



Citation: *RY v Canada Employment Insurance Commission*, 2023 SST 788

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

Decision

Appellant: R. Y.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (571158) dated March 7, 2023 (issued by Service Canada)

Tribunal member: Elyse Rosen

Type of hearing: Teleconference

Hearing date: June 1, 2023

Hearing participant: Appellant

Decision date: June 1, 2023

File number: GE-23-1049

Decision

[1] The appeal is dismissed.

[2] The Appellant isn't entitled to reactivate the claim for parental benefits established in respect of her third child. There are no additional weeks of benefits payable under that claim.

Overview

[3] While the Appellant was on parental leave and receiving benefits in respect of her third child, she became pregnant with her fourth child.

[4] After her fourth child was born, she filed a new application for parental benefits.

[5] Although the benefit period established with respect to her third child had already ended at the time she filed her application, the Canada Employment Insurance Commission (Commission) processed the application as a renewal claim rather than as a new initial claim. It told her it couldn't pay her benefits because it couldn't reactivate the claim she had made in respect of her third child.

[6] The Appellant asked the Commission to reconsider its decision. But, the decision was maintained.

[7] The Appellant says that when she learned she was pregnant with her fourth child, she contacted the Commission to find out how she should proceed to ensure she would be able to receive parental benefits in respect of that child. She says she followed all of the Commission's instructions. This included going back to work during her leave to accumulate sufficient insurable hours to qualify for benefits, and filing a new application for benefits in the period she was told to file it.

[8] Prior to receiving the Commission's reconsideration decision, she had asked to terminate the benefit period for the claim she made in respect of her third child at an earlier date. She made this request so that she could start a new benefit period for the

claim in respect of her fourth child. But, the Commission says it still hasn't actioned (in other words, done anything about) that request.

[9] The Appellant is frustrated. She doesn't understand why she can't be paid parental benefits for her fourth child.

Issue

[10] Is the Appellant entitled to additional parental benefits under the claim she made in respect of her third child?

Analysis

[11] This appeal results from two errors made by the Commission:

- the failure to action a request by the Appellant to retroactively terminate (in other words, backdate) the benefit period established in respect of the claim for parental benefits made after having her third child
- an administrative error with respect to the processing of the Appellant's application for parental benefits made after having her fourth child

[12] As a result of those errors, I am unable to give the Appellant what she seeks—namely, a decision as to whether she is entitled to parental benefits for her fourth child.

[13] Instead, I am limited to deciding an issue that the Appellant never intended to bring before the Tribunal, and that she never asked the Commission to make a decision on: whether she is entitled to additional benefits under the claim she made in respect of her third child.

[14] Before I determine the sole issue that is before me, I will explain why it is the sole issue before me.

The Commissions errors

[15] In order to understand the errors made by the Commission, and why they limit the Tribunal's ability to decide the Appellant's entitlement to benefits under the claim

she made in respect of her fourth child, it is necessary to understand the facts leading up to the making of that claim.

[16] The Appellant's third child was born on April 20, 2021. She applied for, and began receiving, maternity benefits and extended parental benefits. I will call this the first claim.¹

[17] While the Appellant was receiving benefits under the first claim, she became pregnant.

[18] She and her husband contacted the Commission to determine what she would need to do to be able to receive benefits while she was caring for her fourth child.

[19] She was told she would have to go back to work while she was still on parental leave with her third child. This is because she would need to accumulate sufficient insurable hours to make another claim. So, the Appellant went back to work during her leave. The benefits she received under the first claim were reduced as a result.² She worked until right before her fourth child was born.

[20] Following the fourth child's birth, the Appellant and her husband contacted the Commission once again to confirm how to proceed. She was told to remain on the first claim until it was exhausted, and to file a new application for benefits when the benefit period on the first claim ended. She was told to file the new application by November 14, 2022.

[21] She followed these instructions. On November 10, 2022, she filed a new application for parental benefits for her fourth child. I will call this the second claim.

¹ Although I am calling it the first claim for the purposes of this decision, I note that the Appellant also made claims in respect of her first and second child as well. However, those claims aren't relevant to this decision.

² This is because her earnings were allocated to (in other words, applied to) her parental benefits.

[22] Following the filing of the second claim, the Appellant didn't receive any benefits for several weeks. She and her husband called the Commission multiple times to understand why. In most instances, she was told the claim was still being processed.

[23] However, during one of those calls, the agent told the Appellant that he suspected she was not receiving benefits because she didn't qualify to receive them. He said that for the Appellant to qualify for benefits, she would have to retroactively terminate the first claim, so that the second claim could begin on October 2, 2022. He explained that this was the only way for all of the hours she had worked to be included in her qualifying period.

