



Citation: *SK v Canada Employment Insurance Commission*, 2021 SST 823

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

# Decision

**Appellant:** S. K.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (426108) dated July 2, 2021  
(issued by Service Canada)

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**Tribunal member:** Raelene R. Thomas  
**Type of hearing:** Teleconference  
**Hearing date:** September 9, 2021  
**Hearing participant:** Appellant  
**Decision date:** September 22, 2021  
**File number:** GE-21-1339

## Decision

[1] The appeal is dismissed.

[2] The Commission correctly applied the one-time hours credit to the Claimant's November 22, 2020 employment insurance (EI) claim.

[3] The Claimant does not meet the conditions to cancel the benefit period that began on November 22, 2020.

## Overview

[4] The Claimant stopped working in November 2020. She was pregnant at the time and contacted Service Canada to discuss her options for claiming EI benefits. The Claimant says she was told that she could apply for EI regular benefits and, if she returned to work for 120 hours that a one-time hours credit would be available to her when she next applied for maternity and parental benefits. The Claimant followed this advice and applied for regular EI benefits.

[5] The Claimant returned to work and earned 263 hours of insurable employment. She applied for maternity and parental benefits in June 2021 but was told that she did not have enough hours to establish a new claim. The Commission had applied the one-time hours credit to her November 2020 claim. This meant that her benefit period was limited to 52 weeks from November 22, 2020 and her parental benefits would end after 12 weeks rather than 35 weeks.

[6] The Claimant asked that the one-time hours credit be applied to her June 2021 claim because she did not need those hours to establish a claim in November 2020. The Commission refused this request. It says that it has no authority or alternative to reconsider applying the one-time hours credit to the November 2020 claim in favour of applying the credit to a later claim.

[7] The Claimant says that she was misled by the information on the Commission's websites and Service Canada agents when she was told that she would be able to

qualify for maternity and parental benefits with 120 hours of work. The Claimant appeals to the Social Security Tribunal.

## **Matter I have to consider first**

[8] The Commission's reconsideration decision said the issue was "We are not able to cancel the claim with the start date November 22, 2020, in order to apply the 1 time credit in hours to a new claim." In my opinion, the Commission made two decisions when it issued this reconsideration decision. The first decision was a refusal to cancel the claim begun on November 22, 2020. The second decision was the refusal to apply the one-time hours credit to a later claim.

[9] The Commission's submissions to the Tribunal only addressed the application of the one-time hours credit to the November 2020 claim. Before the hearing, I asked the Commission to provide submissions on its refusal to cancel the November 2020 claim. Those submissions were provided to the Claimant prior to the hearing.

[10] At the hearing I asked the Claimant if she was appealing both decisions. She replied that she did not want the November 22, 2020 claim canceled because she wanted those benefits to continue. However, it became clear during the hearing that the Claimant had not been aware of the Commission's submissions on that issue. I allowed a break for the Claimant and her spouse to review those submissions. After the break the Claimant indicated that she did wish to appeal both decisions and the hearing proceeded on that basis.

## **Issue**

[11] Can the Claimant have the additional hours used to establish her claim on November 22, 2020, removed so that she can use the additional hours to establish a new claim for maternity and parental benefits?

[12] Does the Claimant meet the conditions to cancel the benefit period started on November 22, 2020?

## Analysis

### One-time hours credit

[13] I find the Commission correctly applied the credit of additional hours when it established the Claimant's claim for regular EI benefits on November 22, 2020. The law does not allow these hours to be removed and used for another claim.

[14] To qualify for EI benefits, you need to have worked enough hours<sup>1</sup> within a certain timeframe. This timeframe is called the "qualifying period."<sup>2</sup>

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

[16] If you are claiming special benefits, like maternity or parental EI benefits, you are required to have 600 hours in the qualifying period.<sup>4</sup> In this case, the Claimant wanted to establish a claim for maternity and parental EI benefits, so she was required to have worked 600 hours in the qualifying period.

[17] In September 2020, Parliament added some temporary measures to Employment Insurance Act (EI 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. These hours are called one-time credit hours.

[18] 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. Or, if you make an initial claim for special benefits on or after September 27, 2020, you're

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<sup>1</sup> 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).

