



Citation: *Canada Employment Insurance Commission v NK*, 2021 SST 601

Social Security Tribunal of Canada Appeal Division

Decision

Applicant: Canada Employment Insurance Commission
Representative: Anick Dumoulin

Respondent: N. K.

Decision under appeal: General Division decision dated August 19, 2021
(GE-21-1260)

Tribunal member: Shirley Netten

Decision date: October 18, 2021

File number: AD-21-286

Decision

[1] Leave (permission) to appeal is granted and the Commission's appeal is allowed.

Overview

[2] As a temporary measure, the *Employment Insurance Act* (EIA) was amended to provide a one-time increase in insurable hours. The Commission applied that increase to N. K.'s (the Claimant's) claim for regular employment insurance (EI) benefits effective September 27, 2020 (the 2020 claim). While on this claim, the Claimant began a maternity leave in June 2021. She could only receive 14 weeks of maternity benefits because her existing benefit period ended in September 2021. The Claimant wanted the extra insurable hours to apply to a new claim for maternity and parental benefits instead (the 2021 claim), but the Commission refused.

[3] On appeal, the General Division decided that the extra hours should not have been applied to the 2020 claim, and so they were available for the 2021 claim. The Commission requested permission to appeal to the Appeal Division.

[4] On consent of the parties, I have found that the General Division made an error of law. I have replaced the General Division decision with a decision that the extra hours had to be applied to the 2020 claim. However, the Claimant had in fact worked enough hours between the 2020 and 2021 claims to qualify for the balance of her maternity and parental benefits in September 2021.¹ She will receive her full maternity and parental benefits so long as she claims the balance of these benefits, effective September 26, 2021.

There is agreement on the outcome of the appeal

[5] Section 153.17 of the EIA² says:

153.17 (1) A claimant who makes an initial claim for benefits under Part I on or after September 27, 2020 or in relation to an

¹ Service Canada's estimate of the Claimant's insurable hours between September 27, 2020 and June 11, 2021 was mistaken. The Claimant had more than 420 hours. Unfortunately, the Claimant was not aware of this fact and has since worked additional hours while on maternity leave.

² This is the version of section 153.17 that applies to the Claimant's situation; it took effect on September 27, 2020.

interruption of earnings that occurs on or after that date **is deemed to have in their qualifying period**

(a) if the initial claim is in respect of benefits referred to in any of sections 21 to 23.3, an additional 480 hours of insurable employment; and

(b) in any other case, an additional 300 hours of insurable employment.

(2) Subsection (1) does not apply to a claimant who has already had the number of insurable hours in their qualifying period increased under that subsection or under this section as it read on September 26, 2020, if a benefit period was established in relation to that qualifying period.

[Emphasis added.]

[6] The Commission submits, and the Claimant agrees, that this means that the extra hours must be applied to the first claim that is made on or after September 27, 2020. The extra hours cannot be applied to a subsequent claim unless no benefit period was established.

[7] I agree with this interpretation. The General Division was wrong when it said that section 153.17 is ambiguous. The language of “deeming” removes any discretion on the part of the Commission. The Claimant was deemed to have an additional 300 insurable hours in the qualifying period for her 2020 claim, and consequently she could not have any extra hours added to the qualifying period for a subsequent claim.

Conclusion

[8] Permission to appeal is granted, and the appeal is allowed.

Shirley Netten
Member, Appeal Division