



[TRANSLATION]

Citation: *LB v Canada Employment Insurance Commission*, 2022 SST 158

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

Decision

Appellant: L. B.
Appellant's witness: S. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (440385) dated December 8, 2021 (issued by Service Canada)

Tribunal member: Charline Bourque

Type of hearing: Teleconference
Hearing date: February 3, 2022
Hearing participants: Appellant
Appellant's witness

Decision date: February 25, 2022
File number: GE-22-190

Decision

[1] The appeal is dismissed.

[2] The Claimant hasn't shown that he has worked enough hours to qualify for Employment Insurance (EI) benefits.

[3] Also, even if the Claimant had established his claim for EI benefits on July 18, 2021, he would not have had worked enough hours to qualify for EI benefits. The Claimant could not receive the insurable hours credit.

Overview

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

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

[6] The Commission says that the Claimant doesn't have enough hours because he needs 420 hours, but has only 282.

[7] The Claimant disagrees and says that the Commission told him that he could not apply for EI benefits in August like he does every year since his claim hadn't ended.

[8] Because the Claimant got the Employment Insurance Emergency Response Benefit (EI ERB), his EI claim ended October 2, 2021. As a result, when the Claimant wanted to apply for EI in July 2021 like he does every year, he was told that his claim would not end before October and to wait until then to apply.

[9] The Claimant is of the view that waiting until October 2021 to apply for EI benefits prevented him from establishing his claim for benefits. As a result, on top of not

¹ Section 7 of the *Employment Insurance Act* (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."

having enough insurable hours of employment on that date, he could not get the additional hours of employment from the EI ERB.

[10] The Claimant says he never applied for the EI ERB. Rather, he wanted to get regular benefits as usual. Also, he wonders why his claim could not be established in July 2021, which would have allowed him to get EI benefits.

Issues

[11] Could the Claimant have gotten EI regular benefits if his claim had been established in July 2020?

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

[13] Would antedating the Claimant's claim to July 2021 have qualified him for EI benefits?

Analysis

Issue^o1: Could the Claimant have gotten EI regular benefits if his claim had been established in July 2020?

[14] The Claimant is of the view that, while he wanted to get EI regular benefits as usual, it is because he got the EI ERB that he is in this situation.

[15] To meet the needs of Canadians and to respond to the COVID-19 pandemic, the Government of Canada made changes to the *Employment Insurance Act* (Act). For example, it created the EI ERB.

[16] So, for the period beginning on March 15, 2020, and ending on September 26, 2020, no benefit period could be established with respect to benefits like regular or sickness benefits.² This means that the benefits received during that period are those from the EI ERB. The Act does not allow claimants to choose between EI benefits and the EI ERB benefits. They only get the EI ERB benefits.

² See section 153.8(5) of the *Employment Insurance Act* (Act).

[17] When the Claimant applied for EI benefits,³ an EI claim was established on July 19, 2020. This means he received the EI ERB as of this date since the Act gives no discretion on this point. The Claimant received the EI ERB from July 19, 2020, to October 3, 2020.⁴

[18] The EI ERB payments ended on October 3, 2020.⁵

[19] For this reason, I find that I can't interfere with the decision on the type of benefits the Claimant received. Since the claim was established on July 19, 2020, only the EI ERB was payable to the Claimant.

[20] The Claimant had no choice but to get the EI ERB, which he did.⁶ So, I am of the view that it isn't possible for the Claimant to change the type of EI benefits he got. The Act is clear on this point, and only the EI ERB was payable to him.

[21] Also, the EI ERB ended on October 3, 2020, as it did for the Claimant. So, since the EI ERB ended on October 3, 2020, a new claim was started on October 4, 2020. This claim ended on October 2, 2021.⁷

Issue°2: Did the Claimant work enough hours to qualify for EI benefits on October 4, 2021?

[22] The Claimant says he waited until his EI benefits had ended before applying again. He said he wanted to apply for benefits in July 2021 like he had done every year. However, he was informed that his claim hadn't ended and that he had to wait until October 2021 to apply again, which he did.

