Citation: *BS v Canada Employment Insurance Commission*, 2023 SST 1730

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	B. S.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (586353) dated May 16, 2023 (issued by Service Canada)

Tribunal member:	Linda Bell
Type of hearing:	Teleconference
Hearing date:	August 29, 2023
Hearing participant:	Appellant
Decision date:	August 31, 2023
File number:	GE-23-1645

Decision

[1] B. S. is the Appellant. I am dismissing her appeal.

[2] The Appellant qualified for and established a claim (benefit period) for sickness Employment Insurance (EI) benefits, effective November 20, 2022. The Appellant received payment for the maximum 15 weeks of sickness benefits during this benefit period.

[3] The Appellant cannot cancel her November 20, 2022, benefit period to take advantage of legislative changes that were effective December 18, 2022?

Overview

[4] The Appellant stopped working on August 22, 2022, due to an illness. She submitted an application for EI sickness benefits on November 23, 2022.

[5] The Appellant's benefit period was established and commenced on November 20, 2022. The Appellant says she qualified to establish her benefit period effective December 18, 2022, so she should be entitled to 26 weeks of sickness benefits under the new legislation.

[6] Upon reconsideration, the Commission maintained that the Appellant qualified for and established her benefit period effective November 20, 2022. So, she was only entitled to 15 weeks of sickness benefits. The Appellant disagrees and appeals to the Social Security Tribunal (Tribunal).

Issues

[7] What date did the Appellant qualify for and establish her benefit period?

[8] What is the maximum number of weeks for sickness benefits as of November 20, 2022?

[9] Can the Appellant cancel her November 20, 2022, benefit period to start a benefit period later, so she would qualify for 26 weeks of sickness benefits?

Analysis

Benefit Period

[10] I find the Appellant qualified for sickness benefits and established a benefit period effective November 20, 2022. Here is what I considered.

[11] The Commission submits that the Appellant established a benefit period effective November 20, 2022, in accordance with the legislation that was in effect at that time.

[12] The Appellant says that during a December 12, 2022, telephone conversation, the Commission's officer assured her she would qualify under the new legislation for 26 weeks of sickness benefits.

[13] In order to be paid EI benefits, a claimant must submit an application (make an initial claim). If they **qualify** for benefits, a benefit period is **established,** and benefits become payable.[1]

– **Qualifying for benefits**

[14] The law states that a claimant **qualifies** for benefits if the claimant:

a) has had an interruption of earnings from employment; and

b) has the required number of hours of insurable employment in their qualifying period.[2]

[15] In this case, there is no dispute that the Appellant **qualifies** for sickness benefits, as requested in her November 23, 2022, application (initial claim) for benefits. First, she suffered an interruption of earnings.[3] Both her application for benefits and the Record of Employment (ROE) lists her last day worked and paid as August 22, 2022.[4] She

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[1] This is set out in Section 48 of the *Employment Insurance Act* (EI Act).
[2] See section 7 of the EI Act and section 93 of the *Employment Insurance Regulations* (EI Regulations).
[3] An interruption of earnings occurs when the following criteria are met: the claimant is laid off or terminated from their employment, the claimant doesn't work for seven consecutive days for that employer, **and** the claimant doesn't receive any earnings arising from that employment, as set out in section 14(1) of the EI Regulations.
[4] See pages GD3-6 and GD3-17.

testified that she never returned to work and remains off work due to her illness. So, I find she suffered an interruption of earnings in the week of August 21, 2022.

[16] Second, she has the required number of hours of insurable employment in her qualifying period.[5] The law states she needs to have at least 600 hours of insurable employment to qualify for sickness benefits.[6] Her ROE indicates she has 2160 hours of insurable employment up to August 22, 2022. So, she qualifies for benefits.

