



Citation: *SB v Canada Employment Insurance Commission*, 2023 SST 1647

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

Decision

Appellant: S. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (572587) dated March 7, 2023 (issued by Service Canada)

Tribunal member: John Noonan

Type of hearing: Teleconference

Hearing date: June 19, 2023

Hearing participants: Appellant

Decision date: June 27, 2023

File number: GE-23-962

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant, S. B., a worker in NL, was upon reconsideration by the Commission, notified that it was unable to pay her Employment Insurance sickness benefits on this claim from December 4, 2022 through to December 10, 2022, because she had not shown that she qualified for a waiver of the required waiting period , a condition of receiving sick benefits. The Tribunal must decide if the Appellant should be denied sickness benefits for the waiting period in question pursuant to 13 of the Act; and section 40(6) of the Employment Insurance Regulations (the Regulations).

Issue

[3] Issue # 1: Was the Appellant required to serve a waiting period, therefore not qualified to receive Employment Insurance Sickness Benefits during the first week of the claim in question?

Analysis

[4] The relevant legislative provisions are reproduced at GD4.

[5] Section 13 of the Act:

13 A claimant is not entitled to be paid benefits in a benefit period until, after the beginning of the benefit period, the claimant has served a waiting period of one week of unemployment for which benefits would otherwise be payable.

Issue 1: Was the Appellant required to serve a waiting period, therefore not qualified to receive Employment Insurance Sickness Benefits during the first week of the claim in question?

[6] Yes.

[7] The Appellant, applied for sickness benefits on December 5, 2022 and her claim was established effective December 4, 2022, the Sunday as prescribed by the Act.

[8] She was then required, as per section 13 of the Act, to serve a one week waiting period as she did not meet any of the conditions wherein the waiting period could be waived. These conditions are, as per section 40(6) of the Regulations:

The waiting period can be waived when a claim for sickness benefits is made and the claimant qualifies to receive sickness and, after the claimant stopped working, allowances, payments or other moneys are payable to the claimant by the employer or former employer, as sick leave pay.

[9] The Appellant submits that she cannot afford to lose this week of benefits.

[10] Her employer allowed / gave only 2 sick days per year.

[11] She had not received any paid sick leave that would, as per section 40(6) of the Regulations, allow for the waiving of the waiting period. GD4-4&5

[12] She was off work due to having contracted Covid.

[13] She submits she was not financially prepared to lose 46 hours pay during the one week waiting period.

[14] The Law is quite clear on this matter. Benefits are payable after a one-week waiting period; this is the first week of the established benefit period. The Act states that a benefit period starts on the Sunday of the week where the interruption of earnings occurs, or the Sunday of the week in which the initial claim for benefits is made, whichever is later.

[15] In this case, the Appellant and the Commission agree that the Appellant's last day of work was December 1, 2022. She applied for sickness benefits on December 5, 2022. Her benefit period was established as of December 4, 2022. This was a Sunday.

[16] I find that the Commission correctly and judicially determined the Appellants benefit period and the requirement to serve a one week waiting period based on the Act and Regulations.

[17] While this Member sympathizes with the Appellant's situation, neither I, the Commission or the Tribunal in general has any authority to circumvent, ignore or change the legislative requirements as dictated by the Act or have any discretion or authority to override clear statutory provisions and conditions imposed by the Act or the Regulations on the basis of fairness, compassion, financial or extenuating circumstances.

Conclusion

[18] Having given careful consideration to all the circumstances, I find that the Appellant has not shown that she qualified for any of the provisions that would allow a waiving of her waiting period from December 4, 2022 to December 10, 2022. The Appeal is dismissed.

John Noonan
Member, General Division – Employment Insurance Section