



Citation: *MA v Canada Employment Insurance Commission*, 2023 SST 389

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

Decision

Appellant: M. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (540911) dated October 6, 2022 (issued by Service Canada)

Tribunal member: Linda Bell

Type of hearing: Teleconference

Hearing date: February 15, 2023

Hearing participant: Appellant

Decision date: February 20, 2023

File number: GE-22-3659

Decision

[1] The appeal is dismissed.

[2] The Appellant can't be paid Employment Insurance (EI) benefits during the week of April 17, 2022. This is because the first week of her claim (benefit period) is the waiting period, during which no benefits are payable.

[3] The Commission deducted the Appellant's waiting period earnings correctly. This means the Appellant was paid the correct amount of EI benefits for the weeks of April 17, 2022, and April 24, 2022.

Overview

[4] The Appellant established a benefit period for EI sickness benefits starting on April 17, 2022. She submitted reports (claims) for the first two weeks, ending April 30, 2022. She declared earnings of \$191.00 for the week of April 17, 2022.

[5] The Commission determined the Appellant had to serve a one-week waiting period during the week of April 17, 2022. The Commission also determined the Appellant's wages of \$191.00 are waiting period earnings. So, the Commission deducted those earnings from her benefits in the week of April 24, 2022. It deducted the \$191.00 dollar for dollar from the \$610.00 weekly benefit rate. It paid the Appellant the remaining \$419.00 as sickness benefits for the week of April 24, 2022.

[6] The Appellant disagrees with the Commission. She appeals to the Social Security Tribunal. She says the Commission told her she would receive another payment of \$560.00 for the time she was off work sick from April 20, 2022, to April 30, 2022. She argued she should also be paid benefits for one day in the third week of her claim because she was still sick on May 2, 2022.

Issues

[7] Can the Appellant be paid benefits during the waiting period?

[8] Is the \$191.00 paid to the Appellant for the week of April 17, 2022, earnings?

[9] If so, are those earnings to be deducted from her benefits?

[10] Can I determine if benefits are payable to the Appellant for the week of May 1, 2022?

Analysis

Can the Appellant be paid benefits during the waiting period?

[11] No. The Appellant can't be paid benefits during the 1-week waiting period.

[12] Generally, a claimant is not entitled to be paid benefits until they have served a one-week waiting period.¹ But there is an exception where the Commission may waive a waiting period if:

- a) the claimant has suffered an interruption of earnings, **and**
- b) the claimant's employer pays the claimant paid sick leave after the claimant stopped working.²

[13] In this case the Appellant agrees that she didn't receive paid sick leave for the period she was off work from April 20, 2023, to May 2, 2023. She explained how her employer did pay her 40 hours of paid sick leave. But she asked her employer to reverse that payment. She says she wanted to save her sick pay so she could use it later that year. This is supported by the pay stubs she provided with her appeal.³

[14] As set out above, the evidence shows the employer didn't pay the Appellant sick leave for the period she was off work from April 20, 2022, to May 2, 2022. This means the Appellant must serve a one-week waiting period, during which no benefits are paid.

¹ This is explained in section 13 of the *Employment Insurance Act (Act)*.

² See section 39 of the Regulations.

³ See the pay stubs at pages GD2-16 and GD2-17 which show payment of 40 hours of sick pay on the pay period ending April 30, 2022. Then the deduction of 40 hours of sick pay on the following pay period ending May 15, 2022.

[15] The Appellant's benefit period started on April 17, 2022. So, her one-week waiting period must be served from April 17, 2022, to April 23, 2022. This is because that is the first week of her benefit period.

Did the Appellant work and receive earnings during the weeks under review?

[16] Yes. The Appellant agrees she worked on April 18, 2022, and April 19, 2022. She also agrees her employer paid her wages and vacation pay totalling \$191.00 for those days.

[17] The law says that earnings are the entire income that you get from any employment. The law defines both "income" and "employment." **Income** can be anything that you got or will get from an employer or any other person. It doesn't have to be money, but it often is. **Employment** is any work that you did or will do under any kind of service or work agreement.⁴

[18] Based on the evidence set out above, I find as fact, the Appellant worked and received earnings of \$191.00 during the week of April 17, 2022.

How are the earnings to be allocated and deducted from EI benefits?

[19] The law says that earnings must be applied (allocated) to certain weeks. The weeks that the earnings are allocated depends on why you received the earnings.

[20] Normally, earnings that are payable to you for work performed under a contract of employment are allocated to the weeks in which the work was performed.⁵ But earnings allocated to the waiting period do not prevent a waiting period from being served.

⁴ This is set out in section 35 of the *Employment Insurance Regulations* (Regulations).

⁵ See sections 36 and 39 of the Regulations.

[21] Once the waiting period is served, your earnings are deducted dollar for dollar, up to the maximum benefit rate. This allocation starts from the week after your waiting period and continues for three weeks immediately after the waiting period.⁶

[22] The Commission determined the Appellant's weekly benefit rate is \$610.00. As set out above, the Appellant earned \$191.00 during the week of April 17, 2022, which is the week in which she must serve the waiting period. This means her \$191.00 earnings are deducted dollar for dollar, in the week after the waiting period is served. For clarity I have set this out below.

Week of	Benefit Period Week	EI Benefits Payable
April 17, 2022	Week 1 – waiting period served	\$ Nil
April 24, 2022	Week 2 - \$610.00 - \$191 =	\$419.00

[23] The Commission allocated the Appellant's waiting period earnings as set out above. So, I find the Commission allocated her earnings correctly.

Can I determine if benefits are payable for the week of May 1, 2022?

[24] No. My authority to determine issues under appeal stems directly from the Commission's reconsideration decision.⁷ Not the issues the Appellant argues should be made.⁸

[25] The Appellant says she would like to receive EI benefits for Monday, May 2, 2022. She returned to work full-time on May 3, 2022. She earned more than \$700.00 that week, which is more than her \$610.00 weekly benefit rate for EI.

[26] As explained during the hearing, I don't have the authority to determine the Appellant's entitlement to benefits for the week of May 1, 2022. This is because there is

⁶ This is set out in section 19(1) of the Act and section 39 of the Regulations.

⁷ Section 113 of the Act states that a party who is dissatisfied with a decision of the Commission that was made under section 112 may appeal that decision to the Social Security Tribunal (Tribunal) The Tribunal is established under section 44 of the *Department of Employment and Social Development Act*.

⁸ See *Hamilton v. Canada (Attorney General)*, A-175-87

no evidence that she completed reports (claims) for that week. If the Appellant wishes to pursue a claim for that week, she is at liberty to contact the Commission.

[27] I acknowledge the Appellant says the Commission told her she was entitled to another payment of \$560.00. But the courts have consistently held that incorrect information which may be given by the Commission can't be upheld if it is contrary to the Act. Even if the information turns out to be against a claimant's interests.⁹

Conclusion

[28] The appeal is dismissed.

Linda Bell

Member, General Division – Employment Insurance Section

⁹ See *Granger v Canada (Attorney General)*, A-684-85.