



Citation: *DL v Canada Employment Insurance Commission*. 2021 SST 564

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

Decision

Appellant: D. L.
Appellant’s Representative: V. L.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (421073) dated April 15, 2021
(issued by Service Canada)

Tribunal member: Raelene R. Thomas
Type of hearing: Teleconference
Hearing date: June 10, 2021
Hearing participants: Appellant
Appellant’s representative
Decision date: June 16, 2021
File number: GE-21-838

Decision

[1] The appeal is dismissed. The Tribunal disagrees with D. L., the Claimant.

[2] The Claimant does not have enough hours to qualify for EI sickness benefits. The 480 additional hours cannot be applied to his current claim because it was applied to an earlier claim.

Overview

[3] The Claimant applied for sickness EI benefits on February 13, 2021, but the Canada Employment Insurance Commission (Commission) decided that the Claimant hadn't worked enough hours to qualify.¹

[4] I have to decide whether the Claimant has worked enough hours to qualify for EI benefits.

[5] In September 2020, Parliament made changes to the law to help claimants to access benefits. This included adding hours of insurable employment to a claimant's qualifying period if they made an initial claim for benefits on or after September 27, 2020. When the Claimant applied for benefits on September 28, 2020, the Commission automatically applied these additional hours to the Claimant's qualifying period.

[6] The Commission says that the Claimant doesn't have enough hours for the claim he made on February 13, 2021, because he needs 600 hours to qualify for sickness EI, which is a special benefit, but has 216. It says that he cannot use the 480 additional hours because those hours were applied to the claim he made on September 27, 2020.

[7] The Claimant disagrees and says that he was told that he needed 120 hours to qualify for sickness EI benefits. He found out after he was denied his EI benefits that the Commission had topped up his hours from the September 27, 2020, claim despite him having enough hours to qualify for that claim. The Commission applied the

¹ Section 7 of the *Employment Insurance Act* (EI Act) says that the hours worked have to be "hours of insurable employment." In this decision, when I use "hours," I am referring to "hours of insurable employment."

additional hours without his knowledge or permission. The Claimant says that he should be able to use the additional hours on his February 13, 2021, claim when he needs those hours to qualify.

Matter I have to consider first

The Commission made a clerical error

[8] The Commission said that it made a clerical error when it issued the initial decision letter. In that letter the Commission wrote the Claimant had earned 226 hours in the qualifying period when it should have written he earned 216 hours during the qualifying period.

[9] Where an error does not cause prejudice or harm, it is not fatal to the decision under appeal.² Because the Commission's error did not prevent the Claimant from seeking reconsideration of the Commission's initial decision and to later appeal the reconsideration decision, I find that the error does not cause the Claimant any prejudice or harm.

Issue

[10] Has the Claimant worked enough hours to qualify for EI benefits?

Analysis

How to qualify for benefits

[11] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.³ The Claimant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that he qualifies for benefits.

² *Desrosiers v. Canada (AG)*, A-128-89. This is how I refer to the courts' decisions that apply to this appeal.

³ See section 48 of the *Employment Insurance Act*.

[12] To qualify, you need to have worked enough hours within a certain timeframe. This timeframe is called the “qualifying period.”⁴

[13] The number of hours depends on the unemployment rate in your region, if you are claiming regular EI benefits.⁵

[14] If you are claiming special benefits, like sickness EI benefits, you are required to have 600 hours in the qualifying period.⁶ In this case, the Claimant applied for sickness EI benefits, so he was required to have worked 600 hours in the qualifying period.

[15] In September 2020, Parliament added some temporary measures to *Employment Insurance Act* to make it easier to access EI benefits. The law now says that if you make an initial claim for special benefits on or after September 27, 2020, you’re deemed to have 480 additional hours in your qualifying period.⁷ This increase of hours can only be used once.⁸

The Claimant’s qualifying period

[16] As noted above, the hours counted are the ones that the Claimant worked during his qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start. But, if you had a claim for EI benefits start in that 52-week period the qualifying period is shortened to the period from the first day of that EI claim to the day before your current claim.⁹

[17] The Commission decided that the Claimant’s qualifying period was shorter than the usual 52 weeks because the Claimant had an claim that started on September 27, 2020.

⁴ See section 7 of the *Employment Insurance Act*.

⁵ See section 7(2)(b) of the *Employment Insurance Act* and section 17 of the *Employment Insurance Regulations*.

⁶ Section 93 of the *Employment Insurance Regulations*

⁷ See section 153.17(1) of the *Employment Insurance Act*. Claimants who apply for regular EI benefits are deemed to have an additional 300 hours.

⁸ See section 153.17(2) of the *Employment Insurance Act*.

⁹ See section 8 of the *Employment Insurance Act*.

[18] Your current qualifying period can't overlap with an earlier qualifying period. The Claimant's qualifying period would overlap with his earlier qualifying period if it went back to a time before September 27, 2020. This means that despite being ill and unable to work from September 27, 2020 to January 3, 2021, the Claimant's qualifying period cannot be extended before September 27, 2020, because the hours he worked before that date were used to establish his EI claim for EI sickness benefits the first time he was ill.

[19] So, the Commission decided that the Claimant's qualifying period was 20 weeks and went from September 27, 2020 to February 13, 2021.

[20] There is no evidence that makes me doubt the Commission's decision. So, I accept as fact that the Claimant's qualifying period is from September 27, 2020 to February 13, 2021.

