[TRANSLATION]

Citation: *VM v Canada Employment Insurance Commission*, 2021 SST 587

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	V. M.
Representative:	Sylvie Huard
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (428392) dated July 19, 2021 (issued by Service Canada)

Tribunal member:	Normand Morin
Type of hearing:	Teleconference
Hearing date:	September 14, 2021
Hearing participants:	Appellant Appellant's representative
Decision date:	September 29, 2021
File number:	GE-21-1430

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 sickness benefits (special benefits).[2]

Overview

[2] From November 9, 2020, to January 19, 2021, and from April 26, 2021, to May 26, 2021, the Appellant worked for the Government of Canada (Canada Revenue Agency, or employer).

[3] On May 18, 2021, she applied for EI sickness benefits (special benefits).[3]

[4] On June 21, 2021, the Canada Employment Insurance Commission (Commission) informed her that she was not entitled to EI special or regular benefits. It explained to her that she had 354 hours of insurable employment between October 4, 2020, and May 29, 2021, when she needed 600 hours of insurable employment to be entitled to benefits. It indicated that, if she had other hours of insurable employment between October 4, 2020, and May 29, 2021, and had not provided them on her claim for benefits, she had to submit a Record of Employment. The Commission also specified that, if she had other hours of insurable employment after May 29, 2021, and then became unemployed, she had to make a new claim for benefits.[4]

[5] On July 19, 2021, after a request for reconsideration, the Commission informed her that it was upholding the June 21, 2021, decision.[5]

[6] The Appellant says that she is eligible for the one-time credit of insurable hours the Government of Canada introduced as part of the measures put in place to facilitate

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[1] See section 93 of the *Employment Insurance Regulations* (Regulations).
[2] See section 7 of the *Employment Insurance Act* (Act) and section 93 of the Regulations.
[3] See GD3-3 to GD3-10.
[4] See GD2-10, GD2-11, GD3-15, and GD3-16.
[5] See GD2-15, GD2-16, GD3-24, and GD3-25.

access to EI benefits. She is asking that the credit of insurable hours she was given for the benefit period starting October 4, 2020, be cancelled and that it be applied instead to the claim for sickness benefits she made on May 18, 2021. The Appellant argues that she did not ask for that hours credit and that she did not need it for the benefit period starting October 4, 2020, but that she needs it for the claim for benefits she made on May 18, 2021, to reach the required number of insurable hours—600 hours—to be entitled to sickness benefits. On August 18, 2021, the Appellant challenged the Commission's reconsideration decision before the Tribunal. That decision is now being appealed to the Tribunal.

Issue

[7] I have to decide whether the Appellant has the required number of hours of insurable employment to be entitled to EI sickness benefits (special benefits) and whether she qualifies for them as a result.[6]

Analysis

[8] You do not automatically receive EI benefits when you stop working. You have to prove that you qualify for benefits.[7] You have to prove this on a balance of probabilities. This means that you have to show that it is more likely than not that you are entitled to benefits.

[9] To qualify for benefits, you need to have worked enough hours within a certain time frame. This time frame is called the "qualifying period."[8] In general, the qualifying period is the 52 weeks before your benefit period would start.[9]

[10] Your benefit period is not the same thing as your qualifying period. It is a different time frame. Your benefit period is the time when you can receive EI benefits.

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[6] See section 7 of the Act and section 93 of the Regulations.
[7] See section 48 of the Act.
[8] See section 7 of the Act.
[9] See section 8 of the Act.

[11] In general, the number of hours used to determine whether you are entitled to benefits depends on the unemployment rate in your region of residence.[10]

[12] But, the *Employment Insurance Act* (Act) provides another way to qualify for special benefits, including sickness benefits.

[13] If you want special benefits, you can qualify if you have 600 or more insurable hours.[11] But, this is only if you do not qualify under the general rule.[12]

[14] In the case before me, the Commission established the Appellant's qualifying period from October 4, 2020, to May 29, 2021.[13]

[15] In this case, I find that the Appellant has not shown that she worked enough hours to qualify for sickness benefits (special benefits). The evidence on file shows that she has only 354 insurable hours in her qualifying period, when she needed 600 insurable hours to be entitled to sickness benefits (special benefits).

