



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *M. T. v Canada Employment Insurance Commission*, 2018 SST 1324

Tribunal File Number: GE-18-2133

BETWEEN:

**M. T.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Charline Bourque

HEARD ON: September 26, 2018

DATE OF DECISION: September 26, 2018

## **DECISION**

[1] The appeal is dismissed.

## **OVERVIEW**

[2] The Appellant made a claim for Employment Insurance benefits, but the Commission notified her that she had accumulated only 408 insurable hours of employment between October 23, 2016, and February 3, 2018, but needed 665 insurable hours of employment to be entitled to benefits. The Appellant believes that her rights were infringed because the Commission did not consider the insurable hours of employment accumulated before her sick leave. She submits that she would have enough insurable hours of employment to qualify for Employment Insurance benefits, if a 104-week period were considered. Since she received only 15 weeks of sickness benefits and would have been entitled to 38 weeks of regular benefits, she would like to receive a minimum of 23 weeks of regular benefits, given how many insurable hours of employment she had. She adds that her employer required her to make the claim for sickness benefits. The Commission, in turn, submits that it could not consider the period the Appellant wanted it to because the Appellant had previously made a claim for benefits.

[3] The Tribunal must decide whether the Appellant had enough insurable hours of employment to establish a claim for Employment Insurance benefits on February 4, 2018.

## **ISSUE**

[4] Does the Appellant have enough hours to establish a claim for Employment Insurance benefits on February 4, 2018?

## **ANALYSIS**

[5] The relevant statutory provisions appear in the annex of this decision.

**Issue 1: Does the Appellant have enough hours to establish a claim for Employment Insurance benefits on February 4, 2018?**

[6] The Tribunal is of the view that a benefit period cannot be established on February 4, 2018, because the Appellant accumulated 198 insurable hours of employment but needed 665 insurable hours of employment to establish an Employment Insurance benefit period. The qualifying period is from October 23, 2016, to February 3, 2018, and cannot start before October 23, 2016.

[7] A person must have an interruption of earnings from employment and have acquired the number of hours of insurable employment in relation to the regional rate of unemployment to qualify to receive Employment Insurance benefits (*Employment Insurance Act* (EI Act), s 7(2)).

[8] The qualifying period for determining the number of insurable hours of employment accumulated by a claimant is the 52-week period immediately before the beginning of a benefit period under section 10(1) or the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period under section 10(1) (EI Act, s 8(1)).

[9] However, this qualifying period can be extended by the aggregate of any weeks during the qualifying period for which the person proves that, throughout the week, the person was not employed in insurable employment because the person was: incapable of work because of a prescribed illness, injury, quarantine, or pregnancy; confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the person was being held or any other offence arising out of the same transaction; receiving assistance under employment benefits; or receiving payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the person, her unborn child, or a child whom she was breast-feeding (EI Act, s 8(2)).

[10] The Appellant made a claim for Employment Insurance regular benefits to begin on February 4, 2018. She had previously established a claim for Employment Insurance benefits beginning on October 23, 2016 (GD3-21).

[11] The Appellant submits that the Commission's decision seems unjust and unfair. She indicates that she was on leave of absence from July 11, 2016, to the end of October 2017 and received disability insurance benefits. She returned to work, but her health prevented her from meeting the demands of the job. She had to leave her employment on her doctor's recommendation. She would like to have the exception that allows for the extension of the qualifying period to 104 weeks applied. She confirms that she received sickness benefits from October 23, 2016, to February 4, 2017, but indicates that her employer required it for her to access disability insurance benefits. She received only sickness benefits for a 15-week period and finds it inconsistent that she is not able to access the minimum 23 weeks of regular benefits established with more than 1,800 insurable hours of employment.

[12] The Tribunal considers, as the Appellant mentioned, extending a qualifying period when the person proves they were, among other things, incapable of work because of an illness or injury (EI Act, s 8(2)). However, the Tribunal notes that the Act specifies that the qualifying period is the 52-week period immediately before the beginning of a benefit period or the period that begins on the first day of an immediately preceding benefit period (EI Act, s 8(1)).