[23] The Claimant applied again on October 22, 2021.⁸ This claim would have started on October 4, 2021, but the Claimant didn't have enough insurable hours of employment to establish this claim.

³ See the application for Employment Insurance benefits from July 28, 2020 (GD7-3).

⁴ See the table of benefits paid (GD9).

⁵ See section 153.8(1) of the Act.

⁶ See section 153.5(2)(b) of the Act.

⁷ See the table of benefits paid to the Claimant starting on October 4, 2020 (GD10-2/3).

⁸ See the claim for benefits from October 20, 2021 (GD3-10).

– **How to qualify for benefits**

[24] Not everyone who stops work can receive EI benefits. A claimant has to prove that they qualify for benefits.⁹ The Claimant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that he qualifies for benefits.

[25] To qualify, a claimant needs to have worked enough hours within a certain time frame. This time frame is called the “qualifying period.”¹⁰

[26] The number of hours depends on the unemployment rate in a claimant’s region.¹¹

– **The Claimant’s region and regional rate of unemployment**

[27] A claimant who had an interruption of earnings and who was employed in insurable employment for at least 420 hours during their qualifying period meets the conditions to establish a claim.¹²

– **The Claimant’s qualifying period**

[28] As I mentioned above, the hours counted are the ones a claimant worked during their qualifying period. In general, the qualifying period is the 52 weeks before their benefit period would start.¹³

[29] A **benefit period** isn’t the same thing as a **qualifying period**. It is a different time frame. A benefit period is the time when a claimant can receive EI benefits.

[30] The Commission decided that the Claimant’s qualifying period was the usual 52 weeks. It determined that the qualifying period went from October 3, 2020, to October 2, 2021.

⁹ See section 48 of the Act.

¹⁰ See section 7 of the Act.

¹¹ See section 7(2)(b) of the Act and section 17 of the *Employment Insurance Regulations*.

¹² See section 7(2) of the Act (September 26, 2021, version), put in place for claims between September 26, 2021, and September 18, 2022.

¹³ See section 8 of the Act.

– **The hours the Claimant worked**

[31] The Commission decided that the Claimant had worked 282 hours during his qualifying period.

[32] The Claimant's Records of Employment show that he has 80 insurable hours of employment in his qualifying period for employer X. He has 201.34 insurable hours of employment in his qualifying period for employer X. Therefore, he has a total of 282 insurable hours of employment in his qualifying period.

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

[33] I find that the Claimant didn't show that he worked enough hours to qualify for EI benefits. He needed 420 hours but had 282 hours.

Issue°3: Would antedating the Claimant's claim to July 2021 have allowed him to get EI benefits?

[34] However, I have to consider the Claimant's particular situation. He is of the view that his EI claim should have ended in July 2021, like every year. As such, he argues that he should have been able to apply for EI in July 2021 and establish a claim then.

[35] The Claimant says his July 19, 2020, claim should have ended as usual, after a year, on July 17, 2020. He says that his claim for benefits should have started on July 18, 2021, like it usually did, especially since he didn't want to get the ERB.

[36] The Commission is of the view that, on this date, the Claimant would not have had enough insurable hours of employment to establish a new claim for benefits. The Commission is of the view that the Claimant would have had 201.34 insurable hours of employment. The Commission considers the qualifying period to be from October 4, 2020, to July 17, 2021.¹⁴

¹⁴ See the Commission's arguments to the Tribunal (GD8).

[37] The Claimant argues that he should have gotten the credit of extra hours from the Government of Canada. He should have therefore established his claim for EI benefits then.

