



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *PC v Canada Employment Insurance Commission*, 2020 SST 1123

Tribunal File Number: GE-20-2185

BETWEEN:

**P. C.**

Claimant

and

**Canada Employment Insurance Commission**

Commission

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

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DECISION BY: Audrey Mitchell

HEARD ON: November 18, 2020

DATE OF DECISION: November 24, 2020

## **DECISION**

[1] The appeal is dismissed. The Claimant is entitled to 37 weeks of benefits.

## **OVERVIEW**

[2] The Claimant applied for employment insurance (EI) benefits after her employer laid her off. She identified other employers in her application for whom she had worked. The Claimant completed requests for records of employment (ROEs) from three former employers. Only one employer responded and issued an ROE. The Commission created an ROE for another employer using information from the Claimant. The Commission determined that the Claimant was entitled to 37 weeks of EI benefits. The Claimant disagrees. She states that she worked more insurable hours than the Commission identified on the ROE they created.

## **PRELIMINARY MATTERS**

[3] On the date originally scheduled for the hearing, the Claimant had not yet seen and read some of the documents the Tribunal sent her. In the interests of natural justice, I adjourned the hearing.

[4] At the hearing, the Claimant referred to paystubs. She also spoke of records of deposits to her bank account from the employer who did not issue an ROE. I gave the Claimant time to send copies of paystubs and bank statements. The Claimant submitted copies of transaction history from her bank account and copies of paycheques.

## **ISSUE**

[5] How many weeks of EI benefits is the Claimant entitled to?

## **ANALYSIS**

**Issue: How many weeks of EI benefits is the Claimant entitled to?**

[6] The Claimant is entitled to 37 weeks of EI benefits.

[7] The Commission may pay a claimant for each week of unemployment in a benefit period.<sup>1</sup> The law lists the maximum number of weeks of benefits to which a claimant is entitled. It is determined using the regional rate of employment and hours of insurable employment a claimant has in their qualifying period.<sup>2</sup>

[8] A qualifying period can be the 52-week period just before the benefit period.<sup>3</sup> If a claimant makes an application for benefits on or after September 27, 2020, the qualifying period is extended by 28 weeks.<sup>4</sup>

[9] If a claimant applies for benefits on or after September 27, 2020, they are deemed to have an extra 300 hours of insurable employment in their qualifying period.<sup>5</sup> If a benefit period starts from September 27, 2020, the regional rate of unemployment is 13.1%. This is the case if this rate is higher than would otherwise apply to a claimant.<sup>6</sup>

[10] The Claimant first applied for EI benefits in March 2020. In July 2020, she asked the Commission to help get three former employers to issue ROEs. The Commission's file shows the Claimant received Canada Emergency Response Benefits (CERB). The Commission tried to get the ROEs. However, because the Claimant was receiving CERB, they took no action on the Claimant's first application for benefits.

[11] The Claimant applied a second time for EI benefits on September 29, 2020. She listed only one employer on this application. As a result, the Commission determined her benefits using only the insurable hours for this employer. They later created an ROE for another employer (employer one) that the Claimant had initially identified. They changed the number of weeks of benefits to which the Claimant was entitled to include the hours worked for employer one.

[12] At the hearing, the Claimant said that she had worked many more hours than those included on the ROE that the Commission created. She testified that she worked three hours of

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<sup>1</sup> Subsection 12(1), *Employment Insurance Act*.

<sup>2</sup> Subsection 12(2), *Employment Insurance Act*.

<sup>3</sup> Subsection 8(1), *Employment Insurance Act*.

<sup>4</sup> Paragraph 153.18(1)(a), *Employment Insurance Act*.

<sup>5</sup> Paragraph 153.17(1)(b), *Employment Insurance Act*.

<sup>6</sup> Section 153.16, *Employment Insurance Act*.

overtime every day. She also said she worked at least eight hours on Saturdays and Sundays. The Claimant said that if she worked 31 hours of overtime for 13 weeks, that is an extra 403 hours. The Commission listed 520 insurable hours on the ROE they created. However, the Claimant said that the ROE should have listed 923 insurable hours.

