

Federal Court



Cour fédérale

Date: 20190916

Docket: T-210-12

Citation: 2019 FC 1173

Ottawa, Ontario, September 16, 2019

PRESENT: Madam Prothonotary Mandy Ayles

BETWEEN:

JENNIFER MCCREA

Plaintiff

and

**HER MAJESTY THE QUEEN IN RIGHT OF
CANADA**

Defendant

and

LUANA BELO

Claimant

JUDGMENT AND REASONS

[1] The Claimant, Luana Belo, brings this application for review of claims decision determination pursuant to section 8 of the Settlement Agreement reached in the context of this class action proceeding and approved by the Honourable Madam Justice Kane in her Order and

Reasons dated January 29, 2019. Ms. Belo seeks review of the determination of the Administrator of the EI Sickness Benefits Class Action dated May 30, 2019, which approved her claim for the benefit period commencing February 3, 2008 and determined that she was entitled to a total gross payment of \$5,070.00. Ms. Belo asserts that she is entitled to interest on the amount payable to her.

[2] Ms. Belo's claim for the benefit period commencing December 19, 2004 was denied by the Administrator. However, Ms. Belo has not sought a review of that portion of the Administrator's determination as part of this application.

[3] For the reasons that follow, I find that Ms. Belo is not entitled to interest on her Individual Payment and accordingly, the determination of the Administrator is upheld.

I. Background

[4] The background to the underlying class action is described in detail in *McCrea v Canada (Attorney General)*, 2013 FC 1278, [2013] FCJ No 1444 [*McCrea 2013*], *McCrea v Canada (Attorney General)*, 2015 FC 592, [2015] FCJ No 1225 (QL) [*McCrea 2015*] and the Order and Reasons of Madam Justice Kane dated January 29, 2019.

[5] In summary, the class action involved a claim by the representative Plaintiff that she and other individuals who became ill while in receipt of parental benefits were unlawfully denied sickness benefits under the *Employment Insurance Act*. The class action was certified but with a modified class definition. The Court refused to expand the class definition to include persons who, during the relevant period, were "advised orally or in writing by the defendants, the Commission or HRSDC, that they did not qualify for sickness leave because they were on

parental leave or not otherwise available to work at the time of their sickness leave application, on which advice and representations they relied in not applying for sickness leave”.

[6] For the purpose of this application, the details of the Settlement Agreement, its implementation and the application for review process are key.

[7] Section 4.02 of the Settlement Agreement defines the class as follows:

All persons who, during the period from March 3, 2002 to, and including, March 23, 2013:

- i) Applies for and were paid parental benefits under the EI Act or corresponding types of benefits under Quebec’s An Act Respecting Parental Insurance;
- ii) Suffered from an illness, injury or quarantine while in receipt of parental benefits;
- iii) Applied for sickness benefits in respect of an illness, injury or quarantine referred to in ii; and
- iv) Were denied a conversion of parental benefits to sickness benefits because:
 - a) the person was not otherwise available for work; or
 - b) the person had not previously received at least one week of sickness benefits during the benefit period in which the parental benefits were received.

[8] Pursuant to Section 5.01 of the Settlement Agreement, any person who can establish that they meet the class definition and received less than 15 weeks of sickness benefits during the benefit period in which the original application to convert to sickness benefits was made is eligible for an Individual Payment (as defined in the Settlement Agreement).

[9] Calculation of the Individual Payment is determined pursuant to Section 5.08 of the Settlement Agreement, which provides:

Upon receipt of a completed Claim, each Claimant who is determined to be an Eligible Class Member under section 5.01, shall be paid an Individual Payment in an amount calculated on the following basis:

$$(A-B) \times C$$

Where:

A= the number of weeks of sickness applied for during the benefit period (or attested to);

B= the number of weeks of sickness benefits paid to the Eligible Class Member during that benefit period; and

C= the Eligible Class Member's applicable weekly rate for that benefit period.

