benefits.

Gary Conrad

Member, General Division – Employment Insurance Section