



Citation: *SR v Canada Employment Insurance Commission*, 2023 SST 1468

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

Decision

Appellant: S. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (582609) dated April 24, 2023 (issued by Service Canada)

Tribunal member: Marc St-Jules

Type of hearing: Teleconference

Hearing date: August 2, 2023

Hearing participant: Appellant
Interpreter

Decision date: August 8, 2023

File number: GE-23-1248

Decision

[1] The appeal is dismissed.

[2] The Appellant can't receive more than 15 weeks of Employment Insurance (EI) sickness benefits.

Overview

[3] The Appellant had two jobs. One ended November 1, 2022. The other ended November 16, 2022. The Appellant applied for sickness benefits on December 1, 2022.

[4] Following the Appellant's application, the Commission started his claim effective November 20, 2022. The week of November 20, 2022, was the Appellant's waiting period. The Appellant was first paid for the week of November 27, 2022.

[5] The first payments were issued on December 13, 2022. The payments, however, were retroactive to the week of November 27, 2022. The Appellant continued to receive benefits until the week ending March 11, 2023. He received a total of 15 weeks of sickness benefits.

[6] The Appellant is arguing that the new law which came into effect later in December 2022 should apply to him. He remains unable to work. He is in dire financial need. He supplied medical notes that he is unable to work until at least August 2023. He is arguing that he should be entitled to 26 weeks given the new law which was introduced.

[7] The Commission disagrees. The Commission says the increase in weeks of sickness benefits only came into effect on December 18, 2022. The Commission says that this means that anyone who started their EI benefits before December 18, 2022, is still bound by the old law, which allows for a maximum of 15 weeks of EI sickness benefits.

Matter I have to consider first

[8] The hearing was originally scheduled for July 25, 2023. The Appellant was in attendance. English not being the Appellant's first language, there was a communication barrier. Communication with the Appellant was possible but limited.

[9] The Appellant asked if an interpreter was available. The Tribunal had not arranged an interpreter to be in attendance. The section on the appeal forms where an Appellant requests an interpreter was left blank.

[10] In the interest of Natural Justice, a new hearing was scheduled for August 2, 2023, with an interpreter. On August 2, 2023, the Appellant and the interpreter were in attendance and the hearing proceeded as scheduled.

Issue

[11] Is the Appellant entitled to receive more than 15 weeks of EI sickness benefits?

Analysis

[12] When you apply for EI benefits, the law describes the maximum weeks of entitlement for different kinds of EI benefits. For EI regular benefits, the maximum number of weeks depends on how many insurable hours you worked.¹

[13] But it's different for EI special benefits (EI special benefits include sickness, maternal, parental, and caregiver benefits). If you apply for EI special benefits, the maximum number of weeks of entitlement isn't based on the number of hours you worked. Instead, the law simply describes the maximum number of weeks of each type of benefit you can collect in one benefit period.²

[14] This appeal is about EI sickness benefits and the maximum weeks of entitlement.

¹ See Section 12(2) of the *Employment Insurance Act* (EI Act).

² See Section 12(3) of the EI Act.

[15] For claims established prior to December 18, 2022, you could only collect a maximum of 15 weeks of EI sickness benefits in one benefit period.³ If you wanted more than 15 weeks of sickness benefits, you would have had to work enough hours to start a new benefit period.

[16] The federal 2021 budget changed this. The government increased the number of weeks of EI sickness benefits, to a maximum of 26 weeks in one benefit period. But this part of the law didn't come into effect right away. Instead, it came into effect on December 18, 2022. And the law said that the new maximums for sickness benefits only applied to anyone who started a new benefit period on or after December 18, 2022. In other words, if your benefit period started **before** December 18, 2022, you were still covered under the old law.⁴

[17] The Commission says this is why the Appellant can't get more than 15 weeks of EI sickness benefits. The Commission says that his benefit period started on November 20, 2022, before the new law came into effect.

[18] The Appellant is correct in stating that the maximum sickness benefits was increased to 26 weeks. The Appellant argues that he still can't work. He supplied medicals to this effect. He is in dire financial need. He feels he should be entitled to more weeks as his claim started only four weeks before the new law came into effect.

[19] It is not unusual for a new or amended provision of a law not to have retroactive effect. Unless explicitly stated in the "new" provision, it is not retroactive. New laws or parts of laws are generally forward-looking. It is the case here.

[20] The Commission also looked at the possibility of additional weeks of benefits after the original 15 weeks of sickness benefits were exhausted. It concluded that to be eligible for more weeks, the Appellant would have to accumulate 600 hours of insurable employment to establish a new benefit period. Of course, due to the nature of his injury, the Appellant could not do that. Unfortunately, this means that the Appellant is unable to

³ See section 12(3)(c) of the Act as it was before December 18, 2022.

⁴ See section 336 of the *Budget Implementation Act, 2021, No. 1*. Order in Council 2022-1218 set December 18, 2022, as the date that section 336 came into effect.

establish a claim either for sickness benefits or regular EI benefits as long as he cannot work.

[21] I find that the Commission correctly interpreted the EI Act in this case. The Appellant can't receive additional sickness benefits in his benefit period. He also can't get regular benefits until he recovers.

[22] His arguments are based on fairness and financial need. While I sympathize with the Appellant's situation, I can't change the law. This is what the Federal Court of Appeal (FCA) has said.⁵

[23] Another FCA decision agrees that rigid rules sometimes lead to harsh results. Even so, the FCA says that I can only follow the plain written meaning of the law. I can't rewrite the law or add new things to the law to make an outcome that seems fairer for the Appellant.⁶

[24] The Appellant's situation is sad. Unfortunately, I can't do anything with the wording of the law to allow for additional benefits to be paid.

Conclusion

[25] The appeal is dismissed.

[26] This means the Commission made the correct decision. It applied the law as it should.

Marc St-Jules

Member, General Division – Employment Insurance Section

⁵ See *Pannu v Canada (Attorney General)*, 2004 FCA 90

⁶ See *Canada (Attorney General) v Knee*, 2011 FCA 301, at paragraph 9.