[10] Section 7 of the Settlement Agreement provides for a claims administration process for persons seeking to make a claim for benefits under the Settlement Agreement. The Administrator processes all claims and renders written determinations to claimants.

[11] Pursuant to Section 8 of the Settlement Agreement, a claimant may seek a review of the Administrator's determination by the Federal Court where the Administrator determines that a claim is not established and denies the claimant an Individual Payment.

[12] Section 8.05 of the Settlement Agreement provides that a designated Prothonotary of the Federal Court shall determine whether the claimant is an Eligible Class Member (as defined in the Settlement Agreement) or not and thereafter either uphold the Administrator's determination or reverse the Administrator's determination and refer the claim back to the Administrator for calculation and processing of the Individual Payment to the claimant.

II. The Administrator's Determination

[13] On February 18, 2019, the Claimant submitted a claim to the Administrator for sickness benefits for the periods commencing December 19, 2004 and February 3, 2008.

[14] By letter dated May 30, 2019, the Administrator transmitted its determination to the Claimant granting her claim in relation to the benefit period commencing February 3, 2008. The Administrator stated:

After a thorough review of your file, we have determined that you **are** eligible for an Individual Payment in accordance with the approved Settlement Agreement for the EI benefit period commencing February 3, 2008. A payment has been issued to you for 15 weeks at a benefit rate of \$338.00 per week for a total gross payment amount of \$5,070.00. Applicable taxes will be deducted from this amount.

III. Analysis

[15] In her Application for Review of Claims Decision Determination form, the Claimant seeks a review of the Administrator's determination on the following grounds:

I am seeking a review of the decision. The reason for my review request is that there is no interest added to the benefit amount. If in 2004 I was told I owed \$5,070.00, what would be the amount I owed with interest if I paid it on May 30, 2019, the date of this letter. I believe interest should be applied. This is the reason for my review request.

[16] The Claimant asserts that she is entitled to interest payable on the Individual Payment determined by the Administrator to be due and owing to the Claimant pursuant to the terms of the Settlement Agreement for the claims period commencing February 3, 2008.

[17] However, section 5.10 of the Settlement Agreement provides:

For greater certainty, the amounts payable to Eligible Class Members under this Settlement Agreement are inclusive of any other forms of damages, compensation or benefits, and all pre-judgment or post-judgment interest or other amounts that may be claimed by Class Members. [emphasis added]

[18] In approving the Settlement Agreement, Madam Justice Kane considered the fact that the Settlement Agreement would not provide for interest and stated in her Order and Reasons dated January 29, 2019:

[48] Class Members will not receive interest. However, any award of interest following trial would be discretionary. The Court notes that in the relevant period, interest rates were low. The Plaintiff and the Defendant both agree that the settlement, which provides 100% of the amount that the claimant would have received at the time of the illness, but without interest, remains a fair amount given the other attributes of this Settlement Agreement.

[19] Overall, Madam Justice Kane found that the beneficial features of the Settlement Agreement offset what has been abandoned (including interest) and that, taking into account all relevant factors, the Settlement Agreement is fair and reasonable and in the best interests of the Class Members.

[20] In light of the above, I find that the Claimant is not entitled to interest on her Individual Payment under the approved terms of the Settlement Agreement and accordingly, the Administrator's determination is upheld.

[21] There shall be no award of costs on this application.

JUDGMENT IN T-210-12

1. The Administrator's determination dated May 30, 2019 in relation to the application of Luana Belo is upheld.

"Mandy Ayles"

Prothonotary

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-210-12

STYLE OF CAUSE: JENNIFER MCCREA V. HER MAJESTY THE QUEEN
IN RIGHT OF CANADA and LUANA BELO

PLACE OF HEARING: OTTAWA, ONTARIO

JUDGMENT AND REASONS: MADAM PROTHONOTARY MANDY AYLEN

DATED: SEPTEMBER 16, 2019

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Luana Belo
For herself

FOR THE CLAIMANT