



Citation: *KM v Canada Employment Insurance Commission*, 2021 SST 245

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: K. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (416238) dated March 23, 2021
(issued by Service Canada)

Tribunal member: Catherine Shaw

Type of hearing: Teleconference
Hearing date: May 4, 2021
Hearing participant: Appellant
Decision date: May 11, 2021
File number: GE-21-616

Decision

[1] K. M. is the Claimant. Her appeal is dismissed.

[2] The Canada Employment Insurance Commission (Commission) correctly applied additional hours to the Claimant's qualifying period. She cannot remove the additional hours that were credited to her qualifying period.

Overview

[3] The Claimant applied for regular EI benefits on December 30, 2020. She's expecting a child and asked how her claim for regular benefits would affect her claim for maternity and parental benefits later in the year. Before she applied, the Commission told her that receiving regular benefits would not affect her ability to receive the full amount of maternity and parental benefits. After she applied for benefits, the Commission told her that she would only be able to receive about six months of maternity and parental benefits before she received the maximum number of weeks of combined benefits.

[4] In September 2020, Parliament made changes to the law to help claimants access benefits. This included adding hours of insurable employment to a claimant's qualifying period if they made an initial claim for benefits after a certain date. When the Claimant applied for benefits, the Commission automatically applied these additional hours to the Claimant's qualifying period.

[5] Now, the Claimant wants to start a new claim so she can receive her full entitlement to maternity and parental benefits. This would be easier if she could use the additional hours that were applied to her previous qualifying period. She's asking to have these additional hours removed from her previous qualifying period so she can use them to qualify for a new benefit period. The Commission has already refused this request.

Issue

[6] Can the Claimant have the additional hours that were credited to her qualifying period removed?

Analysis

[7] In order to qualify for EI benefits, claimants need to have worked enough hours¹ during a certain timeframe.² This timeframe is called the qualifying period.

[8] In September 2020, the *Employment Insurance Act* added some temporary measures to make it easier to access EI benefits. The law now says that if you make an initial claim for benefits on or after September 27, 2020, you're deemed to have additional hours in your qualifying period.³ This increase of hours can only be used once.⁴

[9] The Claimant made an initial claim for regular EI benefits on December 30, 2020. On her application, she said that she wanted maternity benefits to start the week of June 13, 2021.

[10] The Claimant said that she contacted the Commission before she applied for benefits. She asked how her claim for regular benefits would affect her ability to claim maternity and parental benefits later in the year. The Commission told her that there would be no issue receiving the full amount of her maternity and parental benefits after she claimed regular benefits.

[11] In January 2021, the Claimant contacted the Commission again and was told that she could only be paid a maximum of 50 weeks of combined benefits. This means that she would receive around six months of maternity and parental benefits before her benefits stopped. To receive the maximum amount of maternity and parental benefits,

¹ Specifically, the hours worked have to be hours of insurable employment: section 7 of the *Employment Insurance Act*; section 93 of the *Employment Insurance Regulations*. In this decision, when I use "hours," I am referring to hours of insurable employment.

² See section 7 of the *Employment Insurance Act*; section 93 of the *Employment Insurance Regulations*.

³ See section 153.17(1) of the *Employment Insurance Act*.

⁴ See section 153.17(2) of the *Employment Insurance Act*.

she would have to start a new benefit period. (The benefit period is the timeframe when EI benefits may be paid to claimants.)

[12] The Claimant also learned that the Commission had applied 300 additional hours to the qualifying period for her benefit period that started in December 2020. And because this credit of additional hours was applied to that qualifying period, she could no longer use these additional hours to qualify for EI benefits on a future application.

[13] The Claimant disagrees with the Commission's decision to automatically apply the additional hours on this qualifying period. She already had enough hours to qualify for benefits without the additional hours. She argues that she should have been given a choice about when to apply this credit of additional hours, especially if it can't be used again.

[14] The Commission says that the Claimant doesn't have the choice of saving the credit of additional hours for future application. Rather, the law directs it to apply the additional hours based on the date of the Claimant's application for benefits and the benefit type she's requested. The Claimant's application for benefits on December 30, 2020, was her first application for benefits on or after September 27, 2020. The Commission applied 300 additional hours to her qualifying period because her claim was started for regular benefits.

[15] The Claimant says the intention of the additional hours credit is to help people, and in her case it would be more beneficial for her to save the hours credit so she could qualify for maternity and parental benefits later in the year. She argues the law should be changed to prevent it from negatively affecting claimants in circumstances like hers.

[16] There is no dispute that the Claimant made an initial claim for benefits on or after September 27, 2020. She applied for regular EI benefits on December 30, 2020. In these circumstances, the law says that a claimant is deemed to have additional hours in their qualifying period. So, I find the Commission correctly applied the additional hours to the Claimant's qualifying period for the benefit period that started in December 2020.

[17] I recognize the Claimant's argument that it would benefit her to have the choice of when to apply these additional hours, but the law simply doesn't allow for any discretion in this matter. The law clearly identifies that a claimant is deemed to have additional hours if they make an initial claim for EI benefits on or after September 27, 2020.

[18] I also recognize the Claimant's argument that she had enough hours to qualify for benefits without the additional hours credit. However, the law doesn't provide any mechanism to allow for a claimant or the Commission to waive the application of the additional hours if the claimant is able to qualify for benefits without them. The law only considers if the claimant has made an initial claim for benefits on or after September 27, 2020.

[19] The purpose of this deeming provision is to increase the hours in a claimant's qualifying period on the first application for EI benefits on or after September 27, 2020. I find this law applies to the application for benefits the Claimant made on December 30, 2020. I don't have the flexibility to refuse to apply the law that applies to the Claimant.

[20] The law doesn't allow for the Claimant to waive the application of these additional hours, or revoke their application from her claim. The Claimant may feel that this is an unfair result, but there is no legal basis for me to make the change she is requesting. I don't have the ability to re-write legislation or interpret it in a manner that is contrary to its plain meaning.⁵

Conclusion

[21] The appeal is dismissed.

Catherine Shaw
Member, General Division – Employment Insurance Section

⁵ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.