Citation: *MG v Canada Employment Insurance Commission*, 2021 SST 662

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	M. G.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (424889) dated June 4, 2021 (issued by Service Canada)

Tribunal member:	Mark Leonard
Type of hearing:	Videoconference
Hearing date:	August 5, 2021
Hearing participants:	Appellant
Decision date:	August 9, 2021
File number:	GE-21-1072

Decision

[1] The appeal is dismissed.

[2] The Appellant hasn't shown that he has enough hours to qualify for Employment Insurance (EI) benefits.

Overview

[3] The Appellant applied for EI benefits, but the Canada Employment Insurance Commission (Commission) decided that the Appellant did not have enough hours to qualify.[1]

[4] The Commission says that the Appellant doesn't have enough hours because he needs 420 hours, but has no insurable working hours in his qualifying period and a one-time 300-hour credit does not assist him in meeting that threshold.

[5] The Appellant disagrees and says that he worked in The Republic of Ireland (Ireland) and earned enough hours to qualify for benefits in Canada. He says that these hours should count towards his eligibility or, at the very least, fairness should be applied in granting him EI benefits.

[6] I have to decide whether the Appellant has enough hours to qualify for EI benefits.

Matter I have to consider first

The Appellant wasn't at the hearing

[7] The Appellant submitted a written copy of material he referred to in his presentation during the hearing. The material is essentially what he spoke into the record during the hearing so I am satisfied that there is no new information in addition to that presented at hearing.

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[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."

Issue

[8] Has the Appellant worked enough hours to qualify for EI benefits?

Analysis

How to qualify for benefits

[9] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.[2] The Appellant 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.

[10] To qualify, you need to have worked enough hours within a certain timeframe. This timeframe is called the "qualifying period."[3]

[11] The number of hours depends on the unemployment rate in your region.[4]

The Appellant's region and regional rate of unemployment

[12] The Commission decided that the Appellant's regional rate of unemployment was 13.1% because, at the time, that was the regional rate of unemployment for all 62 regions.

[13] This means that the Appellant would need to have at least 420 hours in his qualifying period to be eligible for EI benefits.[5]

The Appellant agrees with the Commission

[14] The Appellant does not dispute the Commission's decisions about which region and regional rate of unemployment apply to him. In fact, 420 hours is the minimum number required to be eligible for benefits therefore, I am satisfied that the required

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[2] See section 48 of the EI Act.
[3] See section 7 of the EI Act.
[4] See section 7(2)(b) of the EI Act and section 17 of the *Employment Insurance Regulations*.
[5] Section 7 of the EI Act sets out a chart that tells us the minimum number of hours that you need depending on the different regional rates of unemployment.

minimum 420 hours apply to the Appellant. This means that the Appellant would need to have at least 420 hours in his qualifying period to be eligible for EI benefits.[6]

[15] However, as a result of the Covid -19 pandemic the Federal Government modified the qualification rules. It recognized that because of the pandemic, some EI applicants would be unable to meet the required hours to qualify. It introduced a one-time credit of 300 hours to be added to a Appellant's actual work hours to assist them in qualifying for benefits.[7]

[16] This means that the Appellant would only need to have worked 120 hours in his qualifying period. Combined with the 300-hour credit he would reach the required 420 hours to qualify for benefits.

The Appellants Qualifying Period

[17] As noted above, the hours counted are the ones that the Appellant worked during his qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.[8]

[18] Your **benefit period** isn't the same thing as your **qualifying period**. It is a different timeframe. Your benefit period is the time when you can receive EI benefits.

[19] The Commission decided that the Appellant's qualifying period was the usual 52 weeks and determined that the Appellant's qualifying period went from March 22, 2020, to March 20, 2021.

[20] The Appellant does not challenge the qualifying period and I see no evidence that would lead me to a different conclusion.

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[6] Section 7 of the EI Act sets out a chart that tells us the minimum number of hours that you need depending on the different regional rates of unemployment.
[7] See Section 152.17 (1)(b) of the *Employment Insurance Act*.
[8] See section 8 of the EI Act.

The hours the Appellant worked

The Appellant doesn't agree with the Commission

[21] The Commission determined that the Appellant had no hours worked in his qualifying period. It says that there is no Record of Employment (RoE) from an eligible employer that records any hours worked during his qualifying period.

[22] The Appellant doesn't dispute that he has no working hours in Canada during the qualifying period. He says that he was working in Ireland and submitted that I should consider those hours as eligible to meet the requirements of the *Act* to receive EI benefits.

Do hours worked in Ireland count towards eligibility for EI benefits in Canada?

[23] I asked the Commission to get a ruling from the Canada Revenue Agency (CRA) on the number of hours because ordinarily, I don't have the authority to decide that particular question.[9] I made the request on July 8, 2021. The expectation is that there will be a response in a reasonable amount of time.

[24] As of the date of the hearing August 5, 2021, the Commission had not responded to the request. It did not ask for an extension of time to obtain the requested information nor did it attend the hearing to explain why it has not responded to the request. On August 6, 2021, it provided notice that there would be no further representations.

[25] So I am left in a situation where I am obligated to dispose of the matter without the benefit of a ruling from the CRA. I am satisfied that I have sufficient evidence to proceed with a decision.

[26] The Appellant submitted that he had worked in Ireland from November 1, 2019, to August 31, 2020. He supplied a copy of his contract with his employer in Ireland as well as an Employment Detail Summary for 2020 (GD2-16). This summary provides details of his earnings and deductions during the contract period. The summary notes that he had 34 weeks of insurable work. He had deductions taken from his pay for Pay-

[9] See section 90 of the EI Act.