– **Can the Claimant get the insurable hours credit for a claim for EI benefits established on July 18, 2021?**

[38] A claimant who makes an initial claim for EI regular benefits on or after September 27, 2020, is deemed to have an additional 300 hours of insurable employment in their qualifying period. If a claimant applies for special benefits, they are deemed to have an additional 480 insurable hours of employment.¹⁵

[39] However, this provision doesn't apply to a claimant who has already had the number of insurable hours in their qualifying period increased.¹⁶

[40] The Commission is of the view that the Claimant would not have gotten the insurable hours credit since he established a claim for benefits in October 2020 and got it, even though he had enough hours to qualify without the credit.¹⁷

[41] The Tribunal's Appeal Division looked at whether a claimant could choose when they want to use this credit of extra hours. The Appeal Division said:

[T]hat this means that the extra hours must be applied to the first claim that is made on or after September 27, 2020. The extra hours can't be applied to a subsequent claim unless no benefit period was established.

The language of "deeming" removes any discretion on the part of the Commission. The Claimant was deemed to have an additional 300 insurable hours in the qualifying period for her 2020 claim, and consequently she could not have any extra hours added to the qualifying period for a subsequent claim.¹⁸

¹⁵ See section 153.17(1) of the Act.

¹⁶ See section 153.17(2) of the Act.

¹⁷ See the Commission's arguments to the Tribunal (GD12).

¹⁸ See *Canada Employment Insurance Commission v NK*, 2021 SST 601.

[42] Therefore, following the Appeal Division's instructions, I find that the Claimant started a claim for benefits on July 19, 2020. The claim ended on October 3, 2020.¹⁹ Then, a new claim was established on October 4, 2020. Therefore, as the Commission confirms, the expected hours credit was applied to the benefit period, which started on October 4, 2020.

[43] So, even if the Claimant had made a new claim for EI benefits on July 18, 2021, the credit of extra insurable hours could not have been applied since the Claimant was deemed to have gotten this credit when he made the first claim after September 27, 2020.

[44] This means that the Claimant could not have gotten the credit of extra insurable hours even if he had established a claim for EI benefits on July 18, 2021.

– **Did the Claimant have enough insurable hours of employment to establish a claim for EI benefits on July 18, 2021?**

[45] The unemployment rate for benefit periods from September 27, 2020, to September 11, 2021, is 13.1% if it is higher than the rate that would otherwise apply.²⁰

[46] This means that on July 18, 2021, the Claimant needed to have worked at least 420 hours during his qualifying period to qualify for EI benefits.

The Claimant's qualifying period

[47] The Commission decided that the Claimant's qualifying period was shorter than the usual 52 weeks because the Claimant had an earlier benefit period that started on October 3, 2020.

[48] A current qualifying period can't overlap with an earlier qualifying period. The Claimant's qualifying period would overlap with his earlier qualifying period if it went back to a time before October 3, 2020.

¹⁹ See section 153.8(1) of the Act.

²⁰ See section 153.16 of the Act.

[49] So, the Commission decided the Claimant's qualifying period was from October 4, 2020 to July 17, 2021.

The hours the Claimant worked

[50] The Commission decided that the Claimant had worked 201.34 hours during his qualifying period.

[51] The Claimant's Records of Employment show that he had 0 insurable hours during his qualifying period for employer X since he had worked after the qualifying period. He had 201.34 insurable hours for employer X during his qualifying period. That means he had a total of 201.34 insurable hours of employment during his qualifying period.

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

[52] I find that the Claimant hasn't proven that he has enough hours to qualify for benefits because he needs 420 hours, but has worked 201.34 hours.

[53] I understand the Claimant's misunderstanding when he is used to applying for EI every year around July and qualifies for benefits. Unfortunately, I can't change the Act. EI is an insurance plan. As with other insurance plans, claimants have to meet the plan's requirements to get benefits.

[54] In this case, the Claimant doesn't meet the requirements, so he doesn't qualify for benefits. While I sympathize with the Claimant's situation, I can't change the law.²¹

Conclusion

[55] I find that the Claimant doesn't have enough hours to qualify for benefits.

²¹ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

[56] This means the appeal is dismissed.

Charline Bourque

Member, General Division – Employment Insurance Section