Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Revised decision – corrections integrated into the main text of the original decision

Citation: *MF v Canada Employment Insurance Commission*, 2020 SST 941

Tribunal File Number: AD-20-813

BETWEEN:

M. F.

Applicant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Stephen Bergen

Date of Decision: ~~October 30, 2020~~
CORRIGENDUM DATE: November 9, 2020

Canada

DECISION AND REASONS

DECISION

[1] The application for leave to appeal is refused.

OVERVIEW

[2] The Applicant, M. F. (Claimant), left his employment on December 1, 2019, and applied for Employment Insurance benefits on January 10, 2020. The Respondent, the Canada Employment Insurance Commission (Commission), established a benefit period effective January 5, 2020. It determined that the Claimant was entitled to 33 weeks of benefits. This was based on two factors. The first factor was that the regional unemployment rate was 5.7% for December 2019 in the Claimant's economic region. The second factor was the number of hours of insurable employment in the Claimant's qualifying period. The Commission used 1728 hours.

[3] Because of the COVID 19 epidemic, the Claimant expected to receive more than the 33 weeks of benefits that he received. He says that he asked the Commission to extend his benefits but that the Commission told him on August 31, 2020, that it would not extend his benefits. There is no record on the Commission's file of such a conversation, but the Commission did not deny that it had refused to extend his benefits. When the Claimant asked for a reconsideration, the Commission would not change the "August 31, 2020", decision.[1]

[4] The Claimant appealed the reconsideration decision to the General Division of the Social Security Tribunal, which dismissed his claim. He is now seeking leave (permission) to appeal the General Division decision to the Appeal Division.

[5] The Claimant has no reasonable chance of success on his appeal. He has not made out an arguable case that the General Division made an error of law or an important error of fact.

PRELIMINARY MATTERS

[6] I can only consider whether the General Division made an error in how it decided the appeal of the Commission's reconsideration decision. I have no jurisdiction to review whether

[1] GD3-36.

the Claimant should have been rolled over to receive benefits under the Canada Emergency Relief Benefit (CERB) or whether he is entitled to any other benefits.

[7] On October 20, 2020, I wrote the Claimant to explain the grounds of appeal and to ask if he wanted to rely on any additional grounds or further explain why he was appealing the General Division decision. The Claimant provided submissions on October 28, 2020.[2] I asked the Tribunal registry to contact the Claimant. I wanted to be sure that the Claimant knew that I could only consider whether the General Division made an error in how it assessed the particular reconsideration decision that the Claimant had appealed. I also asked the registry to confirm that the Claimant would not be providing additional submissions. A Tribunal officer left a telephone message at the Claimant`s number and the Claimant responded with additional submissions.[3]

WHAT GROUNDS CAN I CONSIDER FOR THE APPEAL?

[8] To allow the appeal process to move forward, I must find that there is a "reasonable chance of success" on one or more of the "grounds of appeal" found in the law. A reasonable chance of success means that there is an arguable case. This would be some argument on which the Claimant could possibly be successful in his appeal.[4]

[9] The Claimant's reasons for appealing must fit within the "grounds of appeal" because these grounds describe the errors that I am authorized to consider. I can consider only whether the General Division made any of the following errors:[5]

1. The General Division hearing process was not fair in some way.
2. The General Division did not decide an issue that it should have decided. Or, it decided something it did not have the power to decide.
3. The General Division based its decision on an important error of fact.
4. The General Division made an error of law when making its decision.

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[2] AD1E, AD1F.
[3] AD1G, AD1H.
[4] This is explained in a case called *Canada (Minister of Human Resources Development) v Hogervorst*, 2007, FCA 41; and in *Ingram v Canada (Attorney General)*, 2017 FC 259.
[5] This is a plain-language version of the three grounds. The full text is in section 58(1) of the DESD Act.

ISSUE

[10] Is there an arguable case that the General Division made an error of law when it did not extend his benefits at a time when government restrictions reduced his employment opportunities?

[11] Is there an arguable case that the General Division made an error of fact when it found that the Claimant did not have sufficient hours to obtain additional benefits?

ANALYSIS

Error of law

Entitlement to 33 Weeks

[12] I can only consider whether the General Division made an error of law in finding that the Claimant was entitled to 33 weeks, or in finding that he was not entitled to an extension.

[13] There is no arguable case that the General Division made an error of law by finding that the Claimant had been entitled to 33 weeks of benefits.

[14] The *Employment Insurance Act* (EI Act) says that the Claimant's benefit period must begin on the later of two events. It could begin on the Sunday of the week in which he suffered an interruption of earnings. It could also begin on the Sunday of the week in which the Claimant made his initial claim for benefits, if that is the later date.[6] The Claimant applied for benefits on January 10, 2020, after his interruption of earnings on December 1, 2019. That means his benefit period began on January 5, 2020, the Sunday of the week that he applied for benefits.

[15] The EI Act also says that the Claimant's qualifying period is the 52-week period immediately before his benefit period,[7] which would be the 52-week period leading up to January 5, 2020. A claimant qualifies for a certain number of weeks of benefits depending on the number of hours of insurable earnings he accumulated during his or her qualifying period. The Claimant's Record of Employment (ROE) states the Claimant's total hours of insurable

[6] Section 10(1) of the EI Act.
[7] Section 8(1) of the EI Act.

employment as 1948 hours. However, some of the oldest pay periods recorded in the ROE fall outside of the 52 weeks of his qualifying period. The Commission calculated that there were 1728 hours in the pay periods that were within the Claimant's qualifying period.

