



Citation: *CF v Canada Employment Insurance Commission*, 2021 SST 870

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: C. F.
Representative: Francisco de la Barrera

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (419945) dated July 30, 2021
(issued by Service Canada)

Tribunal member: Angela Ryan Bourgeois

Type of hearing: Teleconference

Hearing date: September 24, 2021

Hearing participants: Appellant
Appellant's representative

Decision date: October 5, 2021

File number: GE-21-1560

Decision

[1] C. F. is the Claimant. I am dismissing her appeal.

[2] The Canada Employment Insurance Commission (Commission) correctly deemed additional hours to the Claimant's qualifying period.¹ The law doesn't let the Claimant decide how to apply the additional hours.

Overview

[3] There have been some temporary changes to the *Employment Insurance Act* (EI Act) to help claimants receive benefits during the pandemic. This appeal is about a new EI section that automatically adds hours of insurable employment (hours) to the qualifying period of certain claimants.²

[4] The Claimant applied for regular EI benefits. She had enough hours to qualify without the additional hours from the new EI section. Despite this, the Commission added the additional hours to her qualifying period. Later, she had a baby, and her regular EI benefits were changed to EI maternity benefits.

[5] The Claimant wants to start a new benefit period for her EI maternity benefits because it would entitle her to more weeks of benefits.

[6] The Claimant will only have enough hours to qualify for a new EI maternity benefit period if she can use the additional hours the Commission applied to her earlier qualifying period.³

[7] The Commission refused to use the additional hours to help the Claimant qualify for EI maternity benefits. The Commission says:

¹ I am referring to the qualifying period from May 12, 2019, to November 21, 2020, which relates to a benefit period starting on November 22, 2020.

² This is section 153.17 of the EI Act.

³ To be clear, the Commission applied 300 hours to the qualifying period for her regular EI benefit period that started on November 22, 2020. If the Claimant can use the extra hours for EI maternity leave, which is a special benefit, she would be entitled to 480 hours.

- the additional hours had to be applied to the first application for benefits made on or after September 27, 2020,
- the additional hours had to be applied then, even though the Claimant didn't need the additional hours to qualify for benefits
- the additional hours can only be applied to one qualifying period, so additional hours can't be added to a qualifying period for EI maternity benefits.

[8] The Claimant says that the Commission was wrong to add the additional hours to the qualifying period when she applied for benefits in November 2020, because:

- she had enough hours to qualify for benefits without the additional hours
- she has the discretion to decide when to use the additional hours.

Matters I have to consider first

The Claimant proceeded without the constitutional issue being considered.

[9] The Claimant questioned the constitutional validity of the section of the EI Act that deals with the additional hours (section 153.17). At the hearing, I explained that appeals containing constitutional issues follow a different appeal path. For example, there are special notice requirements.⁴ I explained that if the Claimant wanted the constitutional issue heard at the Tribunal, she would have to follow that path. In that case, I would adjourn the hearing, and someone would contact her to explain the next steps. The Claimant decided to proceed with the hearing, and not to pursue the constitutional issue.

Issue

[10] I have to decide if the Commission correctly applied the additional hours.

⁴ Section 20 of the *Social Security Tribunal Regulations* sets out special notice and service requirements.

Analysis

– The law and what has happened.

[11] To qualify for EI benefits, claimants need to have worked enough hours during a certain timeframe.⁵ This timeframe is called the qualifying period.

[12] New temporary changes to the EI Act say that if you apply for EI benefits on or after September 27, 2020, you're deemed to have additional hours in your qualifying period.⁶ These extra hours can only be used once.⁷

[13] The Claimant's employment ended because of COVID-19 lockdown measures. In November 2020, she applied for regular EI benefits. She qualified to receive regular EI benefits without the additional hours. The Commission included the additional hours in her qualifying period anyway.

[14] In March 2021, the Claimant told the Commission she was expecting a baby in April 2021. Her regular EI benefits were changed to EI maternity benefits.

[15] The Claimant doesn't have enough hours to start a new EI maternity benefit period. She needs 600 hours, but has only 120 hours.

[16] The Claimant says that 480 additional hours should be available to her under the new EI section. With these extra hours, she would have enough hours for a new EI maternity benefit period. The Claimant says she should have the choice when the additional hours are applied. She didn't want or need them when she applied for benefits in November 2020. She wants and needs them now for her EI maternity benefits.

⁵ The hours worked have to be hours of insurable employment as set out in section 7 of the EI Act and section 93 of the *Employment Insurance Regulations*.

⁶ See section 153.17(1) of the EI Act. An application for EI benefits is called an initial claim for benefits.

⁷ See section 153.17(2) of the EI Act.

