



[TRANSLATION]

Citation: *SF v Canada Employment Insurance Commission*, 2021 SST 836

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

Decision

Appellant: S. F.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (425730) dated June 16, 2021
(issued by Service Canada)

Tribunal member: Manon Sauvé
Type of hearing: Teleconference
Hearing date: August 12, 2021
Hearing participant:
Decision date: September 8, 2021
File number: GE-21-1235

Decision

[1] The appeal is allowed. The Claimant has enough hours of insurable employment to qualify for Employment Insurance (EI) sickness benefits as of May 2, 2021.

Overview

[2] On January 17, 2021, the Claimant applied for 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.

[3] The Commission decided that the Claimant didn't qualify for benefits because she didn't have enough hours of insurable employment between February 8 and April 16, 2021. She also wasn't eligible for the 480-hour credit because she had already taken advantage of this measure when she applied in January 2021.

[4] The Claimant disagrees with the Commission's decision. She had enough hours of insurable employment when she applied in January 2021; the Commission should not have applied the 480-hour credit. This means that she should have received the 480-hour credit when she applied on May 6, 2021.

Issue

Has the Claimant worked enough hours to qualify for EI sickness benefits?

[5] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.¹ The Claimant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that she qualifies for benefits.

¹ See section 48 of the *Employment Insurance Act* (Act).

[6] To qualify, you need to have worked enough hours within a certain time frame. This time frame is called the “qualifying period.”² The number of hours depends on the unemployment rate in your region.³

[7] The law says that the qualifying period is the shorter of the last 52 weeks and the period that begins [on the first day of] an immediately preceding benefit period.⁴

[8] In the Claimant’s case, the shorter of the two periods is the one that relates to her January 2021 claim for EI benefits.

[9] Also, since this involves EI sickness benefits, she needs 600 hours in her qualifying period.⁵

[10] The Commission says that the Claimant has 221 hours of insurable employment in her qualifying period, that is, between January 17, 2021, and May 1, 2021. During that period, she worked from February 8, 2021, to April 16, 2021.

[11] The Commission also says that the Claimant doesn’t have enough hours of insurable employment in her qualifying period to qualify for benefits.

[12] The Claimant says she is entitled to EI sickness benefits because the government introduced special measures to help workers because of the pandemic. For example, workers who have to stop working because of illness are entitled to a credit of 480 hours of insurable employment when ill.⁶ This credit, added to her 221 hours of insurable employment, helps her qualify, since she has 701 hours.

[13] The Commission argues that the Claimant can’t receive the credit because she already got it when she applied in January 2021. Four hundred and eighty hours were added to the claims for EI sickness benefits. It can’t be used twice.

² See section 7 of the Act.

³ See section 7(2)(b) of the Act and section 17 of the *Employment Insurance Regulations* (Regulations).

⁴ See section 8(1) of the Act.

⁵ See section 93 of the Regulations.

⁶ See section 153.17 of the Act.

[14] The Commission says that the number of hours set out in the *Employment Insurance Act* (Act) doesn't allow any discrepancy, even when it comes to sickness benefits.⁷

[15] Moreover, the qualifying period can't be changed;⁸ the shorter of the two periods really has to be used. Additionally, hours accumulated outside the qualifying period can't be used.⁹

[16] I understand that the Claimant doesn't dispute that she has 221 hours of insurable employment in her qualifying period.

[17] She says that the Commission applied the 480-hour credit even though she had worked more than 1,000 hours during her qualifying period. So, she didn't need this credit when she applied in January 2021.

[18] In my view, the 480-hour credit should apply to the May claim for EI sickness benefits rather than the January one.

[19] Because of the pandemic, the government introduced a series of measures to help Canadians.¹⁰ For example, it wanted to help them get EI regular or special benefits by adding hours of insurable employment for those who hadn't accumulated enough hours during this difficult time.

[20] I find that applying the additional hours of employment to all claims, even those that already have the required hours, has the opposite effect of what the government intended.¹¹ A provision of the Act has to remedy something, not do the opposite.¹² The enactment has to be given such fair, large, and liberal construction and interpretation as

⁷ *Canada (AG) v Lévesque*, 2001 FCA 304; and *Pannu v Canada (AG)*, 2004 FCA 90.

⁸ *Long v Canada (AG)*, 2011 FCA 99.

⁹ *Haille v Canada (AG)*, 2008 FCA 193.

¹⁰ See **Temporary Measures to Facilitate Access to Benefits**: sections 153.15 *et seq.*

¹¹ *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837.

¹² Section 12 of the federal *Interpretation Act*.

best ensures the attainment of its goal. A law that grants benefits should be interpreted in a broad manner. Any ambiguity should be resolved in favour of claimants.¹³

[21] Otherwise, applying the provision like the Commission is doing is like giving an umbrella when it is sunny and taking it away when it starts to rain.

[22] So, when the Claimant applied for EI sickness benefits in January, she already had more than 600 hours of insurable employment. She didn't need to have her hours increased.

[23] A few months later, she had to stop working again. She applied for benefits, but she had only 221 hours of insurable employment. She was in the period where she could have her hours of insurable employment increased. She isn't asking to change her qualifying period, [and] she doesn't dispute the hours she has: She wants to have her hours increased as set out in the Act.

[24] In my view, she is entitled to these additional hours of insurable employment; otherwise, the measure isn't achieving its goal of facilitating access to benefits during the pandemic.

Conclusion

[25] I find that the Claimant has enough hours of insurable employment to establish a benefit period for EI sickness benefits as of May 2, 2021.

[26] The appeal is allowed.

Manon Sauvé
Member, General Division – Employment Insurance Section

¹³ *Rizzo*, cited earlier.