Related Social Insurance (PRSI). He says that these weeks and associated hours earned in Ireland can be used for his eligibility to receive EI benefits in Canada because of an agreement between the two countries.

[27] The Appellant submitted that Canada and Ireland have a binding agreement on social security.[10] He suggests that this agreement provides for reciprocal application of EI benefits in Canada based on work he did in Ireland. The Appellant did admit in testimony that there is no reference to EI in the agreement. In fact, the agreement notes that the only two social assistance programs, to which the agreement applies in Canada, are the Canada Pension Plan (CPP) and Old Age Security (OAS).

[28] I find that the Appellant cannot rely upon the noted bilateral agreement because it specifies that it only applies to CPP and OAS in Canada. There is no mention of the agreement applying to EI matters in Canada, nor is there any reference that would lead me to conclude there was an intention to do so.

[29] The Appellant also submitted that the *EI Regulations* (Canada) has a provision to accept hours earned outside of Canada.[11] The section details four requirements in order for hours to be considered insurable employment.

> *Employment outside Canada, other than employment on a ship described in section 4, is included in insurable employment if*
>
> > ***(a)*** *the person so employed ordinarily resides in Canada;*
> >
> > ***(b)*** *that employment is outside Canada or partly outside Canada by an employer who is resident or has a place of business in Canada;*
> >
> > ***(c)*** *the employment would be insurable employment if it were in Canada;* ***and***
> >
> > ***(d)*** *the employment is not insurable employment under the laws of the country in which it takes place.*

[30] The Appellant made submissions on elements (a) and (c). He says that he ordinarily resides in Canada and that the employment in Ireland would be insurable had

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[10] See *Canada-Ireland Agreement on Social Security, E102203 – CTS 1992 No. 6.*
[11] See Section 5 of the *Employment Insurance Regulations*.

it occurred in Canada. I am inclined to agree with the Appellant. He was on a temporary employment contract in Ireland. I am satisfied that returning to Canada to resume his ordinary residence was the Appellant's intention. Further, based on the job the Appellant was performing in Ireland, I am satisfied that had he done the same work in Canada, it would have ben deemed insurable employment.

[31] However, the Appellant did not provide submissions on elements (b) and (d). Element (c) requires that the employment outside of Canada be with an employer who is resident or has a place of business in Canada.

[32] The Appellant was working for University College Dublin's Sutherland School of Law. The employer is neither resident in Canada nor does it have a place of business in Canada. The Appellant made no submissions that could lead me to a different conclusion.

[33] Element (d) requires that any employment outside of Canada not be considered insurable under the laws of the country in which it takes place. The Appellant submitted that he is not eligible to receive benefits in Ireland due to not meeting residency requirements. The element in question does not speak to eligibility to receive benefits. It only specifies that the employment outside Canada cannot be insurable in that country. The Appellant submitted that his employment was insurable (GD2-6). He also submitted documents that confirm that Ireland considered his employment insurable (GD2-16).

[34] The regulation is clearly written in a manner that demands all four elements be met for work outside Canada to be considered insurable in Canada. I am satisfied that the Appellant's work outside Canada does not meet the requirements of elements (b) and (d).

[35] I find that the Appellant cannot rely upon Section 5 of the *EI Regulations* to support that his work outside Canada was insurable employment in Canada

[36] Lastly, the Appellant submitted that the provisions of the *EI Act* should be applied liberally and not literally. He suggests at the legislators intended that all citizens would be entitled to assistance when in need. He believes that even if he does not meet the

minimum eligibility requirements of the Act, he should still be granted EI benefits because it would be fair and would support the notion of equity among all citizens.

[37] I empathize with the Appellant's situation and his plea for fairness. However, to grant him benefits would require that I ignore the eligibility requirements contained in the *EI Act* and that I interpret it in a manner that is contrary to its plain meaning. The *Act* sets out minimum eligibility requirements in order to qualify to receive EI benefits. The *Act* is neither silent on eligibility requirements not does it confer any discretion concerning interpretation of them. It is clear that there was a legislative purpose in doing so.

[38] The Federal Court of Appeal has concluded that it is not discriminatory to have such requirements, even if a claimant is unable to meet them.[12] A claimant must be able to show a minimal workforce attachment in Canada. The Appellant was not attached to the Canadian workforce during his qualifying period.

[39] Parliament clearly gave consideration to the effects of Covid-19 on the ability of claimants to earn the required hours. It enacted a one-time 300-hour credit to assist claimants in qualifying. However, even with this 300-hour credit the Appellant could not reach the minimum threshold of 420 hours to qualify for benefits.

[40] The courts have also previously concluded that adjudicators do not have the authority to grant hours that were not earned in a claimant's qualifying period regardless of the circumstances.[13]

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

[41] I find that the Appellant hasn't proven that he has enough hours to qualify for benefits because he needs 420 hours, but has only the 300 hours one time credit available in his qualifying period.

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[12] See (*Canada (A.G.) v. Lesiuk*, 2003 FCA 3)
[13] See (*Canada (A.G.) v. Romano*, 2008 FCA 117)

[42] EI is an insurance plan and, like other insurance plans, you have to meet certain requirements to receive benefits.

[43] In this case, the Appellant doesn't meet the requirements, so he doesn't qualify for benefits. While I sympathize with the Appellant's situation, I can't change the law.[14]

Conclusion

[44] The Appellant does not have enough hours to qualify for benefits.

[45] This means that the appeal is dismissed.

Mark Leonard
Member, General Division – Employment Insurance Section

[14] See *Pannu v Canada (Attorney General)*, 2004 FCA 90.