



Citation: *NI v Canada Employment Insurance Commission*, 2024 SST 36

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** N. I.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Daniel McRoberts

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**Decision under appeal:** General Division decision dated June 2, 2023  
(GE-23-115)

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**Tribunal member:** Melanie Petrunia

**Decision date:** January 5, 2024

**File number:** AD-23-814

## **Decision**

[1] The appeal is allowed. The Appellant's claim for employment insurance (EI) benefits is antedated to April 24, 2022.

## **Background**

[2] The Appellant, N. I. (Claimant) applied for Employment Insurance (EI) regular benefits on August 3, 2022, but wanted her application to be treated as though it was made on an earlier date.

[3] The Respondent, the Canada Employment Insurance Commission (Commission) initially approved the Claimant's request to have her claim start on the earlier date. It later reviewed this decision and found that the Claimant did not qualify for benefits on the earlier date because she didn't have an interruption of earnings.

[4] The Claimant appealed to the General Division. The General Division found that the Claimant was separated from her employment on April 26, 2022, but did not have an interruption of earnings until June 28, 2022. It decided that the Claimant continued to receive periodic payments of earnings and benefited from the group insurance plan until the later date and that this prevented an interruption of earnings from occurring.

[5] The Claimant argues that the General Division made an error of law when it found that the severance she received, and her continued group insurance benefits prevented an interruption of earnings from occurring. The Commission agrees that the General Division made an error of law.

## **The parties agree on the outcome of the appeal**

[6] The parties agree that the General Division made an error of law when it found that the Claimant did not have an interruption of earnings until June 28, 2022. They agree that I should make the decision that the General Division should have made and that the Claimant is entitled to have her claim for benefits antedated to April 24, 2022.

## **I accept the parties' agreement**

[7] In its decision, the General Division found that the Claimant was terminated from her employment on April 26, 2022, and did not work for the employer for more than seven days after the termination.<sup>1</sup>

[8] The Claimant received a termination package from the employer. As part of this package, she received 9.33 weeks of severance and 8 weeks of pay in lieu of notice. She was also to receive \$40,000 in exchange for full and final release of all claims against the employer. The Claimant remained insured under the group insurance plan and enrolled in the pension plan until the end of the notice period, which was June 30, 2022.<sup>2</sup>

[9] According to the letter from the employer, the total amounts from the termination were to be paid in a lump sum payment. Instead, the employer continued to pay the Claimant periodic payments, equivalent to her salary, until June 28, 2022.<sup>3</sup>

[10] The General Division found that the periodic payments received by the Claimant until June 28, 2022, were earnings arising from her employment. It acknowledged that the payment of separation monies in periodic payments does not necessarily prevent an interruption of earnings from occurring.<sup>4</sup>

[11] The General Division found that an interruption of earnings does not occur when a claimant continues to receive periodic payments of earnings and continues to benefit from the employer's group insurance plan.<sup>5</sup>

[12] The General Division cited section 35(6) of the Employment Insurance Regulations (EI Regulations) which says that that any earnings referred to in section

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<sup>1</sup> General Division decision at paras 32 and 33.

<sup>2</sup> General Division decision at para 21.

<sup>3</sup> General Division decision at paras 22 and 24.

<sup>4</sup> General Division decision at para 42.

<sup>5</sup> General Division decision at para 43.

36(9) of the EI Regulations are not to be taken into consideration for the purposes of determining if an interruption of earnings has taken place.

[13] However, the General Division did not refer to or apply section 36(9). This section refers to all monies paid or payable to a claimant because of a separation. This includes extended coverage under group insurance, health, or dental group plans.

[14] Since the General Division issued its decision in this matter, the Federal Court of Appeal issued a decision addressing these sections of the EI Regulations.<sup>6</sup> In that case, a claimant was terminated and received a severance package that included continued salary and health coverage.<sup>7</sup>

[15] The Federal Court of Appeal confirmed that the continued health coverage constitutes earnings for the purposes of the EI Regulations. Once it was payable by reason of a lay-off or separation, it is no longer taken into account when determining whether an interruption of earnings had occurred.<sup>8</sup>

[16] The General Division made an error of law when it found that the Claimant did not have an interruption of earnings until June 28, 2022. I agree with the parties that the appropriate remedy is to give the decision that the General Division should have given.

[17] The Claimant qualified for benefits on April 24, 2022. The Commission had previously granted her antedate request and did not take issue with whether the Claimant had good cause for the delay in applying for benefits. The Claimant is entitled to an antedate of her claim to April 24, 2022.

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<sup>6</sup> See *Canada (Attorney General) v. Bacile*, 2023 FCA 161 addressing subsection 35(6) of the *EI Regulations*.

<sup>7</sup> See *Bacile* at para 2.

<sup>8</sup> See *Bacile* at para 11.

## **Conclusion**

[18] The appeal is allowed. The Claimant is entitled to an antedate of her claim to April 24, 2022.

Melanie Petrunia  
Member, Appeal Division