



[TRANSLATION]

Citation: *FB v Canada Employment Insurance Commission*, 2021 SST 363

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

Decision

Appellant: F. B.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (411384) dated February 26, 2021 (issued by Service Canada)

Tribunal member: Normand Morin
Type of hearing: Teleconference
Hearing date: June 30, 2021
Hearing participant: Appellant
Decision date: July 16, 2021
File number: GE-21-491

Decision

[1] The appeal is dismissed. I find that the Appellant does not have the required number of hours of insurable employment to establish an Employment Insurance (EI) benefit period.¹ This means that the Appellant does not qualify for benefits.²

Overview

[2] On September 19, 2020, after working as a cook for the restaurant X (employer) from March 15, 2019, to September 18, 2019, the Appellant applied for EI regular benefits.³

[3] On November 9, 2020, the Canada Employment Insurance Commission (Commission) informed him that he was not entitled to EI special or regular benefits. It explained to him that he had no hours (0 hours) of insurable employment between December 29, 2019, and October 3, 2020, when he needed 420 hours of insurable employment to be entitled to benefits. It indicated that, if he did have hours of insurable employment between December 29, 2019, and October 3, 2020, and had not provided them on his claim for benefits, he had to submit a Record of Employment. The Commission also specified that, if he had more hours of insurable employment after October 3, 2020, and then became unemployed, he had to make a new claim for benefits.⁴

[4] On February 26, 2021, after a request for reconsideration, the Commission upheld the November 9, 2020, decision.⁵

[5] The Appellant argues that, when he contacted the Commission in late September or early October 2020, he was informed that, with the number of insurable hours he had worked in 2019, he would be entitled to EI benefits. On March 25, 2021, the Appellant

¹ See section 7 of the *Employment Insurance Act* (Act).

² See section 7 of the Act.

³ See GD3-3 to GD3-12.

⁴ See GD3-15 and GD3-16.

⁵ See GD3-30 and GD3-31.

challenged the Commission's reconsideration decision before the Tribunal. That decision is now being appealed to the Tribunal.

Issue

[6] I have to decide whether the Appellant has the required number of hours of insurable employment to be entitled to EI benefits and whether he qualifies for benefits as a result.⁶

Analysis

[7] A person who stops work does not necessarily receive EI benefits. They have to prove that they qualify for benefits.⁷ They have to prove this on a balance of probabilities. This means that they have to show that it is more likely than not that they are entitled to benefits.

[8] To qualify for benefits, the person needs to have worked enough hours within a certain time frame. This time frame is called the "qualifying period."⁸ The qualifying period is generally the 52-week period immediately before the beginning of a person's benefit period.⁹

[9] The benefit period is different from the qualifying period. It is not the same time frame. The benefit period is the time when a person can receive EI benefits.

[10] The number of hours used to determine whether a person is entitled to benefits depends on the unemployment rate in the person's region of residence.¹⁰

[11] In this case, the Appellant does not have the required number of hours of insurable employment to be entitled to benefits. This means that he does not qualify for benefits.¹¹

⁶ See section 7 of the Act.

⁷ See section 48 of the Act.

⁸ See section 7 of the Act.

⁹ See section 8 of the Act.

¹⁰ See section 7(2)(b) of the Act and section 17 of the *Employment Insurance Regulations*.

¹¹ See section 7 of the Act.

[12] The evidence on file shows that the Appellant has no insurable hours (0 hours) in his qualifying period, from December 29, 2019, to October 3, 2020, when he needs 420 insurable hours to be entitled to benefits.

[13] In its arguments, the Commission gives the following explanations:

- a) The Appellant's qualifying period was established from December 29, 2019, to October 3, 2020,¹² because an earlier benefit period was established for him effective December 29, 2019.¹³
- b) During that benefit period, the Appellant received 15 weeks of sickness benefits (special benefits) and 20 weeks of regular benefits. Since the Appellant had reached the maximum number of weeks of entitlement, a new claim was established effective September 6, 2020, so that he could receive benefits under the Employment Insurance Emergency Response Benefit (EI ERB)¹⁴ until October 3, 2020. The benefit period established on September 6, 2020, cannot be extended, since the EI ERB is no longer available as of October 4, 2020.¹⁵
- c) The Appellant's region of residence is the Montréal region,¹⁶ and the regional rate of unemployment at the time in question, that is, the period from September 6, 2020, to October 10, 2020,¹⁷ was 13.1%.¹⁸
- d) Claimants who apply for benefits (regular benefits) and whose benefit period starts between September 27, 2020, and September 25, 2021, get a one-time credit of 300 insurable hours.¹⁹

¹² See section 8(1)(b) of the Act.

¹³ See GD3-30 and GD4-3.

¹⁴ This type of benefit is also known as the Canada Emergency Response Benefit (CERB).

¹⁵ See GD4-1, GD4-3, and GD4-4.

¹⁶ Employment Insurance economic region of Montréal—GD3-13 and GD3-14.

¹⁷ The Appellant applied for benefits on September 19, 2020—GD3-10.

¹⁸ See GD3-13 and GD3-14.

¹⁹ See GD9-1.