[24] After receiving this explanation, the Appellant confirmed that she wanted to terminate the benefit period for the first claim retroactively to October 1, 2022. Unfortunately, the Commission never actioned that request.³ It is unable to explain why.⁴

[25] Instead of proceeding with the request to retroactively terminate the benefit period for the first claim, for reasons which the Commission is unable to explain⁵, the second claim was processed as a renewal claim rather than as a new initial claim.

[26] A renewal claim is the reactivation of an existing claim. When a new claim for benefits is started and there are weeks that are still payable on an existing claim, the Commission automatically reactivates (renews) the existing claim.

[27] However, in the Appellant's case, at the time that the second claim was made, there were no weeks still payable on the first claim. This is because the benefit period established for that claim had ended. So, there was no existing claim to reactivate.

[28] Since the second claim was mistakenly processed as a renewal of the first claim, and since the benefit period established for the first claim had ended, the Commission

³ See GD4-2.

⁴ See GD10-2.

⁵ See GD10.

advised the Appellant that it couldn't reactivate the first claim and couldn't pay her benefits. It sent her a decision letter to that effect.⁶

[29] The Appellant asked the Commission to reconsider its decision.

[30] The reconsideration agent told the Appellant that she should have applied for a new initial claim since the benefit period on the first claim had been exhausted.⁷ However, that is exactly what the Appellant had done. It's the Commission that failed to process it that way.

[31] The reconsideration agent also looked at whether the Appellant qualified for benefits if the second claim were to begin on October 23, 2022. She determined that the Appellant didn't qualify because she hadn't worked enough hours in that period.

[32] But, the reconsideration agent didn't consider whether the benefit period on the first claim could be retroactively terminated on October 1, 2022, so that the second claim could begin on October 2, 2022.

[33] Following her review, the reconsideration agent issued a reconsideration decision confirming that the first claim couldn't be renewed, as there were no payable weeks remaining on that claim.⁸ She also issued a decision stating that the Appellant couldn't be paid benefits for the second claim because the Appellant didn't have enough hours of insurable employment between October 24, 2021, and October 22, 2022.⁹ This decision states that the Appellant can make a request for reconsideration if she doesn't agree with the decision.

[34] Since my jurisdiction (in other words, authority to decide) in this appeal is limited to the issue that was decided by the Commission in its reconsideration decision,

⁶ See GD3-48.

⁷ See GD3-55.

⁸ See GD3-56.

⁹ See GD2-7.

unfortunately, I can only consider whether the Appellant is entitled to additional benefits under the first claim.¹⁰

[35] I don't have the authority to decide if the Appellant is entitled to parental benefits if the benefit period for the first claim were retroactively terminated on October 1, 2022, because there is no reconsideration decision on that issue.

The Appellant isn't entitled to additional benefits under the first claim

[36] I find that the Appellant isn't entitled to receive any additional weeks of parental benefits under the first claim.

[37] When you make a claim for benefits, your benefit period starts on the later of the week you stop working and have been without earnings for at least seven days, and the week you apply for benefits.¹¹ If you apply for extended parental benefits, it ends 78 weeks later.¹²

[38] In the Appellant's case, with respect to the first claim, she worked until April 20, 2021, and filed her claim on April 24, 2021.¹³ So, I find the benefit period for the first claim began April 25, 2021. It ended 78 weeks later, on October 22, 2022.

[39] When she filed the second claim on November 10, 2022, the benefit period on the first claim had already ended. So, clearly, no additional benefits were payable under that claim.

[40] However, the Appellant never asked for her second claim to be treated as a renewal of the first claim. The Commission did this of its own initiative.

[41] What the Appellant wanted, was to retroactively end the benefit period on the first claim October 1, 2022, so that she could begin the second claim on October 2, 2022.

¹⁰ See section 113 of the Employment Insurance Act (Act). Although in GD4 the Commission implies that I also have the jurisdiction to decide if the Appellant qualifies for benefits in the period from October 24, 2021, to October 22, 2022, I don't. That is because there is no reconsideration decision on that issue.

¹¹ See section 10(1) of the Act.

¹² See sections 10(2) and 10(13.01) of the Act.

¹³ See the application for benefits (GD3-

Next steps

[42] The Commission has indicated that following this decision it will review the Appellant's request for retroactive termination of her previous benefit period.

[43] I trust that the Commission will do this as quickly as possible, seeing as the Appellant has been without benefits since October 22, 2022.

[44] I also trust that it will take its own errors into account when it decides if the Appellant has good cause for the retroactive termination.

[45] I note that the Commission has already established that the Appellant qualifies for benefits on October 1, 2022, and that she could receive 29 weeks of standard parental benefits if a new benefit period were established effective October 1, 2022.¹⁴

Conclusion

[46] The Appellant isn't entitled to any additional weeks of parental benefits under the first claim.

[47] So, the appeal is dismissed.

Elyse Rosen
Member, General Division – Employment Insurance Section

¹⁴ See GD10.