[13] On the request for ROE that the Claimant sent to the Commission for employer one, she said that she worked for the employer from December 3, 2019 to February 28, 2020. She said that she worked 40 hours per week and earned \$2,800. I asked her about this at the hearing. The Claimant said that she missed reporting the overtime hours on the form she completed. I asked her if she had paystubs showing this. The Claimant said that the paystubs showed the total amount, not the hours she worked.

[14] I gave the Claimant time to send bank statements and paystubs to show that she worked overtime hours. She sent copies of three bank statements. One shows a mail deposit of \$1,142.86 on January 2, 2020. It also shows a third-party credit for \$1,149.63 on January 16, 2020. Another shows a third party credit for \$1,149.63 on February 20, 2020.

[15] The Claimant sent two paycheques from employer one. The first, dated December 16, 2019, is for \$974.46. The second, dated February 25, 2020, is for \$1,149.63. A note on this paycheque states that it is a final salary payment to February 29, 2020.

[16] From the post-hearing documents, I do not find there is enough evidence to show the Claimant worked more than 520 insurable hours for employer one. The Claimant said that she earned \$2,800 per month with employer one. I find it likely that the mail deposit and third party credit in January 2020 are net salary pays from employer one. I find that this is consistent with her evidence that she earned \$2,800 per month for 40 hours of work.

[17] Similarly, the Claimant's evidence shows a third party credit and a paycheque in February 2020, both for \$1,149.63. Again, in the absence of additional evidence, I find that this is consistent with the Claimant earning \$2,800 gross for February 2020.

[18] Finally, the Claimant submitted a T4 for 2019 for employer one. The T4 shows earnings of \$2,574.19. The Claimant started working for employer one on December 3, 2019. This, too, I find is consistent with her stated earnings of \$2,800 per month. Because of this, I do not find

that the Claimant has shown that she accumulated any more insurable hour than the 13 weeks at 40 hours per week she identified to the Commission. I find that the Claimant accumulated 520 hours of insurable employment with employer one, as listed in the ROE created by the Commission.

[19] The Claimant argued that the hours she worked for the third employer (employer three) should be included in the calculation of her EI entitlement. The Commission concluded that the hours with this employer fall outside the Claimant's qualifying period. They determined that her benefit period started on September 27, 2020. They did so because the Claimant applied for benefits on September 29, 2020. Based on this, they determined that the Claimant's qualifying period is the 52-week period before September 27, 2020. They added an extension of 28 weeks because of changes to the law due to COVID-19. They determined the qualifying period is March 19, 2019 to September 27, 2020.

[20] The Claimant did not present evidence to show that the qualifying period is wrong. Because the Claimant's benefit period starts on September 27, 2020, I find that the correct qualifying period is March 19, 2019 to September 26, 2020. As a result, I find that the Claimant's work for employer three in January 2019 is outside the qualifying period. These hours cannot be used to calculate the number of weeks of benefits to which she is entitled.

[21] I have already found that the Claimant accumulated 520 insurable hours with employer one. At the hearing, she agreed that Commission properly calculated that she accumulated 419 insurable hours with the second employer (employer two). Because she applied for EI benefits after September 27, 2020, the law allows for the addition of 300 insurable hours. The law also sets the regional rate of employment at 13.1%. This is so if it is higher than the rate that would otherwise apply.

[22] I find that the Claimant accumulated 1,239 insurable hours in her qualifying period [520 from employer one + 419 from employer two + 300 additional hours per the law = 1,239]. I find that with a regional rate of employment of 13.1%, the Claimant is entitled to 37 weeks of EI benefits. For this reason, I find that the number of weeks of benefits the Commission can pay the Claimant is 37 weeks, as identified in their reconsideration decision.

**CONCLUSION**

[23] The appeal is dismissed.

Audrey Mitchell

Member, General Division - Employment Insurance Section

HEARD ON:	November 18, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	P. C., Claimant