<sup>2</sup> See section 7 EI Act and section 93 EI Regulations

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

<sup>4</sup> See section 93 of the EI Regulations

deemed to have 480 additional hours in your qualifying period.<sup>5</sup> This increase of either amount of hours can only be used once.<sup>6</sup>

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

[20] In the Claimant's case, she applied for regular EI benefits on November 22, 2020. This means that the Claimant's qualifying period to establish a new claim for maternity and parental benefits began on November 23, 2020. Any hours that she worked or works in the 52 weeks after that date would be available to her to establish a new claim.

[21] The Claimant returned to work on April 4, 2021 and worked until May 15, 2021. The Record of Employment (ROE) was issued for maternity. It shows that she earned 263 insurable hours. She then applied for maternity and parental benefits on June 7, 2021.

[22] The Claimant testified that she looked at the information that was on line. With her appeal, she provided two screen shots of the information about COVID Relief and the application of the one-time hours credit.

[23] One screen shot deals with accessing EI maternity and parental benefits. On that screen shot, the Claimant highlighted the text that says "you only need 120 insured hours to qualify for benefits because you'll get a one-time credit of 480 insured hours to help you meet the required 600 insured hours of work."

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

<sup>6</sup> See section 153.17(2) of the EI Act.

[24] The other screen shots deals with accessing EI regular benefits. The Claimant highlighted the text that says “you only need 120 insured hours to qualify for benefits because you’ll get a one-time credit of 300 insured hours to help you meet the required 420 insured hours of work.”

[25] The Claimant testified that she spoke to several Service Canada agents prior to applying for regular EI benefits. She wanted to make sure that she would receive the most amount of benefits. The Claimant submitted a recording of a telephone call she had with a Service Canada agent. She says that she and her spouse were on the call and the agent told her that if she applied for regular EI benefits and then returned to work for 120 hours that she would qualify for a new claim for maternity and parental benefits. The Claimant took this advice, returned to work and earned 263 hours of insurable employment.

[26] The Claimant submits that she interpreted the information on the Commission’s website to mean that she would have the one-time hours credit applied to her claim for maternity and parental benefits. That is what the Service Canada agent confirmed to her. If her and her spouse had known that was not the case they would have arranged their finances and the timing of work differently. The Claimant says that she did not need the hours credit when she stopped working in November 2020. She had enough hours available to her to establish that claim. She needs the hours in June 2021 to establish the claim for maternity and parental benefits.

[27] The Claimant’s spouse, affirmed to give evidence, submitted that they did their due diligence. They were aware that a claim established in November 2020 would run out in November 2021. They looked at all the options. It was not possible to work during a lock down or while pregnant. He says they asked the agent in November 2020 if the claim was opened then would the hours credit be available to the Claimant if she worked 120 hours. The agent replied yes. They relied on that information. When the claim was set up in November 2020 there was no information that the hours credit had been applied.

[28] The Commission says a claimant can be entitled to receive special benefits provided they have an interruption in earnings and have 600 or more insured hours in the qualifying period. It says that a claimant who makes an initial claim 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 in their qualifying period, if their claim is for special benefits, an additional 480 hours of insurable employment. The Commission says the hours credit does not apply when a claimant has had their hours increased in an earlier benefit period. The Commission says it has no authority or alternative to reconsider the application of the one-time hours credit of 300 hours applied in November 2020 to apply 480 hours to any subsequent claims.

[29] I recognize that the Claimant and her spouse wanted to ensure they received the maximum amount of benefits following the birth of their child. The Claimant was pregnant when she lost her job in November 2020. She was aware, having talked to friends, that if she was to establish a claim for EI benefits at that time those benefits would end in November 2021.

[30] In the course of considering their options, the Claimant and her spouse looked on-line and also called Service Canada. They testified that they spoke to more than one Service Canada agent and recorded a telephone conversation with one agent. I have listened to that recording. I note that in the recording submitted to the Tribunal the Claimant has not identified herself to the agent. The recording begins with a discussion of the benefit period and the agent confirming that if the Claimant did establish a claim for regular benefits in November 2020 that the most number of weeks of combined regular, parental and maternity benefits that would be paid out was 50 weeks. The discussion then turns to options. The Claimant's spouse asked about what would happen if the Claimant started a regular EI benefits and returned to work would she be eligible for maternity benefits in the summer time. The agent replies, if the Claimant started regular benefit claim and "then got the 600 hours between now, I guess 120 hours because of the simplified measures, and the claim is stopped and the time the Claimant wanted to claim the maternity benefits, technically the Claimant could

terminate the existing claim in favour of the new one because she does have new hours that she could use to get the maternity claim.”