[13] Therefore, even though the Appellant indicated that her employer required her to make a claim for sickness benefits to access her disability insurance, the fact remains that a benefit claim was established on October 23, 2016. The Tribunal therefore has no choice but to consider that the benefit period must begin on the first day of the immediately preceding benefit period (EI Act, s 8(1)). The qualifying period can be extended to 104 weeks, but this extension cannot go beyond the beginning of the first day of an immediately preceding benefit period. Therefore, the qualifying period cannot be extended beyond October 23, 2016, even if the Appellant had not received all the weeks of benefits that she was entitled to through that claim.

[14] Therefore, as the Commission indicated, the Appellant's qualifying period was established from October 23, 2016, to February 3, 2018. The Tribunal notes that a qualifying period cannot be extended beyond October 23 because the Appellant previously filed a claim for benefits on that date (GD3-21) (EI Act, s 8(1)).

[15] When the Appellant filed her claim, the Chicoutimi–Jonquière regional rate of unemployment was 6.2% (GD3-23 and GD3-27). As a result, the Appellant needed to have accumulated 665 insurable hours of employment to be able to establish a claim for Employment Insurance regular benefits (EI Act, s 7(2)).

[16] The Commission indicates that the Appellant accumulated 198 insurable hours of employment during the qualifying period of October 23, 2016, to February 3, 2018. The Tribunal agrees with the calculations that the Commission presented (GD3-32 to GD3-34).

[17] The Tribunal is therefore of the view that the Appellant did not have enough hours to be able to establish an Employment Insurance benefit period on February 4, 2018, because the Appellant needed to have accumulated 665 hours of insurable employment during her qualifying period. A benefit period cannot be established on February 4, 2018.

[18] Furthermore, the Tribunal considered that the length of the Appellant's benefit claim beginning October 23, 2016, could not be more than 52 weeks (EI Act, s 10(2)).

[19] Even though the Appellant feels wronged and finds the situation unfair, the Tribunal cannot waive a statutory requirement. After all, the Act establishes specific criteria that a claimant must meet to be eligible for benefits. The Tribunal's role is to apply the Act, and the Tribunal cannot amend it simply to please a claimant who feels wronged (*Wegener v Canada (Attorney General)*, 2011 FC 137). Unfortunately, this means that the Appellant cannot receive the 23 weeks of benefits that she would have liked to receive if the Commission considered the hours of employment earned before her first benefit claim, even though the Tribunal understands the difficulty of the Appellant's situation.

**CONCLUSION**

[20] The appeal is dismissed.

*Charline Bourque*  
Member, General Division – Employment Insurance Section

HEARD ON:	September 26, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. T., Appellant

**ANNEX**

**THE LAW**

***Employment Insurance Act***

**7 (1)** Unemployment benefits are payable as provided in this Part to an insured person who qualifies to receive them.

**(2)** An insured person qualifies if the person

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

**(b)** has had during their qualifying period at least the number of hours of insurable employment set out in the following table in relation to the regional rate of unemployment that applies to the person.

**TABLE**

Regional Rate of Unemployment	Required Number of Hours of Insurable Employment in Qualifying Period
6% and under	700
more than 6% but not more than 7%	665
more than 7% but not more than 8%	630
more than 8% but not more than 9%	595
more than 9% but not more than 10%	560
more than 10% but not more than 11%	525
more than 11% but not more than 12%	490
more than 12% but not more than 13%	455
more than 13%	420

**(3) to (5)** [Repealed, 2016, c. 7, s. 209]

**(6)** An insured person is not qualified to receive benefits if it is jointly determined that the insured person must first exhaust or end benefit rights under the laws of another jurisdiction, as provided by Article VI of the *Agreement Between Canada and the United States Respecting Unemployment Insurance*, signed on March 6 and 12, 1942.