[16] The Appellant and her representative argue as follows:

a) The Appellant says that she is eligible for the credit of insurable hours the Government of Canada introduced for the period from September 27, 2020, to September 25, 2021.[14] This credit should be applied with the claim for benefits the Appellant made on May 18, 2021, not with the benefit period automatically established effective October 4, 2020. By applying this credit to the May 18, 2021, claim for benefits, the Appellant would have the required number of hours to be able to receive sickness benefits (special benefits).[15]

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[10] See section 7(2)(b) of the Act and section 17 of the Regulations.
[11] See section 93(1) of the Regulations.
[12] Section 7 of the Act sets out the general rule.
[13] See GD4-3.
[14] See section 153.17 of Part VIII.5 of the Act – Temporary Measures to Facilitate Access to Benefits.
[15] See GD2-17 and GD5-1 to GD5-4.

b) The Appellant stopped working on June 24, 2020. She applied for benefits a few days later.[16] Her benefit period started on June 28, 2020. The Appellant received benefits under the EI Emergency Response Benefit (EI ERB).[17] Her benefit period was automatically renewed on October 4, 2020. A one-time credit of 300 insurable hours was used for her benefit period starting October 4, 2020, even though she made no claim in that regard and did not need this credit to receive benefits at that time.[18] When the Appellant stopped working on June 24, 2020, she had 704 insurable hours in her period of employment from February 17, 2020, to June 24, 2020, as shown by the Record of Employment the employer issued on July 22, 2020.[19] She already had enough hours based on her region of residence and the applicable regional unemployment rate when she made her claim for benefits, that is, during the period from June 7, 2020, to July 11, 2020.[20]

c) The Appellant is asking that this credit of insurable hours be applied instead to the claim for sickness benefits (special benefits) made on May 18, 2021, because that is the claim she would need it for.[21] She did make that claim for benefits on May 18, 2021,[22] not May 2, 2021, as mentioned in the Notice of Appeal,[23] or May 25, 2021, as mentioned in a document the representative sent to the Tribunal.[24] But, the Appellant is asking that her benefit period begin the week starting May 2, 2021—after the last week for which she received sickness benefits (special benefits) with the benefit period starting June 28, 2020, that is, the week ending May 1, 2021. In early May 2021, the

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[16] In its arguments, the Commission says that the Appellant applied for regular benefits on July 1, 2020, because of a shortage of work on June 24, 2020—GD6-1.
[17] This type of benefit is also known as the Canada Emergency Response Benefit (CERB). See also GD2-17.
[18] See GD2-17, GD3-17, GD3-23, and GD5-1 to GD5-4.
[19] See GD2-12.
[20] See the excerpt from the Government of Canada website (Service Canada) (3 Month Seasonally Adjusted Unemployment Rates by EI Economic Region - Canada.ca; and EI Regular Benefits - Eligibility - Canada.ca)—GD2-13 and GD2-14.
[21] See GD2-17, GD3-17, and GD3-23.
[22] See GD3-3 to GD3-10.
[23] See GD2-17.
[24] See GD5-1 to GD5-4.

Appellant was working part-time, one day per week, given that she was gradually returning to work, until she stopped working on May 26, 2021.[25]

d) Section 153.17 of the Act says that a claimant who makes an initial claim for benefits on or after September 27, 2020, or who has an interruption of earnings, has a credit of insurable hours. The representative indicates that this measure applies to the period from September 27, 2020, to September 25, 2021. This measure is part of the temporary measures the Government of Canada put in place to facilitate access to EI.[26] The Appellant did not make an initial claim for benefits on October 4, 2020, and did not have an interruption of earnings at that time. The representative points out that the Act [translation] "clearly states" that the claimant needs to be the one making a claim for benefits to receive this credit of insurable hours, but the Appellant made no such claim. In addition, after she stopped working on June 24, 2020, the Appellant did not have another interruption of earnings until January 2021. Effective October 4, 2020, the Appellant's benefit period was automatically extended. It was only the continuation of her benefit period starting June 28, 2020. The Appellant should be able to have 52 weeks to receive benefits for the number of weeks she is entitled to them. Since the Appellant's benefit period started on June 28, 2020, this period should have ended around late June 2021. According to the representative, the Appellant's actual initial claim for benefits was made in May 2021.[27]

