



Citation: *DM v Canada Employment Insurance Commission*, 2021 SST 473

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

Decision

Appellant: D. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (424909) dated July 9, 2021
(issued by Service Canada)

Tribunal member: Teresa M. Day

Type of hearing: Teleconference

Hearing date: August 9, 2021

Hearing participant: Appellant

Decision date: August 9, 2021

File number: GE-21-1274

Decision

[1] The appeal is dismissed. The Appellant cannot carry forward her one-time credit of insurable hours to establish a subsequent claim for employment insurance (EI) benefits.

Overview

[2] In December 2020, the Appellant was laid off from her job as a retail store manager because of Covid-19 public health measures. She established an initial claim for regular EI benefits as of December 6, 2020. Based on the Covid-19 emergency response measures in force at that time, the Appellant was deemed to have an additional 300 hours of insurable employment¹ in her qualifying period. This meant that the claim she started effective December 6, 2020 was established with over 700 hours of insurable employment² – far in excess of what she needed to qualify for EI benefits³. The Appellant received 9 weeks of regular EI benefits on this claim.

[3] In April 2021, the Appellant applied for 15 weeks of EI maternity benefits and 35 weeks of EI parental benefits for the child she was expecting on April 14, 2021. The Respondent (Commission) renewed her December 6, 2020 claim as of April 11, 2021, but she would not be getting everything she asked for. She would receive 15 weeks of maternity benefits. But she would only receive 19 weeks of parental benefits – and not the 35 weeks she applied for. This is because the benefit period on her renewal claim cannot extend beyond December 4, 2021⁴.

¹ This one-time credit of insurable hours of employment is provided for in Section 153.17(1)(b) of the *Employment Insurance Act*.

² She had 440 hours from her ROE (at GD3-19) plus the one-time credit of 300 hours.

³ Claimants only needed between 420 and 700 hours to qualify for benefits, depending on the regional rate of unemployment where they live. The Appellant resided in the EI economic region of Hamilton, Ontario and only needed 420 insured hours to qualify for regular EI benefits (GD3-20 to GD3-24).

⁴ Claimants are eligible for up to 50 weeks of EI benefits for claims established between September 27, 2020 and September 25, 2021. For the Appellant, the 50-week maximum benefit period started with her claim on December 6, 2020. When she renewed that application for her maternity and parental benefits, she could still only receive benefits until the end of the original 50-week benefit period, which concludes on December 4, 2021.

[4] The Appellant asked the Commission if she could carry forward the one-time credit of insurable hours. She wanted to use it to help her qualify on a new claim so she could receive the full 35 weeks of parental benefits she asked for⁵.

[5] The Commission denied her request because the law does not allow a claimant to choose which benefit period the one-time credit of insurable hours can be applied to⁶. The Appellant appealed to the Social Security Tribunal.

Issue

[6] Is the Appellant permitted to carry forward the one-time credit of insurable hours of employment to establish a subsequent claim for EI benefits?

Analysis

[7] The one-time credit of hours provided for in the emergency Covid-19 response measures applies to the first initial claim requested by a claimant or after September 27, 2020⁷ – ***regardless of whether the hours are necessary to establish a claim.***

[8] The Appellant's first initial claim for EI benefits after September 27, 2020 was the one that she established – and was paid benefits on – starting as of December 6, 2020.

[9] I acknowledge that she did not need the credit of 300 insurable hours to establish that claim. But I nonetheless must find that the Commission correctly added it to the hours reported on her Record of Employment to her establish her claim starting on December 6, 2020.

[10] There is no provision in Part VIII.5 Temporary Measures to Facilitate Access to Benefits in the *Employment Insurance Act* that allows a claimant to carry forward the “deemed hours” to establish a different benefit period.

⁵ For maternity and parental benefits, the one-time credit increased to 480 hours: section 153.17(1)(a) of the *Employment Insurance Act*.

⁶ The one-time credit of insurable hours must be applied to the first claim for EI benefits established between September 27, 2020 and September 25, 2021. The Appellant established a claim for regular EI benefits on December 6, 2020 and, therefore, the one-time credit was used for that claim.

⁷ 153.17(1)(b) and 153.17(2) of the *Employment Insurance Act*.

[11] The Appellant's evidence and submissions are that:

- She didn't choose to stop working in December 2020.
- She was forced to stop working because public health measures were imposed to combat the Covid-19 pandemic and the store she managed was temporarily closed to the public.
- She returned to work in February 2021, when the public health restrictions were lifted.
- She worked right up until she started her maternity leave in April 2021.
- She has a history of working between pregnancies, and is aware that she needs to work in order to have the hours to qualify for a full year of EI benefits.
- This time, through no fault of her own, she was unable to work enough to get the hours she needed before her child was born in April 2021.
- She didn't need a credit of insurable hours to qualify for EI benefits in December 2020.
- She needs it now⁸.
- Without it, she will be forced to go back to work when her child is only 7 months old.
- But for Covid-19, she would not have been off work between December 2020 and February 2021. She would have had more than enough hours to qualify for a full year of EI benefits when her maternity leave started in April 2021.
- She has been contributing to the employment insurance program for many years.

⁸ The Appellant needs 600 hours to establish a new initial claim for EI benefits that would enable her to be paid the full 35 weeks of parental benefits (up to April 2022). But she only has 352 hours of insurable employment from when she returned to work between February 2, 2021 and April 12, 2021 (see ROE at GD3-49).

- It's not fair that she is now being denied a year of paid leave with her child.
- She asks for the one-time credit of hours to be available to her for use on a new initial claim for parental benefits so she can start a fresh benefit period that would allow her to be paid the full 35 weeks of parental benefits she wants.
- She asks the Tribunal for a decision that gives effect to the intentions of the government's Covid-19 response and corrects the adverse impact of the interim emergency order on her situation.

[12] I acknowledge the Appellant's frustration with the application of the law in her case, and I am sympathetic to her situation.

[13] Unfortunately, I do not have the jurisdiction to grant the relief the Appellant is asking for. Only Parliament can amend the *Employment Insurance Act* to provide additional flexibility for parents in such circumstances. There have been no amendments to the *Employment Insurance Act* emergency Covid-19 response measures (or otherwise) that would allow the Appellant to carry forward her one-time credit of hours to establish a subsequent claim for EI benefits of any kind.

[14] I do not have discretion to disregard or override the deeming provisions in section 153 of the *Employment Insurance Act*. Nor can I make an exception for the Appellant, no matter how compelling her circumstances.

[15] The Appellant's one-time credit of hours has already been correctly applied to the claim for regular EI benefits she established as of December 6, 2020. As such, it is not available for use to qualify on a subsequent claim for EI benefits.

Conclusion

[16] The Commission correctly applied a one-time credit of 300 hours of insurable employment to the initial claim for regular EI benefits that the Appellant established as of December 6, 2020.

[17] Even though the Appellant did not need the 300-hour credit to establish that claim, it was nonetheless correctly included on that claim. As a result, it is no longer available to her.

[18] She cannot carry the one-time credit of hours forward to establish a subsequent claim for EI benefits.

[19] The appeal is dismissed.

Teresa M. Day
Member, General Division – Employment Insurance Section