– **The Commission correctly applied the new EI section.**

[17] The Commission correctly deemed the additional hours to the qualifying period relating to the November 2020 application. This is why:

- The Claimant applied for regular EI benefits in November 2020.
- Since the Claimant applied for benefits after September 27, 2020, the new EI section about additional hours had to be applied then.
- This meant that additional hours had to be deemed to the Claimant's qualifying period for the November 2020 application.
- Since the November 2020 application was for regular EI benefits, 300 hours had to be added to the Claimant's qualifying period.
- There is no exception that says the additional hours are only deemed if a claimant needs them to qualify for benefits.⁸

[18] The Commission correctly refused to add additional hours to the Claimant's qualifying period for EI maternity benefits. The law says that the section that deems additional hours doesn't apply to a claimant who has already had additional hours deemed in a qualifying period if a benefit period was established.⁹ The law does not say that the additional hours must have been used to establish a benefit period.

[19] Since the Claimant had additional hours deemed to the qualifying period for the November 2020 application, and a benefit period was established, she can't have additional hours deemed to any other qualifying period.

⁸ The fact that the law refers to the establishment of a benefit period in section 153.17(2), but leaves it out of section 153.17(1) shows that the law-makers turned their minds to the establishment of a benefit period, and chose not to include it as one of the conditions of deeming hours to the qualifying period.

⁹ See section 153.17(2).

– **The words “in any other case” are not vague.**

[20] The Claimant argues that the words “in any other case” are too vague to have any meaning, and therefore, can’t be applied.¹⁰

[21] The new EI section, section 153.17 reads as follows:

153.17 (1) A claimant who makes an initial claim for benefits under Part I 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

(a) if the initial claim is in respect of benefits referred to in any of sections 21 to 23.3, an additional 480 hours of insurable employment; and

(b) **in any other case**, an additional 300 hours of insurable employment. [emphasis mine]

[22] I find the words “in any other case” are not vague. When you read the section as a whole, there is no ambiguity. “In any other case” refers to an application for regular EI benefits.

[23] This is why “in any other case” is not vague:

- As a whole, section 153.17 applies only to benefits under Part I of the EI Act.
- Part I of the EI Act deals with unemployment benefits — regular EI benefits and special EI benefits.
- Special EI benefits are those benefits dealt with in sections 21 to 23.3 of the EI Act.
- So, the words “in any other case,” refers to all other benefits under Part I that are not covered by sections 21 to 23.3 of the EI Act — which are regular EI benefits.

¹⁰ I considered the cases the Claimant referred to: *Sussex Peerage Case* (1844; 11 Cl&Fin 85) and *Ontario v Canadian Pacific Ltd.*, [1995] 2 S.C.R. 1031.

– **There is no discretion about how the additional hours are applied.**

[24] The Claimant argues that she should be able to choose how the additional hours are applied because the EI Act doesn't specifically say that she doesn't have that discretion.

[25] I find that the law doesn't give the Claimant any choice about the additional hours.

[26] Section 153.17 is a deeming provision. It is automatically applied when the conditions set out in that section are met. This means that neither the Commission nor the Claimant have a choice about when to apply the section.

[27] Section 153.17(1) is clear that claimants who apply for benefits on or after September 27, 2020, have additional hours added to their qualifying period. There is no choice in the matter. There are no conditions about whether the claimant wants the additional hours, or whether the claimant needs the additional hours to qualify for benefits. Further, nothing in the section suggests that the application of the deeming provision should be delayed to a different qualifying period of the claimant's choosing.

– **I can't decide about the weeks of parental benefits.**

[28] Section 23 of the EI Act deals with parental benefits. The Claimant says that she isn't receiving the 52 weeks of parental benefits that she is entitled to under section 23(2)(b) of the EI Act. She says the way the Commission has applied section 153.17 means that she cannot benefit from the recovery period intended for new parents.

[29] I have jurisdiction only to decide matters that have been reconsidered by the Commission. The reconsideration decision before me dated July 30, 2021, is about the additional hours.¹¹ It is not about weeks of benefits or benefit periods. So I don't have jurisdiction to decide how many weeks of parental benefits the Claimant can receive.

¹¹ See page GD3-33.

Conclusion

[30] For these reasons, I find the Commission correctly applied the additional hours to the Claimant's qualifying period when she applied for regular EI benefits in November 2020. The EI Act doesn't give the Commission or the Claimant the choice of which qualifying period the additional hours are added. It doesn't matter that the additional hours weren't needed to establish a benefit period, the hours are only deemed to be added once.

[31] The appeal is dismissed.

Angela Ryan Bourgeois
Member, General Division — Employment Insurance Section