– **Establishing a benefit period**

[17] The law states that a benefit period is **established** on the later of

a) the Sunday of the week in which the interruption of earnings occurs, and

b) the Sunday of the week in which the initial claim for benefits is made.[7]

[18] In this case the Appellant suffered an interruption of earnings in the week of August 21, 2022. She submitted her initial claim (her application for benefits) on Wednesday, November 23, 2022. So, the Sunday of the week of the later of the two factors is November 20, 2022. Accordingly, I find the Appellant suffered an interruption of earnings and she has the required hours of insurable employment to **qualify** for sickness benefits, plus her benefit period was correctly **established,** effective November 20, 2022.

– **Entitlement to benefits**

[19] The Appellant argued that when she spoke with the Commission's officer on December 12, 2022, she had not yet **qualified** for benefits, and she could not have **established** a benefit period. She says she had not qualified for or established a benefit period because the Commission had not finalized her claim and she had not yet submitted her biweekly reports or her medical note. I disagree.

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[5] Section 8(1) of the EI Act states that a qualifying period is normally the 52 weeks immediately before the beginning of a benefit period.
[6] See section 7 of the EI Act and section 93 of the EI Regulations.
[7] This is set out in section 10(1) of the EI Act.

[20] As set out above, biweekly reports or a medical note are not listed as requirements to **qualify** for benefits or to **establish** a benefit period. Rather, biweekly reports and a medical note are required to prove **entitlement** to sickness benefits.

[21] The law states that in order for a claimant to be **entitled** to sickness benefits, they must submit a medical note completed by a medical doctor or other medical professional attesting to the claimant's inability to work and stating the probable duration of the illness, injury or quarantine.[8]

[22] The EI Act further states that a claimant is not **entitled** to receive payment of benefits until they complete their reports (make a claim) for each week claimed and show they meet the requirements for receiving the benefits claimed.[9]

[23] In this case, when the Appellant submitted her medical note and completed her biweekly reports (claims) she became **entitled** to receive payment of sickness benefits. She confirms she received payment for 15 weeks of sickness benefits. Accordingly, entitlement to benefits is different from qualifying for or establishing a benefit period.

The Maximum weeks for sickness benefits

[24] The law that was in effect on November 20, 2022, states that 15 weeks is the maximum number of weeks a claimant may receive for sickness benefits during a benefit period.[10]

[25] I agree with the Commission when it states the Appellant is only entitled to 15 weeks of sickness benefits. This is because she qualified for and established a benefit period effective on November 20, 2022. Once she submitted her medical note and completed her biweekly claims, she became entitled to payment for the maximum 15 weeks of sickness benefits, as set out in the EI Act which was effective at that time.

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[8] This is set out in section 40 of the EI Regulations.
[9] See section 49(1) of the EI Act.
[10] See section 12(3)(c) of the EI Act that was in effect from September 25, 2022, to December 17, 2022.

[26] The EI Act does not allow any discretion with respect to the duration of sickness benefits. The EI Act that was in effect on November 20, 2022, clearly states a claimant can receive up to a maximum of 15 weeks of sickness benefits in a benefit period.[11]

[27] It is not within the Tribunal's jurisdiction to ignore or change the legislation as it is clearly written, no matter how compelling the circumstances.[12]

[28] The Appellant is correct when she says the Government of Canada made changes to the EI Act. Specifically, those changes were included in the *Budget Implementation Act, 2021, No. 1.,* which included an increase to the number of weeks for sickness benefits up to 26 weeks.[13] But these changes only apply to claimants who qualify for and establish benefit periods on December 18, 2022, or later.[14] This means the Appellant is not entitled to 26 weeks of sickness benefits on her November 20, 2022, benefit period.

Can the Appellant cancel her November 20, 2022, benefit period?

