



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *FF v Canada Employment Insurance Commission*, 2020 SST 1027

Tribunal File Number: GE-20-1924

BETWEEN:

F. F.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: September 30, 2020

DATE OF DECISION: October 5, 2020

Decision

[1] The appeal is dismissed. The Claimant has not shown that she has worked enough hours¹ to qualify for employment insurance (EI) maternity and parental benefits.

Overview

[2] The Claimant applied for EI maternity and parental benefits, but the Canada Employment Insurance Commission (the Commission) decided that the Claimant had not worked enough hours to qualify.

[3] The Commission says that the Claimant does not have enough hours because she needs 600 hours, but only has 510. The Claimant says that she would have worked enough hours if not for the COVID-19 public health emergency. She asks the Tribunal to consider her unique circumstances and allow her to access her maternity benefits to support her family in this difficult situation.

Issue

[4] Has the Claimant worked enough hours to qualify for EI maternity and parental benefits?

Analysis

[5] Not everyone who stops working can be paid EI benefits. Claimants have to prove² that they qualify for benefits.³ In order to qualify, claimants need to have worked enough hours during a certain timeframe.⁴ (This timeframe is called the qualifying period; I will explain what that is in more detail further down in the decision.)

¹ Specifically, the hours worked have to be hours of insurable employment: sections 6 and 22 of the *Employment Insurance Act*. In this decision, when I use “hours,” I am referring to hours of insurable employment.

² The Claimant has to prove this on a balance of probabilities which means it is more likely than not.

³ Section 48 of the *Employment Insurance Act*.

⁴ Sections 6 and 22 of the *Employment Insurance Act*.

[6] In general, the number of hours that claimants need to have worked in order to qualify depends on the regional rate of unemployment that applies to that claimant.⁵ But, claimants who want maternity or parental benefits must have 600 or more hours to qualify to get them.⁶

[7] As noted above, the hours that are counted are the ones that the Claimant worked during her qualifying period. In general, the qualifying period is the 52 weeks before a claimant's benefit period would start.⁷ (The benefit period is a different timeframe; it is the time when EI benefits may be paid to claimants.)

[8] The Commission decided that the Claimant's qualifying period was the usual 52-weeks and went from July 21, 2019 to July 18, 2020.

[9] The *Employment Insurance Act* was recently changed to facilitate access to EI benefits for those transitioning from the EI Emergency Response Benefit (EIERB) or Canada Emergency Response Benefit (CERB). The law now says that a claimant who wants to receive maternity and parental benefits, who has been paid EIERB or CERB during their qualifying period, receives a qualifying period extension.⁸ In the Claimant's case, her qualifying period is extended by 24 weeks.⁹

[10] With the extension, I find the Claimant's qualifying period is from February 3, 2019 to July 18, 2020.

[11] The Claimant testified that she was previously on maternity leave before she returned to work in March 2020. She went on maternity leave in September 2018 and returned to work on March 10, 2020. She was employed from March 10 to March 13, 2020, when she was suddenly

⁵ Section 7(2)(b) of the *Employment Insurance Act*; section 17 of the *Employment Insurance Regulations*.

⁶ Section 22 of the *Employment Insurance Act* sets out that benefits are payable to a "major attachment claimant" who proves their pregnancy. Section 6(1) of the *Employment Insurance Act* defines a "major attachment claimant" as a claimant who qualifies to receive benefits and has 600 or more hours in their qualifying period; the hours need to be hours of insurable employment.

⁷ Section 8 of the *Employment Insurance Act*.

⁸ Section 153.18 of the *Employment Insurance Act* sets out the qualifying period extension applicable to a claimant's claim for maternity and parental benefits. The length of the extension to the qualifying period is determined by the date the claimant's benefit period is established.

⁹ The Claimant applied for EI benefits on July 24, 2020, so her benefit period would be established on July 19, 2020. This means she is eligible for an extension to her qualifying period pursuant to section 153.18(b) of the *Employment Insurance Act*.

laid off due to COVID-19. The employer issued a record of employment (ROE) dated March 23, 2020, which states the Claimant had worked 30 hours.

[12] The Claimant confirmed at the hearing that her work in March 2020 was her only employment since September 2018. She agreed with the hours stated on her ROE and said she had no further hours in her qualifying period.

[13] As part of the temporary measures to facilitate access to benefits, the law now says that claimants who meet certain criteria¹⁰ and who have less than 600 hours in their qualifying period are deemed to have accumulated an additional 480 hours.¹¹ This allows claimants to qualify for maternity and parental benefits with a minimum of 120 hours of work.

[14] While these changes to the *Employment Insurance Act* apply to the Claimant, even with the additional 480 hours she does not have enough hours in her qualifying period to receive maternity and parental benefits.

[15] I find that the Claimant has not proven that she has enough hours to qualify for benefits, because she needs 600 hours, but has 510 hours.¹²

[16] I recognize that the Claimant's work ended abruptly due to the COVID-19 pandemic. She has consistently stated to the Commission and the Tribunal that she would have been able to work enough hours to qualify for maternity benefits if not for the impact of COVID-19. The Claimant understands that she does not meet the minimum required hours to qualify for benefits but asks that she be allowed to receive her maternity benefits because of the unique circumstances of her case.

[17] Unfortunately, the law does not allow for any payment of maternity benefits unless a claimant has qualified to receive them. In this case, the Claimant does not meet the hours

¹⁰ This applies to claimants who want to receive maternity and parental benefits and who have been paid EIERB or CERB.

¹¹ Section 153.16 and 153.17(1) of the *Employment Insurance Act*.

¹² The Claimant's 510 hours is the aggregate of the 30 hours she worked in her qualifying period plus the 480 hours she is deemed to have accumulated.

requirement, so does not qualify for benefits. I truly sympathize with the Claimant's situation, but I am unable to circumvent, rewrite or ignore the law, even in the interest of compassion.¹³

Conclusion

[18] The appeal is dismissed.

Catherine Shaw
Member, General Division - Employment Insurance Section

HEARD ON:	September 30, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	F. F., Appellant

¹³ *Pannu v Canada (Attorney General)*, 2004 FCA 90.