- e) To establish a benefit period (regular benefits) from October 4, 2020, to September 25, 2021, a claimant needs at least 420 insurable hours in their qualifying period.²⁰
- f) In the Appellant's case, he needs at least 420 hours of insurable employment in his qualifying period, which includes the one-time credit of 300 insurable hours.²¹
- g) The Appellant needs at least 120 hours of insurable employment to reach the total 420 insurable hours required to establish a benefit period, taking into account the one-time credit of 300 insurable hours.²²
- h) The Appellant does not have any hours of insurable employment in his qualifying period. He failed to prove that he was entitled to EI benefits.²³

[14] The Appellant's testimony and statements to the Commission indicate the following:

- a) The Appellant contacted the Commission in late September 2020 or early October 2020, before his benefit period ended. He wanted to know whether he could continue getting benefits, given that his benefit period was about to end. The Appellant wanted his benefit period to be extended. He also wanted the Commission's authorization to return to school and continue his treatment at X while receiving benefits.²⁴
- b) During his call, a Commission agent told him that he would be able to make a new claim for benefits, that it would [translation] "be OK," and that he would be able to receive benefits.

²⁰ See GD9-1.

²¹ The Commission says it made the following calculation: 420 hours (insurable hours needed to establish a claim for regular benefits) – 300 hours (one-time credit of 300 insurable hours) = 120 hours (hours of insurable employment)—GD9-1.

²² See GD9-1 and GD9-2.

²³ See section 7(2) of the Act—GD4-3 and GD9-1.

²⁴ See GD3-17 to GD3-22, GD3-29, and GD3-30.

- c) After checking, the agent confirmed that 300 insurable hours would be credited to him and that, because he had worked at least 120 hours in 2019, he would be entitled to benefits. The Appellant says that the agent did not tell him that the insurable hours needed to have been worked after December 29, 2019, that is, after his qualifying period started.²⁵
- d) The Appellant made a new claim based on the information from the Commission that he would be able receive benefits; otherwise, he would not have done it. He stresses that he did what the agent told him to do.
- e) The Appellant continued completing his claimant reports like the Commission asked him to in an email it sent him on November 4, 2020.²⁶
- f) A few days later, on November 9, 2020, the Commission informed him that he could not receive benefits.²⁷
- g) The Appellant submits that the Commission agent confirmed to him inaccuracies by telling him that he would be entitled to benefits, which was not the case. He argues that a recording of his conversation with the agent in question would show what she told him. The Appellant says that he does not have the recording of that call.
- h) The Appellant did not work during his qualifying period, from December 29, 2019, to October 3, 2020.²⁸ The Commission agent was aware of this situation, and his claimant reports also indicate this. The Appellant also has not worked since October 3, 2020. So, he does not have any insurable hours after December 29, 2019.

²⁵ See GD3-17 to GD3-22.

²⁶ See GD3-20 to GD3-22.

²⁷ See GD3-15 and GD3-16.

²⁸ See GD3-29 and GD3-30.

- i) The Appellant is receiving the Canada Recovery Benefit (CRB).²⁹ He has also returned to school.
- j) The Appellant regrets the fact that he did not get the maximum services he was entitled to expect from the Commission.³⁰ The Commission did not inform him of the end of his benefit period.³¹ He was unable to speak with the Commission like he wanted to. He submits that the Commission did not fulfill its obligations or its responsibilities toward claimants.³²

[15] The evidence on file shows that the Appellant has no insurable hours (0 hours) in his qualifying period, when he needs 420 hours to be entitled to benefits, taking into account the fact that the Commission says that 300 insurable hours were credited to him to allow him to reach the minimum number of insurable hours required, that is, 420 hours.

[16] The Appellant's statements that a Commission agent told him that he would be entitled to benefits because he had worked at least 120 insurable hours in 2019 do not change the fact that he does not have any insurable hours in his qualifying period, from December 29, 2019, to October 3, 2020.

[17] The Commission's decision says that the Appellant needed to accumulate 420 insurable hours during his qualifying period, not in 2019.³³

[18] The Court tells us that hours accumulated outside the qualifying period cannot be used to entitle the claimant to benefits.³⁴

²⁹ See GD3-29 and GD3-30.

³⁰ See GD2-5.

³¹ See GD2-5.

³² See GD3-6.

³³ See GD3-15 and GD3-16.

³⁴ The Court established this principle in *Haile*, 2008 FCA 193.

[19] The Court also tells us that the *Employment Insurance Act* (Act) is an insurance plan, and like other insurance plans, claimants must meet the conditions of the plan to obtain benefits.³⁵

[20] On the issue of extending the Appellant's benefit period established effective September 6, 2020, the Commission explains that this period cannot be extended, since the EI ERB is no longer available as of October 4, 2020.³⁶

[21] The Court also tells us that the requirements of section 7(2) of the Act do not allow any discrepancy and provide no discretion.³⁷

[22] In summary, the evidence on file shows that the Appellant does not have enough hours of insurable employment in his qualifying period to be able to receive benefits. The Appellant has no hours of insurable employment (0 hours) in his qualifying period, when he needs 420 hours of insurable employment.

Conclusion

[23] I find that the Appellant has not shown that he meets the requirements to be entitled to benefits. He has not worked enough hours to receive benefits.

[24] This means that the appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section

³⁵ The Court established this principle in *Pannu*, 2004 FCA 90.

³⁶ See GD4-3 and GD4-4.

³⁷ The Court established this principle in *Lévesque*, 2001 FCA 304.