



Citation: *AB v Canada Employment Insurance Commission*, 2022 SST 239

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

Decision

Appellant: A. B.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (453684) dated January 19, 2022
(issued by Service Canada)

Tribunal member: Amanda Pezzutto
Type of hearing: Teleconference
Hearing date: March 9, 2022
Hearing participant: Appellant
Appellant's representative
Decision date: March 15, 2022
File number: GE-22-383

Decision

[1] A. B. is the Claimant. The Canada Employment Insurance Commission (Commission) says she doesn't have enough hours to qualify for Employment Insurance (EI) benefits. The Claimant is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I am dismissing the Claimant's appeal. I find that the law doesn't give the Claimant any choice about when to use the one-time hours credit. The law says the Commission had to apply the hours credit to her first benefit period after September 27, 2020.

Overview

[3] The Claimant stopped working in October 2020 and applied for EI regular benefits. After a few months of collecting EI regular benefits, she asked for EI maternity and parental benefits. She wanted to start a new benefit period so she could collect 15 weeks of maternity benefits and 35 weeks of parental benefits. She thought she could use a one-time credit of hours to help her qualify for a new benefit period.

[4] But the Commission says the Claimant doesn't have enough hours to start a new benefit period in July 2021. The Commission says it already gave the Claimant the one-time hours credit in October 2020. The Commission says it can't give another credit to the Claimant, and she can't choose when to use the credit.

[5] The Claimant disagrees. She argues that the credit is supposed to help her qualify for EI benefits when she wouldn't otherwise have enough hours to qualify. She says the Commission shouldn't have given her the credit in October 2020 because she had enough hours to qualify without it. She wants to use the one-time credit in July 2021 to start a new benefit period and collect the maximum entitlement of EI maternity and parental benefits.

Matters I have to consider first

I am only looking at the issue of the hours credit

[6] At the hearing, the Claimant's aunt acted as her representative. She made arguments about the hours credit and explained why she thought the Commission should grant the Claimant the credit for a new benefit period in July 2021. Neither the Claimant nor her representative made any arguments about any related issues. They didn't make arguments about the length of the qualifying period, the number of insurable hours the Claimant had from working, or how many hours the Claimant needed to qualify for benefits. They only made arguments about the hours credit.

[7] So, I will only look at the hours credit in this decision. I will not consider any of the related qualifying issues, such as the length of the benefit period or the number of hours the Claimant needs to qualify for benefits.

Issue

[8] Can the Claimant use the hours credit to start a new benefit period in July 2021?

Analysis

[9] The Commission argues that it had to give the Claimant a one-time hours credit on the benefit period that start October 11, 2020. The Commission says this is because it had to give the Claimant the hours credit on her first benefit period after September 27, 2020.

[10] The Claimant says the Commission has made a mistake with the law. The Claimant says that the purpose of the hours credit is to help people qualify, if they wouldn't otherwise have enough hours to qualify. The Claimant says this means that the Commission shouldn't have applied the credit to the October 11, 2020 benefit period, because she already had enough hours to qualify. The Claimant argues that the law says the Commission has to give her the credit to help her qualify for benefits on an application when she wouldn't otherwise have enough hours to qualify. The Claimant

says this means the Commission should give her the one-time hours credit to help her start a new benefit period in July 2021.

[11] I understand the Claimant's argument, but I don't agree with her. She is asking me to add extra meaning into the law. But I can only look at the plain, simple meaning of the law. I find that the law doesn't give any flexibility about when and how to apply the one-time hours credit.

[12] The Claimant relies on information from the Commission's website about the one-time hours credit. She says this information shows that the purpose of the hours credit is to help people qualify for benefits, if they otherwise wouldn't have enough hours to qualify.

[13] I understand that this is how the Claimant interprets the information on the Commission's website. But the information on the website is general information about the EI program. It isn't the law and so I can't follow the information on the Commission's website when I make my decisions. Instead, I have to focus on the law itself.

[14] The Claimant also argues that the law itself says that the Commission should only apply the hours credit if you wouldn't otherwise qualify for benefits. She says this meaning is embedded in the law. She says this means that the Commission shouldn't have given her the hours credit in October 2020.

[15] I disagree with the Claimant's argument. If the law intended for the Commission to give the hours credit only if you wouldn't otherwise have enough hours to qualify for benefits, then the law would say this clearly. But the law doesn't say this.

[16] I find that the law says that the Commission must grant an hours credit to the first benefit period after September 27, 2020. The Commission can only give this credit once. The law doesn't include any flexibility about when and how the Commission can apply this credit.¹

¹ Section 153.17 of the *Employment Insurance Act*.

[17] This part of the law is new, and so there aren't any Federal Court of Appeal (FCA) decisions that talk about this issue. But the Appeal Division of the Tribunal has looked at this question before. The Appeal Division interprets the law in the same way that I do. In more than one decision, the Appeal Division has agreed that the law requires the Commission to apply the one-time hours credit to the first benefit period after September 27, 2020. The Appeal Division says that the law doesn't give any flexibility about when or how to apply the hours credit.²

[18] I am choosing to follow the guidance of the Appeal Division on this issue. This is because the Claimant's situation is similar to the circumstances in prior Appeal Division decisions on the same issue. Also, it is important for Tribunal Members to make decisions that are consistent with each other. Following Appeal Division decisions when the facts are similar is an important way that the Tribunal can keep its decisions consistent.

[19] The Claimant also argues that the FCA decisions cited by the Commission aren't relevant or binding on this case because they pre-date the law. I agree that the FCA decisions don't describe the exact same set of circumstances. But the FCA decisions also give me general principles to follow when I am interpreting the law. For instance, once of the FCA decisions the Commission relies on says that the EI program is an insurance plan, and claimants have to meet all the required conditions to collect benefits.³ Even though this decision pre-dates the law I am looking at in this decision, I think this principle is still useful to me.

[20] Another FCA decision agrees that rigid rules can sometimes lead to harsh results. Even so, the FCA says I can only follow the plain meaning of the law. I can't rewrite the law or add new things to the law to make an outcome that seems fairer for the Claimant.⁴

² See *DM v Canada Employment Insurance Commission*, 2021 SST 472 and *MM v Canada Employment Insurance Commission*, 2022 SST 5.

³ This is in *Pannu v Canada (Attorney General)*, 2004 FCA 90, at paragraph 3.

⁴ *Canada (Attorney General) v Knee*, 2011 FCA 301, at paragraph 9.

[21] So, in this case, I find that the law doesn't give the Claimant or the Commission any discretion or flexibility with when to apply the one-time hours credit. Even though the Claimant already had enough hours to qualify for EI benefits in October 2020, the law required the Commission to give her the hours credit anyways. The law doesn't allow any way for the Claimant to save the credit and use it to qualify for benefits in July 2021.

Conclusion

[22] I am dismissing the Claimant's appeal. She can't use the hours credit to help qualify for EI benefits in July 2021.

Amanda Pezzutto
Member, General Division – Employment Insurance Section