[29] There is no provision in the law that would allow me to cancel the Appellant's November 20, 2022, benefit period so that she can postdate it to take advantage of the legislative changes that came into effect December 18, 2022.[15]

[30] The EI Act sets out two scenarios when a benefit period can be cancelled.

a) The benefit period has ended, and no benefits were **paid** or **payable** during the period;[16] or

b) Regardless of whether the benefit period has ended, if a person requests it, that portion of the benefit period immediately before the first week for which benefits

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[11] See *Brown v. Canada (Attorney General),* 2010 FCA 148.
[12] See *Canada (Attorney General) v Knee*, 2011 FCA 301.
[13] See section 307(2) of the *Budget Implementation Act, 2021, No. 1.*
[14] On November 17, 2022, her Excellency the Governor General in Council, on the recommendation of the Minister of Employment and Social Development, under subsection 339(3) of the *Budget Implementation Act, 2021, No. 1*, chapter 23 of the Statutes of Canada, 2021, fixes December 18, 2022, as the day on which subsection 307(2) and sections 323 and 336 of that Act come into force.
[15] See *Taylor v Canada (Attorney General),* A-84-90.
[16] Section 10(6)(a) of the EI Act.

> were paid or payable can be cancelled, if the person qualifies to establish a new benefit period starting that first week benefits were paid or payable. They must also show good cause for the delay in asking for the cancellation.[17]

[31] In this case, benefits have been paid on the November 20, 2022, benefit period. Also, this benefit period hasn't ended. So, the benefit period can't be cancelled based on the first option.

[32] I recognize that the Appellant may offer to pay back the benefits she received on the November 20, 2022, benefit period, to create a situation where benefits weren't **paid**. But the law doesn't provide for this option.

[33] Also, paying back the benefits received wouldn't help the Appellant. This is because a benefit period can't be cancelled if benefits were **paid** or **payable**. In this case, even if those weeks of sickness benefits were not paid out, the benefits were still payable because the Appellant made an initial claim for them and met the requirements for payment. So, she still would not be able to cancel her benefit period this way.

[34] The Appellant testified that she has not worked since August 22, 2022. Her insurable hours were used to qualify for and establish her November 20, 2022, benefit period. So, she has no insurable hours to qualify for and establish a new benefit period on December 18, 2022.

[35] The Appellant received the maximum 15 weeks of sickness benefits on her November 20, 2022, benefit period. So, she cannot cancel this benefit period in favour of establishing another on December 18, 2022, to benefit from the new legislation.

Other arguments

[36] The Appellant argued that the case law referred to by the Commission does not apply, because her case is unique. Specifically, she said she applied for benefits several months after she stopped working; she has more than enough hours to qualify for benefits on December 18, 2022; her application was not approved or finalized by the

[17] Section 10(6)(b) of the EI Act.

Commission until after December 18, 2022; she did not submit her reports or her medical note before the law changed on December 18, 2022; she was told by the Commission's officer that her claim would be set up for 26 weeks of sickness benefits.

[37] I agree that the decisions (case law) relied upon by the Commission may not be exactly on point with the same fact pattern as the Appellant's case. But case law, which comes from judicial decisions, often sets out legal principles or precedents which are binding upon administrative tribunals, even though the main issue or fact pattern may differ. That is the case here.

[38] I am truly sympathetic to the Appellant's circumstances. But my decision is not based on fairness or financial hardship. Even if the Commission's officer may have told the Appellant something different about her situation, I must make my decision based on the facts before me and the application of the EI law.[18] There are no exceptions and no room for discretion.

[39] The Federal Court of Appeal has said that rigid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme. However, tempting as it may be in such cases (and this may well be one), adjudicators, such as myself, are not permitted to rewrite legislation nor to interpret it in a manner that is contrary to its plain meaning.[19]

[40] If the Appellant wishes to pursue a complaint about the mis-information she received from Service Canada, she may wish to contact the Office for Client Satisfaction at https://www.canada.ca/en/employment-social-development/corporate/service-canada/client-satisfaction.html This website states the Office for Client Satisfaction (OCS) is a neutral organization that receives, reviews, and responds to suggestions, compliments, and complaints about Service Canada's delivery of services.

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[18] See *Granger v. Canada (Attorney General),* A-684-85.
[19] See *Canada (Attorney General) v Knee,* 2011 FCA 301 at para 9.

Conclusion

[41] The appeal is dismissed.

Linda Bell

Member, General Division – Employment Insurance Section