



Citation: *Canada Employment Insurance Commission v PG & al*, 2022 SST 388

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Anick Dumoulin

Respondent: P. G. *et al.*
Representative: Kevin McDonald

Decision under appeal: General Division decisions dated January 13, 2022
(GE-21-2163, GE-21-2131, GE-21-2160, GE-21-2127,
GE-21-2133, GE-21-2181, GE-21-2124, GE-21-2125)

Tribunal member: Shirley Netten

Type of hearing: Teleconference

Hearing date: April 19, 2022

Hearing participants: Appellant's representative
Respondents D. M., E. K., R. B., S. P.
Respondents' representative

Decision date: May 6, 2022

File number: AD-22-70, AD-22-71, AD-22-72, AD-22-73,
AD-22-74, AD-22-75, AD-22-77, AD-22-78

Decision

[1] The appeal is allowed. The General Division made an error of law. The Claimants are not entitled to Employment Insurance (EI) benefits.

Overview

[2] As a temporary measure associated with the pandemic, claimants could get a credit of 300 insurable hours.¹ This meant that they could get EI regular benefits after only 120 hours of work, because they needed 420 insurable hours in their qualifying period.²

[3] This appeal is about the time frame for getting the extra 300 hours. The section giving the extra hours was in place until September 25, 2021.

[4] The eight Claimants in this appeal worked 120 hours with the same employer, from September 7, 2021, to September 22, 2021. Each of the Claimants applied for EI benefits on September 23, 2021. The General Division said that they could have the extra 300 hours because they **applied before September 25, 2021**. This gave them 420 hours for a benefit period starting Sunday, September 26, 2021.

[5] The Canada Employment Insurance Commission (Commission) is appealing the General Division decisions. The Commission says that the extra 300 hours were available only for **benefit periods up to September 25, 2021**. According to the Commission, the Claimants can't get the extra 300 hours for a benefit period starting September 26, 2021, even though they applied and had an interruption of earnings earlier.

[6] I have found that the General Division misinterpreted the law. The Commission's interpretation is right: the extra hours are available only to those whose benefit periods

¹ See section 153.17(1)(b) of the *Employment Insurance Act* (Act).

² See sections 153.16 and 7(2)(b) of the Act, as they read before September 26, 2021.

started between September 27, 2020, and September 25, 2021. Unfortunately, the Claimants don't have enough hours to qualify for benefits.

Issue

[7] Did the General Division make an error of law in its interpretation of the temporary extra hours provisions in the *Employment Insurance Act* (Act)? If so, how should that error be fixed?

Analysis

[8] One of the grounds of appeal to the Appeal Division is that the General Division made an error of law in making its decision.³ Based on this unqualified language, I agree with the Commission that I don't have to defer to the General Division on questions of law. This means that I will need to decide whether the General Division's interpretation of the law is right or wrong. Because of this, I will turn directly to the interpretation of the extra hours provisions.

[9] To decide what a section of the law means, I have to look at the words, their context, and the purpose of the law. The Supreme Court of Canada put it this way:

[T]he words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.⁴

The General Division misinterpreted the law

– The words, taken in context, are clear

[10] Sections 153.17 and 153.196 are both in Part VIII.5 of the Act, called "Temporary Measures to Facilitate Access to Benefits."

³ This is found in section 58(1)(b) of the *Department of Employment and Social Development Act*.

⁴ This quote is from the Supreme Court of Canada decision in *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC) at paragraph 21, citing Driedger in *Construction of Statutes*. The Supreme Court of Canada recently confirmed this approach to statutory interpretation in *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.

[11] Section 153.17(1) says:

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;⁵ and

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

[12] Section 153.196(1) says that Part VIII.5 “ceases to apply on the earlier of September 25, 2021 and the day on which *Interim Order No. 8 Amending the Employment Insurance Act (Facilitated Access to Benefits)* is repealed.”⁶ Interim Order No. 8 wasn’t repealed. So Part VIII.5, including section 153.17, no longer applied after September 25, 2021.⁷

[13] Together, these provisions say that:

- you get the extra hours if you make an initial claim on or after September 27, 2020 or related to an interruption of earnings on or after September 27, 2020, **but**
- you don’t get the extra hours if you make an initial claim after September 25, 2021.