**8 (1)** Subject to subsections (2) to (7), the qualifying period of an insured person is the shorter of

**(a)** the 52-week period immediately before the beginning of a benefit period under subsection 10(1), and

**(b)** the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period under subsection 10(1).

**(2)** A qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission may direct, that throughout the week the person was not employed in insurable employment because the person was

- (a)** incapable of work because of a prescribed illness, injury, quarantine or pregnancy;
- (b)** confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the person was being held or any other offence arising out of the same transaction;
- (c)** receiving assistance under employment benefits; or
- (d)** receiving payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the person, her unborn child or a child whom she was breast-feeding.

**(3)** A qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission may direct, that

- (a)** earnings paid because of the complete severance of their relationship with their former employer have been allocated to weeks in accordance with the regulations; and
- (b)** the allocation has prevented them from establishing an interruption of earnings.

**(4)** A qualifying period is further extended by the aggregate of any weeks during an extension for which the person proves, in such manner as the Commission may direct, that

- (a)** in the case of an extension under subsection (2), the person was not employed in insurable employment because of a reason specified in that subsection; or
- (b)** in the case of an extension under subsection (3), the person had earnings paid to them because of the complete severance of their relationship with their former employer.

**(5)** For the purposes of subsections (2) to (4), a week during which the person was in receipt of benefits does not count.

**(6)** For the purposes of subsection (3) and paragraph (4)(b), a week during which the person was employed in insurable employment does not count.

**(7)** No extension under any of subsections (2) to (4) may result in a qualifying period of more than 104 weeks.

**10 (1)** A benefit period begins 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.

**(2)** Except as otherwise provided in subsections (10) to (15) and section 24, the length of a benefit period is 52 weeks.

**(3)** Subject to a change or cancellation of a benefit period under this section, a benefit period shall not be established for the claimant if a prior benefit period has not ended.

**(4)** An initial claim for benefits made after the day when the claimant was first qualified to make the claim shall be regarded as having been made on an earlier day if the claimant shows that the claimant qualified to receive benefits on the earlier day and that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the initial claim was made.

**(5)** A claim for benefits, other than an initial claim for benefits, made after the time prescribed for making the claim shall be regarded as having been made on an earlier day if the claimant shows that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the claim was made.

**(5.1)** A claim for benefits referred to in section 23.1 with respect to a family member shall not be regarded as having been made on an earlier day under subsection (4) or (5) if

**(a)** at the time the claim is made, all benefits that may otherwise have been payable in relation to that claim have already been exhausted;

**(b)** the beginning of the period referred to in subsection 23.1(4) has already been determined with respect to that family member and the claim would have the effect of moving the beginning of that period to an earlier date; or

**(c)** the claim is made in any other circumstances set out in the regulations.

**(5.2)** A claim for benefits referred to in section 23.2 with respect to a critically ill child or children who are critically ill as a result of the same event must not be regarded as having been made on an earlier day under subsection (4) or (5) if

**(a)** at the time the claim is made, all benefits that may otherwise have been payable in relation to that claim have already been exhausted;

**(b)** the beginning of the period referred to in subsection 23.2(3) or (4) has already been determined with respect to that child or those children and the claim would have the effect of moving the beginning of that period to an earlier date; or

**(c)** the claim is made in any other circumstances set out in the regulations.

**(6)** Once a benefit period has been established for a claimant, the Commission may

**(a)** cancel the benefit period if it has ended and no benefits were paid or payable during

the period; or

**(b)** whether or not the period has ended, cancel at the request of the claimant that portion of the benefit period immediately before the first week for which benefits were paid or payable, if the claimant

**(i)** establishes under this Part, as an insured person, a new benefit period beginning the first week for which benefits were paid or payable or establishes, under Part VII.1, as a self-employed person within the meaning of subsection 152.01(1), a new benefit period beginning the first week for which benefits were paid or payable, and

**(ii)** shows that there was good cause for the delay in making the request throughout the period beginning on the day when benefits were first paid or payable and ending on the day when the request for cancellation was made.

