



Citation: *SA v Canada Employment Insurance Commission*, 2022 SST 114

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

# Decision

**Appellant:** S. A.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (442004) dated December 8, 2021 (issued by Service Canada)

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**Tribunal member:** Lilian Klein

**Type of hearing:** Videoconference

**Hearing date:** January 27, 2022

**Hearing participants:** Appellant

**Decision date:** January 31, 2022

**File number:** GE-22-5

## Decision

[1] I am dismissing the Claimant's appeal. This decision explains why.

[2] The Claimant has not shown that he had worked enough hours to qualify for Employment Insurance (EI) benefits when he applied on September 21, 2021.

## Overview

[3] The Claimant applied for EI benefits, but the Canada Employment Insurance Commission (Commission) decided that he had not worked enough hours to qualify.<sup>1</sup>

[4] I have to decide if the Claimant worked enough hours to qualify for benefits.

[5] The Commission says that the Claimant does not have enough hours to qualify because he needed 420 hours based on his application date of September 21, 2021. But he worked no insurable hours during the 52-weeks before that date, which is the qualifying period that applies.

[6] The Claimant disagrees. He argues that he had enough insurable hours when he was laid off on January 31, 2019, and he had paid EI contributions to be covered for that. He says he did not apply for benefits at the time because he did not understand his rights. He says he was busy contesting his lay-off and then got too sick to make a claim.

[7] The Claimant says he applied for benefits at the end of 2019 or early 2020 but the Commission refused him benefits. He made a reconsideration request but did not appeal the matter to the Tribunal. He argues that he is now appealing that earlier claim.

## Issue

[8] Has the Claimant worked enough hours to qualify for EI benefits based on his application date of September 21, 2021?

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<sup>1</sup> S 7 of the *Employment Insurance Act* (EI Act) says the hours worked must be "hours of insurable employment." In this decision, when I say "hours," I am referring to "hours of insurable employment."

## Analysis

### How to qualify for benefits

[9] Not everyone who stops work can receive EI benefits. You have to prove that you qualify.<sup>2</sup> The Claimant has to prove this on a balance of probabilities. This means he has to show it is more likely than not that he qualifies for benefits.

[10] To qualify, you need to have worked enough hours within a certain timeframe.<sup>3</sup> This timeframe is called the “qualifying period.”

[11] The number of hours depends on the unemployment rate in your region.<sup>4</sup>

### The Claimant’s region and the regional rate of unemployment

[12] The Commission decided that the Claimant’s region was Toronto. It says the regional rate of unemployment when he applied for benefits was 13.1%. The evidence supports these findings.

[13] This means that the Claimant needs to have worked at least 420 hours in his qualifying period to be paid EI benefits.<sup>5</sup>

[14] The Claimant has not disputed the Commission’s decisions about which region and regional rate of unemployment apply to him.

[15] There is no evidence to make me doubt the Commission’s decisions. So, I accept as fact that the Claimant needs 420 hours to qualify for benefits according to the law in place when he applied, the region where he lived and the unemployment rate there.

[16] As noted, the hours that count are the ones worked during a qualifying period. The qualifying period is usually is the 52 weeks before a benefit period starts.<sup>6</sup>

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<sup>2</sup> See s 48 of the EI Act. See also *Attorney General of Canada v Terrion*, 2013 FCA 97.

<sup>3</sup> See s 7 of the EI Act.

<sup>4</sup> See s 7(2)(b) of the EI Act and s 17 of the *Employment Insurance Regulations*.

<sup>5</sup> S 7 of the EI Act sets out a chart that tells us the minimum number of hours that you need depending on different regional rates of unemployment.

<sup>6</sup> See s 8 of the EI Act for the rules on when benefit periods start.

[17] Your **benefit period** is not the same as your **qualifying period**. It is a different timeframe. If you have enough hours in your qualifying period, you receive your benefits during your benefit period.

### **The dates of the Claimant's qualifying period**

[18] The Commission decided that the Claimant's qualifying period was the usual 52 weeks before his application date. So, it says his qualifying period ran from September 20, 2020, to September 18, 2021.

[19] There is no evidence to make me doubt the Commission's decision. So, I accept as fact its dates for the Claimant's qualifying period.

[20] The Claimant disputes those dates because he says his qualifying period should be the 52 weeks before his lay-off on January 31, 2019. He says he would have enough hours if he could use those earlier hours to help him qualify on his current claim.

### **The hours the Claimant worked**

[21] The Commission decided that the Claimant worked no hours during the qualifying period relevant to his application on September 21, 2021.

[22] The Claimant does not dispute that he has zero hours in the 52 weeks before this date. There is no evidence showing that he worked during this period, so I accept as fact that he has no insurable hours.

### **So, has the Claimant worked enough hours to qualify for EI benefits?**

[23] I find that the Claimant has not proved that he has enough hours to qualify for benefits as of September 21, 2021. This is because he needs 420 hours to qualify, but worked no hours in the 52 weeks before his application (his current qualifying period).

[24] The Claimant is asking me to use hours he worked in the year before his lay-off on January 31, 2019 (an earlier qualifying period), to help him qualify for a claim starting

on September 21, 2021. But the courts have said you cannot use hours from an earlier qualifying period to help you later qualify for benefits on another application.<sup>7</sup>

[25] Alternatively, the Claimant is asking me to treat this appeal as if it applies to a benefit claim he says he made in late 2019 or early 2020. He says the Commission should have provided me with details of that claim. However, there was no need for it to do this because I have no jurisdiction over any earlier claims.<sup>8</sup> The only benefit claim before me in this appeal is the one the Claimant made on September 21, 2021.

[26] The Claimant argues that he should get benefits now when he needs them since he paid EI contributions for many years and is facing financial hardship due to poor health. However, EI is an insurance plan. As with other insurance plans, you have to meet certain requirements to receive benefits.<sup>9</sup>

[27] In this case, the Claimant does not meet the requirements, so he does not qualify for benefits. While I sympathize with his difficult circumstances, I cannot change the law.<sup>10</sup>

## Conclusion

[28] The Claimant does not have enough hours to qualify for benefits on his September 2021 claim.

[29] This means that I am dismissing the Claimant's appeal.

Lilian Klein  
Member, General Division – Employment Insurance Section

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<sup>7</sup> *Haile v Attorney General of Canada*, 2008 FCA 193.

<sup>8</sup> The Commission says he made his earlier claim in March 2020 (See GD3-31).

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

<sup>10</sup> *Canada (Attorney General) v Knee*, 2011 FCA 301.