e) Although the Commission indicates in its arguments that the hours credit [translation] "was applied to the [Appellant]'s claim starting October 4, 2020,"[28] the Appellant did not ask for the credit of insurable hours to be applied from October 4, 2020.

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[25] See GD3-13 and GD3-14.
[26] See GD2-17.
[27] See GD5-1 to GD5-4.
[28] See GD4-1.

f) The Commission denied the Appellant's request to use her credit of insurable hours for the claim for benefits made on May 18, 2021, saying: [translation] "The decisions are based on the *Employment Insurance Act* and its Regulations."[29] A backgrounder on the Government of Canada website indicates that temporary measures were put in place on September 27, 2020, to facilitate access to EI, and it explains that these measures are "complementary to, but not included in, the Act."[30]

g) The credit of insurable hours exists to help people reach the required number of insurable hours to be entitled to benefits. You should be able to ask for this credit in the year it is available and for the period you need it.[31]

h) If the benefit period starting June 28, 2020, had continued without a new period being established effective October 4, 2021 [*sic*], the Appellant could have claimed sickness benefits using the period established effective June 28, 2020. By considering the claim for benefits the Appellant made on May 18, 2021, as her first initial claim made between September 27, 2020, and September 25, 2021, she would be entitled to her credit of insurable hours, and she would have been entitled to regular or sickness benefits, given that she stopped working on May 26, 2021, as a result of an illness or injury.[32]

i) If the temporary measures the Government of Canada put in place—like the measure to give claimants a credit of insurable hours—were meant to make it easier for claimants to access benefits, that has not been the case for the Appellant. Instead, this measure has penalized her.[33]

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[29] See GD2-10, GD2-11, GD2-15 to GD2-17, GD3-15, GD3-16, GD3-24, GD3-25, and GD5-1 to GD5-4.
[30] See the excerpt from the Government of Canada website – Backgrounder: The COVID-19 Response Measures Act - Canada.ca—GD2-9.
[31] See GD2-17.
[32] See GD3-13, GD3-14, and GD5-1 to GD5-4.
[33] See GD5-1 to GD5-4.

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

a) The Appellant's qualifying period was established from October 4, 2020, to May 29, 2021,[34] because an earlier benefit period was established for her effective October 4, 2020.[35]

b) On May 18, 2021, the Appellant applied for sickness benefits, which are considered special benefits under the Act.[36] She has failed to show that she qualified for EI special benefits under section 93 of the *Employment Insurance Regulations*, since she has only 354 out of the required 600 hours of insurable employment in her qualifying period.[37]

c) If the qualifying conditions had been met, the claim for benefits the Appellant made on May 18, 2021, would have started on May 30, 2021, not May 2, 2021.[38]

d) Section 153.17(1) of the Act says that any claimant who files a claim on or after September 27, 2020, is deemed to have a one-time credit of additional insurable hours based on the type of benefit claimed. Section 153.17(2) of the Act says that section 153.17(1) of the Act does not apply to a claimant who has already had the number of insurable hours in their qualifying period increased under that section.[39]

e) The Appellant has only 354 hours of insurable employment in her qualifying period, when she needs 600 hours to qualify for sickness benefits. A one-time credit of additional insurable hours was applied to her benefit period starting October 4, 2020. As a result, the insurable hours for the claim for benefits

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[34] See section 8(1)(b) of the Act.
[35] See GD4-3.
[36] See section 2(1) of the Act.
[37] See GD4-3.
[38] See GD4-3.
[39] See sections 153.17(1) and 153.17(2) of Part VIII.5 of the Act (Temporary Measures to Facilitate Access to Benefits). See also GD4-4.