**(7)** A cancelled benefit period or portion of a benefit period is deemed never to have begun.

**(8)** A benefit period ends when any of the following first occurs:

**(a)** no further benefits are payable to the claimant in their benefit period, including for the reason that benefits have been paid for the maximum number of weeks for which benefits may be paid under section 12;

**(b)** the benefit period would otherwise end under this section; or

**(c)** [Repealed, 2002, c. 9, s. 12]

**(d)** the claimant

**(i)** requests that their benefit period end,

**(ii)** makes a new initial claim for benefits under this Part or Part VII.1, and

**(iii)** qualifies, as an insured person, to receive benefits under this Part or qualifies, as a self-employed person within the meaning of subsection 152.01(1), to receive benefits under Part VII.1.

**(9)** Whether or not the benefit period has ended, a request under paragraph 8(d) shall be regarded as having been made on an earlier day if the claimant shows that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the request was made.

**(10)** A claimant's benefit period is extended by the aggregate of any weeks during the benefit period for which the claimant proves, in such manner as the Commission may direct, that the claimant was not entitled to benefits because the claimant was

(a) confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the claimant was being held or any other offence arising out of the same transaction;

(b) in receipt of earnings paid because of the complete severance of their relationship with their former employer;

(c) in receipt of workers' compensation payments for an illness or injury; or

(d) in receipt of payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the claimant, her unborn child or a child whom she was breast-feeding.

(11) A claimant's benefit period is extended by the aggregate of any weeks during an extension of a benefit period under subsection (10) for which the claimant proves, in such manner as the Commission may direct, that the claimant was not entitled to benefits because of a reason specified in that subsection.

(12) If the child or children referred to in subsection 23(1) are hospitalized during the period referred to in subsection 23(2), the benefit period is extended by the number of weeks during which the child or children are hospitalized.

(12.1) If, during the period referred to in subsection 23(2), the start date of a claimant's period of parental leave is deferred or a claimant is directed to return to duty from parental leave, in accordance with regulations made under the *National Defence Act*, the benefit period is extended by the number of weeks during which the claimant's parental leave is deferred or the claimant is directed to return to duty, as the case may be.

(13) If, during a claimant's benefit period,

(a) regular benefits were not paid to the claimant,

(b) benefits were paid to the claimant for more than one of the reasons mentioned in paragraphs 12(3)(a) to (e) and at least one of those benefits was paid for fewer than the applicable maximum number of weeks established for those reasons, and

(c) the maximum total number of weeks established for those reasons is greater than 50,

the benefit period is extended so that those benefits may be paid up to that maximum total number of weeks.

(13.1) A claimant's benefit period that has not ended before July 3, 2016, or that begins on or after that date, is extended by 17 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.1).

(13.2) Subject to subsections (13.7) and (14.1), if a claimant's benefit period ended before July 3, 2016, that benefit period is deemed, despite subsection (8), not to have ended and it is extended

by 17 weeks beginning on July 3, 2016 if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.1).

**(13.3)** A claimant's benefit period that has not ended before July 3, 2016, or that begins on or after that date, is extended by 37 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.3).

**(13.4)** Subject to subsections (13.7) and (14.1), if a claimant's benefit period ended before July 3, 2016, that benefit period is deemed, despite subsection (8), not to have ended and it is extended by 37 weeks beginning on July 3, 2016 if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.3).

**(13.5)** A claimant's benefit period is extended by 29 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.5).

**(13.6)** A claimant's benefit period is extended by 22 weeks if the number of weeks for which benefits may be paid to the claimant has been increased as a result of subsection 12(2.6).

**(13.7)** A benefit period that is deemed under subsection (13.2) or (13.4) not to have ended does not include the period that begins on the day after the day on which the benefit period ended and that ends on July 2, 2016.

**(14)** Subject to subsections (14.1) and (15), an extension under any of subsections (10) to (13.6) must not result in a benefit period of more than 104 weeks.

**(14.1)** The period that is excluded under subsection (13.7) is to be included in the calculation of the 104 weeks for the purposes of subsection (14).

**(15)** Unless the benefit period is also extended under any of subsections (10) to (12.1), an extension under subsection (13) must not result in a benefit period of more than the sum of two weeks and the total of the maximum number of weeks established under subsection 12(3) for each of the benefits paid to the claimant for one of the reasons mentioned in paragraphs 12(3)(a) to (e) during the claimant's benefit period before it was extended under subsection (13).