



Citation: *RH v Canada Employment Insurance Commission*, 2022 SST 129

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: R. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (443851) dated December 14, 2021 (issued by Service Canada)

Tribunal member: Paul Dusome

Type of hearing: Teleconference

Hearing date: February 7, 2022

Hearing participant: Appellant

Decision date: February 8, 2022

File number: GE-22-89

Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

[2] The Claimant has shown that she has accumulated enough hours to qualify for Employment Insurance (EI) benefits.

Overview

[3] The Claimant applied for EI benefits, but the Canada Employment Insurance Commission (Commission) decided that the Claimant hadn't worked enough hours to qualify.¹

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

[5] The Commission says that the Claimant doesn't have enough hours because she needs 420 hours, but has only 135 hours.

[6] The Claimant disagrees and says that she had been told a number of times by the Commission that she needed 120 hours to qualify. She had more than that.

Issue

[7] Has the Claimant worked enough hours to qualify for EI benefits?

Analysis

How to qualify for benefits

[8] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.² The Claimant has to prove this on a balance of probabilities.

¹ Section 7 of the *Employment Insurance Act* (EI Act) says that the hours worked have to be "hours of insurable employment." In this decision, when I use "hours," I am referring to "hours of insurable employment."

² See section 48 of the EI Act.

This means that she has to show that it is more likely than not that she qualifies for benefits.

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

[10] The number of hours depends on the actual unemployment rate in your region. The lower the rate of unemployment, the higher the number of hours you need to qualify for benefits.⁴ This rule was changed by amendments to the EI Act in response to the COVID pandemic. For the period from September 27, 2020, to September 25, 2021, the regional rate of unemployment was deemed to be 13.1% if the actual rate in your region was lower.⁵ That meant that claimants had to have 420 hours to qualify. For the period from September 26, 2021, to September 24, 2022, the number of hours required is fixed at 420 for all claimants.⁶

The number of hours the Claimant needs to qualify

[11] The Commission decided that the Claimant needed 420 hours of employment in order to qualify for EI benefits. That was based on the rules under the two COVID amendments to section 7 of the EI Act, set out above. Whether the Claimant falls under the rule up to September 25, 2021, or the rule starting September 26, 2021, she still needs 420 hours in her qualifying period to qualify for EI benefits.

[12] There was also a COVID amendment that allowed claimants a one-time increase of 300 extra hours of employment to use towards qualifying for benefits.⁷ That increase applies to claimants who make an initial claim for benefits on or after September 27,

³ See section 7 of the EI Act.

⁴ See section 7(2)(b) of the EI Act (as it stood prior to the COVID amendments), and section 17 of the *Employment Insurance Regulations* (EI Regulations),.

⁵ See section 153.16 of the EI Act, as enacted by the *Budget Implementation Act, 2021*, S.C. 2021, c. 23, section 326 and 339(4). The original version of s. 153.16 expired on September 11, 2021, leaving a gap from September 12 to 25, 2021. The *Budget Implementation Act, 2021* corrected that gap.

⁶ See the *Budget Implementation Act, 2021*, sections 303(1) and (3), and 339(1). Section 7(2) of the EI Act is scheduled to return to the pre-COVID amendments rule referring to the actual rate of unemployment on September 25, 2022: *Budget Implementation Act, 2021* sections 303(2) and (4), and 339(2).

⁷ See section 153.17(1)(b) of the EI Act.

2020, or in relation to an interruption of earnings on or after that date. That one-time increase ended on September 25, 2021.⁸ That amendment may be relevant to the Claimant, as she applied for EI benefits on September 24, 2021.

– **The Claimant doesn't agree with the Commission**

[13] The Claimant disagrees with the Commission that she needs 420 hours of employment to qualify for benefits. The Claimant says that the Commission is wrong because when she spoke to the Commission on two occasions, she was told she only needed 120 hours. In addition, the Claimant quoted from the Commission's website: "Generally, you need between 420-700 insured hours to claim EI....Until September 2021, however, this number of hours is reduced to 120."

[14] The Claimant's reliance on statements made by the Commission's agents, and statements made on the Commission's website does not assist her. Commission agents' interpretation of the law does not have the force of law. Commitments to act in a way other than written in law is absolutely void.⁹ I must decide this case on the law as set out in the EI Act and EI Regulations, and on interpretations of the Act and Regulations made by tribunals and courts. Some of that law has been set out above. More will be set out below.

The Claimant's qualifying period

[15] 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.¹⁰

[16] Your **benefit period** isn't the same thing as your **qualifying period**. It is a different timeframe. Your benefit period is the time when you can receive EI benefits.

[17] The Commission decided that the Claimant's qualifying period was the usual 52 weeks. It determined that the Claimant's qualifying period went from September 27,

⁸ See section 153.196(1) of the EI Act.

⁹ *Granger v Employment and Immigration Commission*, A-684-85, affirmed [1989] 1 S.C.R. 141.

¹⁰ See section 8 of the EI Act.

2020, to September 25, 2021. That is the correct period. The Claimant's benefit period started on the later of the Sunday of the week she applied, or the Sunday of the week in which she had an interruption of earnings.¹¹ An interruption of earnings occurs when a claimant's employment has ended, followed by seven or more consecutive days on which the claimant does not work for and make earnings from the employer.¹² The Claimant applied for EI benefits on Friday, September 24, 2021. The Sunday of that week was September 19, 2021. The Claimant's last day of work was September 24, 2021. She did not work for any employer after that. She did not receive any earnings for the period after September 24, 2021. The seven consecutive day period ended on Friday, October 1, 2021. The Sunday of that week was September 26, 2021. Since September 26, 2021, is the later of those two dates, September 26, 2021, is the start date of her benefit period. September 25, 2021, is therefore the end date of her qualifying period.¹³

The hours the Claimant worked

– The Claimant doesn't agree with the Commission

[18] The Commission decided that the Claimant had worked 135 hours during her qualifying period. The Claimant did not dispute this figure. The Claimant had only worked for two employers in her qualifying period, in August and September 2021. Both jobs ended in late September 2021. She had not received the EI Emergency Response Benefit, or the Canada Emergency Response Benefit. Her disagreement with the Commission was simple. She only needed to actually work for 120 hours to qualify for benefits.

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

[19] I find that the Claimant has proven that she has enough hours to qualify for benefits. She needs 420 hours, but has worked 135 hours and has a deemed increase of 300 hours, for a total of 435 hours.

¹¹ See section 10(1) of the EI Act.

¹² See section 17(1) of the EI Regulations.

¹³ See section 8(1)(a) of the EI Act.

[20] Section 153.17(1)(b) of the EI Act says that on the date of the Claimant's application, she is deemed to have 300 additional hours of employment in her qualifying period. The EI Act says that that section ceased to apply on September 25, 2021.¹⁴ The law interprets that to mean that the section ceased to have effect "on the commencement of the following day".¹⁵ That means that section 153.17 of the EI Act remained in effect until the start of September 26, 2021. The Claimant applied for EI benefits on September 24, 2021, so comes within the language of section 153.17(1)(b) about making an initial claim. Her qualifying period ended on September 25, 2021, the same day the section ceased to apply. Having made her initial claim within her qualifying period, the Claimant is deemed to have the additional 300 hours.

Conclusion

[21] The Claimant has enough hours to qualify for benefits.

[22] This means that the appeal is allowed.

Paul Dusome

Member, General Division – Employment Insurance Section

¹⁴ See section 153.196(1) of the EI Act.

¹⁵ See section 6(1) of the *Interpretation Act*, R.S.C. 1985, c. I-21.