made on May 18, 2021, with which a benefit period that [*sic*] could have been established effective May 30, 2021, cannot be increased again.[40]

f) The Appellant's benefit period starting June 28, 2020, is related to a claim for the EI ERB (CERB) established under Part VIII.4 of the Act, not a claim for EI benefits.[41]

g) Under section 153.8(5) of the Act, a claim for regular benefits or sickness benefits (special benefits) could not be established between March 15, 2020, and September 26, 2020. Given that the Appellant applied for regular benefits on July 1, 2020, because of a shortage of work on June 24, 2020, her claim could not be established as EI regular benefits. The only type of benefit period that could be established was a benefit period for the EI ERB (CERB).[42]

h) Section 153.8(1) of the Act says that the EI ERB (CERB) could be paid only until October 3, 2020. After that, the Appellant could not be paid any benefits for her benefit period starting June 28, 2020, because it was a claim for the EI ERB (CERB). As a result, it was appropriate to end the benefit period starting June 28, 2020, on October 3, 2020.[43]

i) A claim for EI regular benefits was automatically established for the Appellant effective October 4, 2020. It is an initial claim. The term "initial claim" refers to establishing a new benefit period, as opposed to a "renewal claim," which does not involve establishing a new benefit period.[44]

j) The temporary measures set out in Part VIII.5 of the Act apply to any benefit period established on or after October 4, 2020. The Act does not say that a claimant needs to have filed the claim for benefits for Part VIII.5 of the Act to

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[40] See GD4-4.
[41] See GD6-1.
[42] See GD6-1.
[43] See GD6-1.
[44] See GD6-1 and GD6-2.

> apply. Although the Appellant did not file this claim for benefits herself, she claimed benefits from October 4, 2020, by completing her claimant reports. In addition, the Appellant never asked for the benefit period starting October 4, 2020, to be cancelled. It was appropriate to apply the measures set out in Part VIII.5 of the Act to the benefit period established effective October 4, 2020.[45]

[18] Because of the COVID-19 pandemic,[46] changes were made to the Act. For example, a number of temporary measures were put in place, including the measure to increase hours of insurable employment by giving an hours credit to facilitate access to EI regular and special benefits.[47]

[19] Under this measure, with a minimum of 120 hours of work, claimants will receive a one-time credit of 300 insurable hours for claims for regular and work-sharing benefits or 480 insurable hours for claims for special benefits (for example, sickness, maternity, parental, compassionate care, and family caregiver benefits).[48]

[20] In this case, the Appellant initially received benefits under the EI ERB (CERB) after applying for benefits on July 1, 2020.[49] The Appellant received this type of benefit from the week beginning June 28, 2020, until October 3, 2020—that is, for as long as she could be paid this type of benefit, given the temporary nature of this measure.[50]

[21] I do not accept the representative's argument that the Appellant's actual initial claim for benefits was made in May 2021, given that the Appellant initially applied for benefits on July 1, 2020, to get the EI ERB (CERB).

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[45] See GD6-2.
[46] Coronavirus disease 2019.
[47] See section 153.17 of Part VIII.5 of the Act – Temporary Measures to Facilitate Access to Benefits.
[48] See section 153.17 of Part VIII.5 of the Act – Temporary Measures to Facilitate Access to Benefits.
[49] See section 153.8(1) of Part VIII.4 of the Act. See also the Commission's arguments, which say that the Appellant applied for regular benefits on July 1, 2020, because of a shortage of work on June 24, 2020—GD6-1.
[50] See section 153.8(1) of Part VIII.4 of the Act.

[22] Despite the representative's argument that, if this benefit period had continued until the end of June 2021, without a new period being established effective October 4, 2020, the Appellant could have claimed sickness benefits with the claim for benefits made on July 1, 2020, this could not be the case. A claim for regular benefits or sickness benefits (special benefits) could not be established between March 15, 2020, and September 26, 2020, given the creation of the EI ERB (CERB).[51] The Appellant could not continue receiving this type of benefit after October 3, 2020, either.[52]

[23] I do not accept the Appellant's arguments that she did not make an initial claim for benefits on October 4, 2020, and that she did not ask to be given a one-time credit of insurable hours with the benefit period established effective that date.

