



Citation: *RB v Canada Employment Insurance Commission*, 2021 SST 644

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: R. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (425689) dated June 11, 2021
(issued by Service Canada)

Tribunal member: Raelene R. Thomas

Type of hearing: Videoconference

Hearing date: July 8, 2021

Hearing participant: Appellant

Decision date: July 26, 2021

File number: GE-21-1043

Decision

[1] R. B. is the Claimant. Her appeal is dismissed.

[2] The Canada Employment Insurance Commission (Commission) correctly applied the additional hours to the claim it established on October 4, 2020. The additional hours cannot be removed and used at a later date.

Overview

[3] The Claimant received the Employment Insurance Emergency Response Benefit (EI ERB) until October 3, 2020. The Commission then automatically established a claim for regular EI benefits for the Claimant effective October 4, 2020.

[4] In September 2020, Parliament made changes to the law to make claimants access benefits easier. 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 Commission established the Claimant's claim for regular EI benefits, the Commission automatically applied these additional hours to the Claimant's qualifying period.

[5] In April 2021, the Claimant asked that her regular EI benefits be converted to 15 weeks of maternity and 35 weeks of parental EI benefits. The Commission says that the Claimant cannot receive 35 weeks of parental EI benefits because she does not have enough hours to start a new claim. Instead, she must rely on the claim started in October 2020. The Commission says that it cannot apply the additional hours to establish a new claim because those hours were applied to the claim it established on October 4, 2020.

[6] The Claimant disagrees. She says that she had enough hours to establish a claim for regular EI benefits in October 2020 and that the Commission should not have applied the additional hours to that claim. The Claimant asks that the additional hours be applied to her new claim for maternity and parental benefits, which is when she needs the hours.

Matter I have to consider first

Additional documents received after the hearing

[7] At the hearing, the Claimant said that she had worked from September 2020 to April 2021 and had earned 160 hours of insurable employment. I asked the Commission for a copy of the Record of Employment (ROE) issued by the Claimant's employer for this work. The Commission responded that it did not have an ROE for that employment.

[8] For the reasons outlined below, I do not think that the hours the Claimant earned after the Commission established a claim for EI regular benefits for her on October 4, 2020, are relevant to my decision on whether the additional hours can be applied at a later date to establish a new claim. Therefore, the lack of an ROE for those hours does not affect my decision.

[9] However, I would suggest that the Claimant contact her former employer and the Commission, if she requires assistance, to ensure that an ROE is issued for those hours for any possible future use.

Issue

[10] Can the Claimant have the additional hours used to establish her claim on October 4, 2020, removed so that she can use the additional hours to establish a new claim for maternity and parental benefits?

Analysis

[11] No, the Commission correctly applied the credit of additional hours when it established the Claimant's claim for regular EI benefits on October 4, 2020. The law does not allow these hours to be removed and used for another claim.

[12] To qualify for EI benefits, you need to have worked enough hours¹ within a certain timeframe. This timeframe is called the “qualifying period.”²

[13] The number of hours depends on the unemployment rate in your region, if you are claiming regular EI benefits.³

[14] If you are claiming special benefits, like sickness EI benefits, you are required to have 600 hours in the qualifying period.⁴ In this case, the Claimant wants to establish a claim for maternity and parental EI benefits, so she 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 benefits you are deemed to have additional hours in your qualifying period.

[16] Specifically, if you make an initial claim for regular benefits on or after September 27, 2020, you’re deemed to have 300 additional hours in your qualifying period. 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.⁵ This increase of either amount of hours can only be used once.⁶

[17] As noted above, the hours counted are the ones that the Claimant worked during her 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

¹ Specifically, the hours worked have to be hours of insurable employment. See section 7 of the *Employment Insurance Act* (EI Act) and section 93 of the *Employment Insurance Regulations* (EI Regulations).

² See section 7 EI Act and section 93 EI Regulations

³ See section 7(2)(b) of the EI Act and section 17 of the EI Regulations.

⁴ See section 93 of the EI Regulations

⁵ See section 153.17(1) of the EI Act. Claimants who apply for regular EI benefits are deemed to have an additional 300 hours

⁶ See section 153.17(2) of the EI Act.

period the qualifying period is shortened to the period from the first day of that EI claim to the day before your current claim.

[18] In the Claimant's case, once the EI ERB benefits ended the Commission established a new claim for regular EI benefits for her effective October 4, 2020. The regular EI benefits claim was converted to maternity and parental benefits effective May 2, 2021. This means that the Claimant's qualifying period to establish a new claim for maternity and parental benefits would be October 4, 2020 to May 1, 2021. The Claimant testified that she had 160 hours of insurable employment during that period. She says that if she were able to use the additional hours to top up those 160 hours, she would be able to start a new claim and be able to get her full entitlement of maternity and parental benefits.

[19] The Commission says that the law required that the additional hours had to be applied to the first claim for benefits made after September 27, 2021. It says that regardless of the fact the Claimant did not need the additional hours, the October 4, 2020 claim was the first claim after September 27, 2020 and that it fulfilled the law when it applied the additional hours to that claim.

[20] The Claimant says that the Commission's application of the law to the October 2020 claim was unnecessary and incorrect. The additional hours were established to help people affected by the COVID19 pandemic. Applying the additional hours when she had enough hours to qualify made the law futile. Now that she is in need of the additional hours, she is not able to avail of the law to establish a new claim. She said that the government's attempts to help people has backfired with the way the law is being applied. The Claimant said that the law as written needs more flexibility. Judgement should be exercised to allow for human reasoning rather than simply place people in legislated categories.

[21] When the Commission established a claim for regular EI benefits for the Claimant on October 4, 2020, it established an initial claim for her. Because that claim was established after September 27, 2020, the law says that she was deemed to have an additional 300 hours in her qualifying period. So, I find that the Commission correctly

applied the additional hours to the Claimant's qualifying period for the benefit period that began on October 4, 2020.

[22] I recognize the Claimant's argument that it would benefit her to have the choice of when to apply the additional hours, but the law simply does not allow for any discretion as to when to apply the additional hours. She is entitled to only one application of additional hours. 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, 2020.

[23] I also recognize the Claimant's argument that she had enough hours to qualify for benefits without the additional hours. However, the law doesn't provide any means to allow for the Claimant or the Commission to waive the application of the additional hours even if the Claimant is able to qualify for benefits without them. The law only considers if an initial claim for benefits was made on or after September 27, 2020.

[24] The purpose of the deeming provision of additional hours is to increase the hours in a claimant's qualifying period on the first claim for EI benefits on or after September 27, 2020. I find this law applies to the claim established on October 4, 2020. I do not have the flexibility to refuse to apply the law that applies to the Claimant's circumstances.

[25] The Claimant may feel that this is an unfair result, but there is no legal basis for me to make the change she is requesting. I do not have the ability to re-write the law or to interpret it in a manner that is contrary to its plain meaning.⁷

Conclusion

[26] The appeal is dismissed.

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

⁷ See *Pannu v. Attorney General (Canada)*, 2004 FCA 90. This is how I refer to the courts decisions that apply to the circumstances of this appeal.