



[TRANSLATION]

Citation: *Canada Employment Insurance Commission v SF*, 2022 SST 21

## Social Security Tribunal of Canada Appeal Division

# Decision

**Appellant:** Canada Employment Insurance Commission  
**Representative:** Julie Meilleur  
**Respondent:** S. F.

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**Decision under appeal:** General Division decision dated  
September 8, 2021 (GE-21-1235)

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**Tribunal member:** Pierre Lafontaine

**Type of hearing:** Teleconference  
**Hearing date:** January 11, 2022  
**Hearing participants:** Appellant's representative  
Respondent

**Decision date:** January 17, 2022  
**File number:** AD-21-324

## Decision

[1] The appeal is allowed.

## Overview

[2] On January 17, 2021, the Respondent (Claimant) applied for Employment Insurance (EI) sickness benefits. She went back to work on February 8, 2021. On May 6, 2021, she made a new claim for EI sickness benefits after stopping work a second time.

[3] The Appellant (Commission) decided that the Claimant did not qualify for benefits because she did not have enough hours of insurable employment between February 8 and April 16, 2021. She also was not eligible for the 480-hour credit because she had already taken advantage of this measure when she applied in January 2021. The Commission upheld its initial decision on reconsideration. The Claimant appealed to the General Division.

[4] The General Division allowed the Claimant's appeal. It found that the 480-hour credit should apply to the May 2021 claim for EI sickness benefits rather than the January 2021 one. It decided that the Claimant had enough hours of insurable employment to establish a benefit period for EI sickness benefits as of May 2, 2021.

[5] The Appeal Division granted the Commission leave to appeal the General Division decision. The Commission argues that the General Division made an error of law when it found that the 480-hour credit should apply to the May 2021 claim for EI sickness benefits.

[6] I have to decide whether the General Division made an error when it found that the 480-hour credit should apply to the May 2021 claim for EI sickness benefits.

[7] I am allowing the Commission's appeal.

## Issue

[8] Did the General Division make an error when it found that the 480-hour credit should apply to the May 2021 claim for EI sickness benefits?

## Analysis

### Appeal Division's mandate

[9] The Federal Court of Appeal has established that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.<sup>1</sup>

[10] The Appeal Division acts as an administrative appeal tribunal for decisions made by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[11] So, unless the General Division failed to observe a principle of natural justice, made an error of law, or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, I must dismiss the appeal.

### **Did the General Division make an error when it found that the 480-hour credit should apply to the May 2021 claim for EI sickness benefits?**

[12] The Commission argues that the General Division made an error of law when it decided that the 480-hour credit under the law should be carried forward to the claim starting May 2, 2021.

[13] The Commission says that the law gives it no discretion on this point, and no mechanism allows the Claimant to waive the application of these additional hours or to

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<sup>1</sup> *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

have them removed from her claim. The Commission says that, as a result, the credit of hours should apply to the claim for benefits starting January 2021.

[14] The Claimant argues that the credit of hours could not apply to her January 2021 claim because she already had the number of insurable hours to qualify. She says that the Commission's interpretation does not benefit her at all as a claimant and is contrary to the goal of the program that focuses on access to benefits.

[15] During the pandemic, Parliament introduced temporary measures to facilitate access to benefits. One of the measures involves additional hours of insurable employment.

[16] The law indicates that a claimant who makes an initial claim for sickness 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 in their qualifying period an additional 480 hours of insurable employment.<sup>2</sup>

[17] In my view, the law is clear and does not contain any ambiguities. It does not provide an option to apply the additional hours to a future claim when the claimant establishes enough hours in the qualifying period to meet the entry rate to qualify for benefits without a credit of hours.<sup>3</sup>

[18] I find that the program that facilitates access to benefits is meeting its accessibility goal because it allows claimants who apply for benefits on or after September 27, 2020, **and who do not have enough hours of insurable employment** to qualify for benefits when they would not otherwise qualify.

[19] The law is clearly meant to help claimants who do not have enough hours of insurable employment to establish **a benefit period**. It is not meant to help claimants

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<sup>2</sup> See section 153.17(1) of the *Employment Insurance Act* (EI Act).

<sup>3</sup> See the Appeal Division decisions in *Canada Employment Insurance Commission v NK*, 2021 SST 601; and *DM v Canada Employment Insurance Commission*, 2021 SST 472.

who have enough hours of insurable employment when applying on or after September 17, 2020, to establish multiple benefit periods.<sup>4</sup>

[20] In my view, the General Division made an error of law when it decided that the 480-hour credit under the law should be applied to the claim starting May 2, 2021. Neither the General Division nor the Appeal Division has the power to depart from the rules set out by Parliament for granting benefits, even for considerations of fairness.

## **Remedy**

[21] Considering that both parties had the opportunity to present their case before the General Division, I will give the decision that the General Division should have given.

[22] The Claimant's one-time credit of hours was correctly applied to the qualifying period for her January 2021 claim for sickness benefits. As such, it is not available for use on a later claim for EI benefits.

[23] This means that the Claimant did not qualify for sickness benefits in May 2021 because she did not have enough hours of insurable employment between February 8 and April 16, 2021.

## **Conclusion**

[24] The appeal is allowed.

Pierre Lafontaine  
Member, Appeal Division

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<sup>4</sup> See section 153.17(2) of the EI Act, which limits using the additional hours to the establishment of a single benefit period.