[14] The General Division equated **making an initial claim** for benefits with **applying** for benefits. This would be a fair interpretation, without context. But under the Act, an initial claim has a specific meaning.

⁵ These are special benefits, such as sickness and parental benefits.

⁶ There are exceptions that aren’t relevant to this appeal.

⁷ Although section 153.17 ceased to apply “on” September 25, 2021, this means that it was in effect up to and including that date. See section 6(1) of the *Interpretation Act*.

[15] An “initial claim for benefits” means a “claim made for the purpose of establishing a claimant’s benefit period.”⁸ In other words, an initial claim is linked to a specific benefit period.

[16] A benefit period always starts on a Sunday.⁹ A benefit period begins on the later of

- the Sunday of or before the interruption of earnings
- the Sunday of or before the initial claim.¹⁰

[17] So, if you lost your job and applied for EI the week ending Saturday, September 25, 2021, you were necessarily making an initial claim for a benefit period starting Sunday, September 19, 2021. If you wanted your benefit period to start the following week, you had to make your initial claim on or after Sunday, September 26, 2021.

[18] Effectively, because an initial claim for benefits is linked to a specific benefit period, you could get the extra hours only if you made an initial claim with a benefit period that began between September 27, 2020, and September 25, 2021. Since benefit periods always start on a Sunday, the last benefit period for which the extra hours were available was the week starting September 19, 2021.

[19] I’ll explain this using the Claimants’ circumstances.

⁸ This definition is in section 6(1) of the Act. I appreciate the Claimants’ representative’s view that the temporary measures weren’t normal, so the usual rules should not apply. However, Part VIII.5 of the Act specifically uses the term “initial claim for benefits” and in section 153.15 it adopts the usual definition of that term.

⁹ See section 10(1) of the Act.

¹⁰ See section 10(1) of the Act, setting out the beginning of the benefit period, and section 2, which says that a week starts on a Sunday.

– **The Claimants’ initial claims were for a benefit period starting September 19, 2021**

[20] The Claimants’ interruption of earnings happened on September 22, 2021.¹¹ The Sunday before that was September 19, 2021. The Claimants filed their initial claims on September 23, 2021. The Sunday before that was also September 19, 2021. This means that their initial claims were **claims made to establish a benefit period starting September 19, 2021**.

[21] These initial claims were made between September 27, 2020, and September 25, 2021. So the Claimants were entitled to the extra 300 hours — but only for a benefit period starting September 19, 2021.

[22] Unfortunately, even with the extra 300 hours, the Claimants didn’t have the required 420 hours for a benefit period starting September 19, 2021. This is because they hadn’t worked 120 hours by September 18, 2021, and the hours they worked after that date couldn’t be included.¹²

– **The Claimants’ initial claims for a benefit period starting September 26, 2021, had to be made on or after September 26, 2021**

[23] When the Claimants applied on September 23, 2021, they didn’t make initial claims for a benefit period starting September 26, 2021. They **couldn’t actually make such claims until September 26, 2021 or later**, so that the benefit period could start the Sunday before the initial claims were made.¹³ There is no option in the Act that lets a claimant make an initial claim for benefits to start the Sunday **after** their interruption of earnings and their claim.

[24] Service Canada has a practice of accepting an initial claim **as if** it had been made the following week, instead of requiring a new application. They call this postdating the claim. Service Canada does this as a courtesy, if a benefit period can’t

¹¹ The interruption of earnings is the date of lay-off or separation from employment. See *Canada (Attorney-General) v Hartmann*, 1989 CanLII 5196 (FCA) at paragraph 7.

¹² The qualifying period ended on September 18, 2021. See section 8(1) of the Act. None of the Claimants had worked 120 hours by September 18, 2021.

¹³ See section 10(1) of the Act.

be established as claimed but could possibly be established if the claim had been made a week later. This practice may leave a claimant with the impression that they have made a claim for a benefit period that starts after they applied, but this isn't the case. Rather, Service Canada has postdated their initial claim to a later date. Service Canada's practice doesn't change the benefit period associated with an initial claim under the Act.

[25] Here, Service Canada considered postdating the Claimants' initial claims to September 26, 2021, to use all of their employment hours for a benefit period starting September 26, 2021.¹⁴ But, since these would be initial claims made after September 25, 2021, the extra 300 hours were no longer available. The Claimants didn't have enough hours to qualify for a benefit period starting September 26, 2021.