[16] The Claimant did not dispute that he resided in the economic region of Toronto in December 2019, or that the regional rate of unemployment was 5.7% at that time. According to the EI Act, the maximum number of weeks for which benefits may be paid in a benefit period is determined according to a chart at Schedule I (to the EI Act).[8] According to the Schedule I chart, a claimant with between 1715 and 1749 insurable hours in his or her qualifying period, in a region with an unemployment rate less than 6%, is entitled to 33 weeks of benefits.

Entitlement to Extension of benefits

[17] There is no arguable case that the General Division made an error of law in finding that the Claimant was not entitled to additional weeks of Employment Insurance benefits.

[18] The only way that the Claimant could have received more than 33 weeks of benefits in his benefit period is if he had more insurable hours in his qualifying period. The only way that he could have had more insurable hours is if the qualifying period was more than 52 ~~months~~ **[weeks]**.

[19] A qualifying period can be more than 52 ~~months~~ **[weeks]** in certain circumstances. It can be extended to as much as 104 ~~months~~ **[weeks]**.[9] The Commission may allow the qualifying period to start earlier if any of the following apply:

a) The Claimant could not work at any time in the usual qualifying period because of illness, injury, or quarantine
b) He had been in jail but was found not guilty
c) He received employment benefits
d) He received certain other provincial benefits because working would have been a danger to him, or,

[8] Section 12(2) of the EI Act; Schedule I to the EI Act.
[9] Section 8(7) of the EI Act.

e) He received severance that was allocated to weeks and which prevented him from establishing an interruption of earnings.[10]

[20] The Claimant did not show, or claim, that any of these circumstances applied to him. Therefore, the Commission could not extend his qualifying period.[11] This means that he could not use more than 1728 hours of hours of insurable employment for the calculation of weeks of benefits.

[21] The Claimant also argued that he should be entitled to additional weeks of benefits because his benefits ran out during the COVID-19 epidemic and that the Government was responsible or partly responsible for reduced employment and self-employment opportunities. However, he did not explain how this affected the General Division decision. He did not explain how the General Division made an error of law.

[22] The General Division considered the Claimant's appeal of a refusal to extend his Employment Insurance benefits. The Commission's refusal to extend has nothing to do with the Claimant's entitlement to CERB benefits or to any other request that he might make for other benefits.

[23] The Claimant is free to ask the Canada Revenue Agency or the Commission as the case may be, for a decision on other benefits, which have different entitlement criteria. I believe he has already done so.[12]

[24] However, there is no arguable case that the General Division made an error in law by not granting him other benefits. In fact, it would have exceeded its jurisdiction if it had attempted to do so.

[10] Sections 8(2) and 8(3) of the EI Act.
[11] GD3-34.
[12] GD3-35; AD1H-1.

Error of fact

Hours of insurable employment

[25] There is no arguable case that the General Division made an important error of fact relating to the Claimant's insurable hours.

[26] The Claimant says he does not know why the Commission says he has only 300 hours of insurable employment.[13] However, the General Division decision did not find that the Claimant had 300 hours, or even refer to 300 hours.

[27] Nothing in the appeal record that says that the Claimant was not eligible for benefits because he only has 300 hours of insurable employment. However, perhaps a Commission agent mentioned 300 hours when the Claimant requested additional benefits and a Commission agent refused his request verbally. It is possible that the Commission was telling the Claimant about where he stood to qualify and establish a new claim. The appeal record does not show this, but it is possible.

[28] The reconsideration decision says that it has not changed its decision regarding weeks of entitlement. It is not a decision that the Claimant did not have sufficient hours of insurable employment to establish a claim. The General Division could not presume that the Commission intended to make a decision on a new claim, or any other decision than a decision about weeks of entitlement under the existing claim. Nor could it speculate about how many additional hours of insurable employment the Claimant required or accumulated to establish a new claim.

[29] In case there is some misunderstanding about how the Claimant's hours of insurable employment relate to any new claim for weeks of benefits, I will explain how the Commission applies hours to calculate benefits. The Claimant established his initial claim based on his insurable hours of employment in the 52 weeks before his benefit period. Once the Commission used those hours to establish a benefit period, the Claimant could not use them again. He could not use those hours to re-qualify for additional benefits after he received the 33 weeks of benefits to which he was entitled in his first claim.

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[13] AD1E-2.

[30] To qualify for benefits again, the Claimant would have to accumulate enough hours of insurable employment from within a **new** qualifying period. The new qualifying period would be determined for a new benefit period. Usually, the qualifying period is the 52 weeks leading up to his new benefit period. However, any new qualifying period for the Claimant could not have begun before January 5, 2020. This is because the EI Act says that the qualifying period is the period that is the **lesser of** two periods. The other "period" is the one that begins on the first day of the immediately preceding first benefit period. That would be January 5, 2020, the day that the Claimant's first benefit period started.[14] So if the Claimant tried to establish a second claim for additional benefits in 2020, the "lesser" period would have to be the one that started on January 5, 2020.

[31] The Commission could only have offered additional weeks of Employment Insurance benefits if the Claimant made a new application for benefits. However, he would have to have accumulated enough hours to qualify after January 5, 2020. The Claimant could not use any of the 1948 hours from his December 2019 ROE to obtain additional benefits.

[32] The Claimant has no reasonable chance of success in this appeal.

CONCLUSION

[33] The application for leave to appeal is refused.

Stephen Bergen
Member, Appeal Division

REPRESENTATIVES:	M. F., Self-represented

[14] Section 8(1) of the EI Act.