[24] The Commission acknowledges that a claim for EI regular benefits was automatically established for the Appellant effective October 4, 2020, and that, in its view, it is an initial claim for benefits.

[25] I find that the temporary measures set out in the Act apply to benefit periods established on or after October 4, 2020.[53]

[26] I find that the Commission had the power to apply the measures set out in the Act[54] by automatically establishing a benefit period for EI regular benefits effective October 4, 2020, and by using the credit of insurable hours available to the Appellant, even though she did not make a claim for benefits herself at that time or ask that the credit be also used for this claim.

[27] I point out that section 153.17(1) of the Act says that any claimant who files a claim for benefits on or after September 27, 2020, or in relation to an interruption of earnings that occurs on or after that date, is deemed to have a credit of insurable hours based on the type of benefit claimed (regular or special benefits).[55] Section 153.17(2) of

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[51] See sections 153.8(1) and 153.8(5) of Part VIII.4 of the Act.
[52] See section 153.8(1) of Part VIII.4 of the Act.
[53] See Part VIII.5 of the Act – Temporary Measures to Facilitate Access to Benefits.
[54] See Part VIII.5 of the Act – Temporary Measures to Facilitate Access to Benefits.
[55] See section 153.17(1) of Part VIII.5 of the Act – Temporary Measures to Facilitate Access to Benefits.

the Act also says that section 153.17(1) of the Act does not apply to a claimant who has already had the number of insurable hours in their qualifying period increased if a benefit period was established in relation to that qualifying period.[56]

[28] I find that the credit of insurable hours set out in section 153.17(1) of the Act was already used for the benefit period that was established for the Appellant effective October 4, 2020. This means that this credit cannot apply for the claim for benefits the Appellant made on May 18, 2021.

[29] The fact that the Appellant did not have an interruption of earnings before a benefit period was established on October 4, 2020, does not change the situation.

[30] There is no provision in the Act that provides that a claimant may ask the Commission to use the credit of insurable hours for a period other than the one the credit was used for. In my view, the Act does not allow the Appellant to decide to use this credit for the claim for benefits she made on May 18, 2021, or for the benefit period starting October 4, 2020. Although the representative argues that not being able to make such a decision may put the Appellant at a disadvantage, given her situation, the Act does not give her the option of doing so.

[31] I do not accept the representative's argument that the measures that involve giving a credit of insurable hours, subject to conditions, are not included in the Act. Temporary measures to facilitate access to benefits, including the measure to increase hours of insurable employment, form an integral part of the Act following the changes that were made to it.[57]

[32] In summary, the evidence on file shows that the Appellant does not have enough hours of insurable employment in her qualifying period to be able to receive sickness

[56] See sections 153.17(1) and 153.17(2) of Part VIII.5 of the Act – Temporary Measures to Facilitate Access to Benefits.
[57] See section 153.17 of Part VIII.5 of the Act – Temporary Measures to Facilitate Access to Benefits.

benefits (special benefits). The Appellant has 354 hours of insurable employment in her qualifying period, when she needs 600 hours of insurable employment.

[33] This means that a benefit period cannot be established for the Appellant so that she can receive sickness benefits (special benefits) using the claim for benefits she made on May 18, 2021.

[34] The Court tells us that the requirements of the Act regarding the number of hours of insurable employment to enable a person to receive benefits do not allow any discrepancy and provide no discretion, even when special benefits are being claimed.[58]

[35] While I sympathize with the Appellant's case, the Court tells us that adjudicators, which include the Tribunal, are not permitted to rewrite legislation or to interpret it in a manner that is contrary to its plain meaning.[59]

Conclusion

[36] I find that the Appellant has not shown that she has enough insurable hours to receive benefits.

[37] This means that the appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section

[58] The Court established this principle in the following decisions: *Lévesque*, 2001 FCA 304; and *Pannu*, 2004 FCA 90.
[59] The Court established this principle in *Knee*, 2011 FCA 301.