– **The transitional provision supports the Commission's interpretation**

[26] The *Budget Implementation Act, 2021, No. 1* made a series of new temporary changes to the *Employment Insurance Act* to begin on September 26, 2021.¹⁵ It included various transitional provisions. Section 333 took effect on June 29, 2021.¹⁶ It said that Part VIII.5 of the Act, as it read before September 26, 2021, would continue to apply for those "whose benefit period begins during the period beginning on September 27, 2020 and ending on September 25, 2021."

[27] When it interpreted the time frame for the extra hours, the General Division didn't consider this provision. I agree with the Commission that section 333 supports the interpretation that the extra hours were available only for benefit periods up to September 25, 2021.

¹⁴ The opposite scenario would allow a claimant to get the extra hours even though they applied after September 26, 2021. Service Canada can backdate a claim to an earlier date, so someone who qualified for a benefit period starting September 19, 2021, could get the extra hours even if they applied late. In this situation, the reliance on a benefit period rather than an application date favours claimants.

¹⁵ See sections 302 to 339 of the *Budget Implementation Act 2021, No. 1*.

¹⁶ The *Budget Implementation Act 2021, No. 1* didn't specify a coming into force date for section 333. This means that it came into force on the date of assent: See section 5(4) of the *Interpretation Act*.

– **The purpose doesn't help with the interpretation**

[28] The purpose of the extra hours provision was to make it easier for people to qualify for EI, for a temporary period of time. This recognized the impact of the pandemic and associated workplace closures on people's ability to work and their insurable hours.

[29] The extra hours, along with certain other temporary measures, were available for approximately one year. Any temporary measure has a start and an end date. Either interpretation — the extra hours being available so long as you applied by September 25, 2021 (as the General Division said), or only for benefits periods up to September 25, 2021 (as the Commission says) — is consistent with the purpose of the extra hours provision. In other words, the purpose doesn't help determine exactly when this temporary measure ends.

– **Service Canada's communication to the public doesn't change the interpretation**

[30] The Claimants are understandably upset that Service Canada's website didn't clearly state that they had to work 120 hours before September 19, 2021, to make an initial claim by the September 25, 2021 deadline. As their representative points out, this would not have been obvious to them or other non-experts.

[31] Service Canada's messaging could certainly have been clearer, but it wasn't wrong. The excerpt given to the General Division said that you had to "establish an initial claim" by September 25, 2021. Unfortunately, the Claimants didn't know that this meant that the last possible benefit period for getting the extra hours would be the week starting September 19, 2021. In any case, website messaging doesn't change the meaning of the law. And, the Claimants can't be credited with extra hours (even just a few) based on a misunderstanding about the law.

– **The General Division made an error of law**

[32] The General Division decided, incorrectly, that it was enough to apply by the September 25, 2021 deadline, regardless of the benefit period associated with the initial

claim. Collectively, the text, context and purpose of the extra hours provisions lead to a different interpretation: the extra hours are available for benefit periods that began between September 27, 2020, and September 25, 2021.

[33] By not considering the words of section 153.17 of the Act in their entire context, the General Division misinterpreted their meaning. This was an error of law.

Fixing the General Division's error

[34] When the General Division makes a reviewable error, the Appeal Division has the option of giving the decision the General Division should have given.¹⁷ The Appeal Division will generally do this when, as in this case, the General Division made an error of law and the underlying facts aren't in dispute. In this situation, there is no reason to send the matter back to the General Division.

[35] As outlined above, the extra hours are available for benefit periods that began between September 27, 2020, and September 25, 2021

[36] The Claimants get the extra hours for a benefit period starting September 19, 2021, but they don't have enough hours to qualify by that date. The Claimants don't get the extra hours for a benefit period starting September 26, 2021, because they couldn't make initial claims for that period until after the September 25, 2021 deadline.

Conclusion

[37] The appeal is allowed. The extra 300 hours are available to claimants whose benefit periods started between September 27, 2020, and September 25, 2021. The Claimants don't have enough hours to get EI benefits for a benefit period starting on either September 19, 2021, or September 26, 2021.

Shirley Netten
Member, Appeal Division

¹⁷ The power to give the decision, and the power to decide questions of fact and law, are found in sections 59(1) and 64(1) of the *Department of Employment and Social Development Act*.