[31] The Federal Court of Appeal has found 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.<sup>7</sup> This means that even if the Claimant did receive incorrect information from Commission agents, what is important is what is written in the EI Act, and whether the Claimant complied with those provisions. Also, I cannot change a decision on the basis that the Commission misled a party, or refuse to apply the law on the grounds of equity.<sup>8</sup>

[32] The Claimant applied for regular benefits on November 27, 2020 and her claim was made effective on November 22, 2020. She argued that the Commission should not have applied the one-time hours credit to that claim. 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 her to have the one-time credit hours applied to a maternity and parental benefits claim, but the law does not 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, 2020. This means that the Commission applied the 300 additional hours to the Claimant's hours used to establish the Claimant's claim for EI regular benefits made on November 22, 2020.

[34] 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

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<sup>7</sup> *Granger v. Employment and Immigration Commission*, A-684-85. This is how I refer to the courts' decisions that apply to the circumstances of this appeal.

<sup>8</sup> See *Wegerner v. Canada (Attorney General)*, 2011 FC 137



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 she 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.<sup>9</sup>

[35] 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.<sup>10</sup> This means that, having had the additional hours applied to the November 2020 claim the Claimant cannot access the additional hours for her May 2021 claim. As a result, I find the Claimant had 263 hours in her qualifying period when she applied for EI maternity and parental benefits. She needed 600 hours to establish that claim. Accordingly, I find the Claimant does not have enough hours to qualify for maternity and parental EI benefits.

### **Canceling the benefit period begun on November 22, 2020**

[36] There are specific conditions that must be met for a claimant to cancel their benefit period.<sup>11</sup>

[37] The conditions are: no benefits were paid or payable during the benefit period; the claimant asks for a cancellation; and, the claimant can establish a new benefit period, effective the first week for which benefits on the former claim were paid or payable.<sup>12</sup> A claimant must meet all three of these conditions for a benefit period to be cancelled.

[38] The Commission says the Claimant was paid EI benefits on the claim she established on November 22, 2020 until April 3, 2021. The evidence is that she earned 263 hours of insurable employment between April 4, 2021 and May 4, 2021. I find that given that the Claimant had received EI benefits and did not qualify to establish a new

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<sup>9</sup> See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

<sup>10</sup> See section 153.17(2) of the EI Act

<sup>11</sup> The conditions are set out in section 10(6) of the EI Act

<sup>12</sup> See section 10(6) of the EI Act

benefit period, the existing benefit period begun on November 22, 2020 cannot be cancelled.

### **Other Matters**

[39] The Claimant testified that she had other part-time employment during the qualifying period prior to her November 22, 2020 claim. She provided an ROE that showed she started work on May 15, 2020 and stopped working on July 27, 2020.<sup>13</sup> The employer closed as part of a lockdown in response to the COVID 19 Pandemic. The ROE shows that she accumulated 326.5 hours of employment. The Claimant said she did not apply for EI benefits at that time. However, she wondered if she applied for regular EI benefits as a result of that job loss on or after September 27, 2020, would the one-time hours credit be available to establish a benefit period on September 27, 2020? And, if she were able to use that May 2020 to July 2020 period to establish a claim, would she then be able to use the hours earned from May 2020 to November 2020 to establish a new benefit period at a later time?

[40] I cannot answer this question because I do not have the jurisdiction to do so.

[41] My jurisdiction, in other words my ability to make a ruling on an appeal, comes only after the Commission makes a reconsideration decision that the Claimant then chooses to appeal. The Claimant has yet to ask the Commission if she could antedate (backdate) a claim due to the loss of her part-time employment and what impact, if any, that would have on a subsequent benefit period. Without an initial decision from the Commission and a reconsideration decision on that request, if necessary, I do not have any jurisdiction.

[42] Nothing in my decision prevents the Claimant from contacting the Commission to see if she could antedate (backdate) a claim to September 27, 2020 in relation to the loss of her part-time employment in July 2020 and what impact if any that would have on a subsequent benefit period. If necessary, the Claimant is free to request

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<sup>13</sup> This ROE is at page GD6-6

reconsideration of the Commission's decision on that request and appeal to the Tribunal if she wishes.

## **Conclusion**

[43] The appeal is dismissed

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