The hours the Claimant worked

[21] The Commission decided that the Claimant had worked 216 hours during his qualifying period.

[22] The Claimant doesn't dispute this, and there is no evidence that makes me doubt it. So, I accept it as fact.

So, has the Claimant worked enough hours to qualify for EI benefits?

[23] No, the Claimant has not worked enough hours to qualify for EI sickness benefits. I find that the Claimant does not have enough hours to qualify for benefits because he needs 600 hours, but has worked 216 hours in the qualifying period.

[24] The Claimant testified that he applied for EI sickness benefits on September 28, 2020. At the time he made that claim he had 1,993 hours. He received 14 weeks of EI sickness benefits until January 2, 2021. He returned to work on January 4, 2021, and worked until February 9, 2020, when he had leave work due to illness.

[25] The Claimant testified that he received one week of EI sickness benefits in February 2021. That was the last week of EI sickness benefits from the claim he

started on September 27, 2020. The Claimant said he was told by several Service Canada agents that he needed 120 hours to qualify for a new claim for EI benefits. He did not find out that the Commission had applied the 480 additional hours to the September 2020 qualifying period, until he was told that he did not have enough hours to qualify for benefits on his February 2021 claim.

[26] The Claimant's Representative submitted that the regulations for EI that came out in response to the COVID-19 pandemic claim provided for a top up of hours for those who did not qualify for EI benefits. The Commission applied the additional hours to the Claimant's September 2020 qualifying period when those hours were not necessary to establish his claim. He had 1,993 hours in September 2020 which was more than enough to establish a claim. There was no choice given to people if they wanted to have the additional hours applied. Instead the additional hours were automatically applied.

[27] The Claimant's Representative noted that it made no sense the Claimant was repeatedly told that he needed 120 hours by Service Canada staff but no one checked to see if the 480 hours had already been applied. As she read section 153.17(2) of the *Employment Insurance Act*, quoted by the Commission at page GD4-4, the additional hours never should have been applied to the Claimant's September 2020 claim.

[28] The Claimant's Representative submitted that where the legislation providing for the additional hours is new, there is no case law to say that the additional hours cannot be applied the way the Claimant wants the hours applied. It is not clear that the legislation required an automatic top-up of hours.

[29] The Claimant submitted that there was no information given to the public on the legislative changes. The regular population does not understand the changes. He was told that he needed 120 hours. He believes that he was lied to and that it was entrapment. The Claimant was offended when a Service Canada agent told him, "It is what it is."

[30] The Commission says that Claimant needed 600 hours to qualify for EI sickness benefits, which are a special benefit. It says that the temporary measures that came

into effect on September 27, 2020 provided that a claimant who established a claim on or after that date would receive a one time hours credit. The hours credit related to special benefits was 480 hours, with 300 hours related to all other benefits. In this case, the Commission says, the temporary measures directed it to apply the one time credit to the Claimant's claim for EI sickness benefits made on September 28, 2020. The Commission says that the temporary measures prevent the one time hours credit from being removed from the September 20, 2020 claim in order to be used on a subsequent claim of the Claimant's choosing.¹⁰

[31] I recognize the Claimant submits that he spoke to Service Canada agents who provided incorrect information. While this may be true, the Federal Court of Appeal has found that it is obvious that Commission agents have "no power to amend the [law]," so any interpretation they make of the law does not, by itself, "have the force of law." The Court also stated that any commitment the Commission's representatives might make, "whether in good or bad faith, to act in a way other than" written in the law, is "absolutely void." This means that even if the Claimant did receive incorrect information from Commission agents, what is important is what is written in the *Employment Insurance Act*, and whether the Claimant complied with those provisions.

[32] I recognize the Claimant's argument that having qualified for the September 2020 claim the additional hours should not have been applied to that claim. I also recognize that the additional hours were applied to that claim without the Claimant's knowledge or consent. 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.

[33] I recognize the Claimant's argument that it would benefit him 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,

¹⁰ The Commission is relying on section 153.17(2) of the *Employment Insurance Act* when it makes this submission.

2020. This means that the Commission applied the 480 additional hours to the Claimant's 1,933 hours used to establish the Claimant's claim for EI sickness benefits made on September 27, 2020.

[34] As noted above, once hours are used to establish a claim for EI benefits they cannot be re-used to establish a new claim. The temporary measures also clearly state that a claimant who has already had their hours increased by applying the additional hours cannot have any more additional hours.¹¹ This means that, having had the additional hours applied to the September 2020 claim the Claimant cannot access the additional hours for his February 2021 claim. As a result, I find the Claimant has 216 hours in his qualifying period when he required 600 hours to establish his claim for EI sickness benefits. Accordingly, I find the Claimant does not have enough hours to qualify for sickness EI benefits.

[35] The purpose of the 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. The law doesn't allow for the Claimant to waive the application of these additional hours, or revoke their application from a previous claim. The Claimant may feel that this is an unfair result, but there is no legal basis for me to make the change he 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.¹²

Conclusion

[36] The Claimant doesn't have enough hours to qualify for EI sickness benefits.

[37] This means the appeal is dismissed.

Raelene R. Thomas
Member, General Division – Employment Insurance Section

¹¹ See section 153.17(2) of the *Employment Insurance Act*

¹² See *Pannu v Canada (Attorney General)*, 2004 FCA 90.