



[TRANSLATION]

Citation: *ER v Canada Employment Insurance Commission*, 2022 SST 470

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

## Decision

**Appellant:** E. R.  
**Representative:** Jonathan Beaulieu Richard

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (441621) dated December 23, 2021 (issued by Service Canada)

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**Tribunal member:** Nathalie Léger

**Type of hearing:** Videoconference  
**Hearing date:** March 28, 2022  
**Hearing participants:** Appellant  
Appellant's representative

**Decision date:** April 7, 2022  
**File number:** GE-22-608

## Decision

[1] The appeal is dismissed.

[2] The Claimant hasn't worked enough hours since her last benefit period to qualify for Employment Insurance (EI) special benefits.

## Overview

[3] I would like to move away from the usual template to better reflect the particular and devastating situation faced by the Claimant, her partner, and their two children.

[4] The Claimant wants family caregiver benefits to support her partner through a serious illness that appeared suddenly when their second child was barely a year old.

[5] In the weeks before and after the birth of their second child, the Claimant took advantage of the Québec Parental Insurance Plan. Obviously, she didn't work during that time, since she was caring for her newborn child.

[6] Then, from May to September 2021, she decided to reorient herself and put time and energy into starting her own business, while continuing to work a few hours a week as an employee,<sup>1</sup> for a total of 42 insurable hours.

[7] But on September 6, 2021, her partner was hospitalized and had emergency surgery. He was in critical condition. The bad news came a few weeks later: Her partner's life was seriously at risk. Their lives fell apart. The Claimant applied for family caregiver benefits to both deal with this difficult personal situation and care for her partner and their two (very young) children.

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<sup>1</sup> GD7-3

[8] The Commission refused her application because she didn't have enough hours,<sup>2</sup> even with the special measure that provides a one-time credit of 300 hours<sup>3</sup> to all claimants.

[9] This refusal naturally leaves the Claimant and her family in a difficult financial situation, as neither parent is able to work. So, they decided to challenge the Commission's refusal, then the reconsideration decision as far as the Social Security Tribunal.

[10] Since the Claimant's appeal alleges that the Commission's refusal is discriminatory on the basis of sex (pregnancy), she could have chosen to file a constitutional challenge, alleging that her right to equality under section 15 of the Canadian Charter had been breached. After some thought, the Claimant and her partner decided not to go that route given the complexity of such a process and the time involved. That decision was perfectly reasonable and understandable in the circumstances.

[11] As explained to the Claimant and her partner, who represented her at the hearing, the Social Security Tribunal's jurisdiction is limited. All I can do as a decision-maker is apply the *Employment Insurance Act* (Act). I have no authority to rewrite the Act or to rule on fairness, however unfair the application of its provisions may seem to me. Although I am deeply moved by the situation the Claimant and her partner find themselves in, I have no choice but to apply the strict requirements set out in the Act.

## **Issue**

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

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<sup>2</sup> GD3-18 and GD3-24

<sup>3</sup> See section 153.17(1) of the *Employment Insurance Act* (Act).

## Analysis

### How to qualify for benefits

[13] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.<sup>4</sup> The Claimant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that she qualifies for benefits.

[14] To qualify, you need to have worked enough hours within a certain time frame. This time frame is called the “qualifying period.”<sup>5</sup>

[15] In general, the number of hours depends on the unemployment rate in your region.<sup>6</sup> But, the law provides another way to qualify for special benefits, including family caregiver benefits.

[16] If you want special benefits, you can qualify if you have 600 or more hours.<sup>7</sup> But, this is only if you don’t qualify under the general rule.<sup>8</sup>

[17] The parties agree that the Claimant doesn’t qualify under the general rule, and there is no evidence that makes me doubt it. So, I accept this as fact.

### The Claimant’s qualifying period

[18] As noted above, the hours counted are the ones the Claimant worked during her qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.<sup>9</sup>

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

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<sup>4</sup> See section 48 of the Act.

<sup>5</sup> See section 7 of the Act and section 93 of the *Employment Insurance Regulations* (Regulations).

<sup>6</sup> See section 7(2)(b) of the Act and section 17 of the Regulations.

<sup>7</sup> See section 93(1) of the Regulations. The hours need to be hours of insurable employment.

<sup>8</sup> Section 7 of the Act sets out the general rule.

<sup>9</sup> See section 8 of the Act.

[20] The Commission decided that the Claimant's qualifying period went from September 6, 2020, to September 4, 2021,<sup>10</sup> because a period of parental leave had been established earlier as of June 14, 2020.

– **The Claimant agrees with the Commission**

[21] The Claimant agrees with the Commission's decision about her qualifying period.

[22] There is no evidence that makes me doubt the Commission's decision. So, I accept as fact that the Claimant's qualifying period is from September 6, 2020, to September 4, 2021.

**The hours the Claimant worked**

– **The Claimant agrees with the Commission**

[23] The Commission decided that the Claimant had worked 42 hours during her qualifying period.

[24] The Claimant doesn't dispute this, and there is no evidence that makes me doubt it. So, I accept it as fact.

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

[25] I find that the Claimant hasn't proven that she has enough hours to qualify for EI special benefits because she needs 600 or more hours, but has 42 hours. The recognized total is 342 with the 300-hour credit under the Act.

[26] In this case, the Claimant doesn't meet the requirements, so she doesn't qualify for benefits. While I sympathize with the situation faced by the Claimant and her family, I can't change the law.<sup>11</sup> As the Federal Court of Appeal stated in a 2011 decision:<sup>12</sup>

[R]igid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme. However, tempting as it may be in such cases (and this may well

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<sup>10</sup> GD4-2

<sup>11</sup> See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

<sup>12</sup> *Canada (Attorney General) v Knee*, 2011 FCA 301 at para 9

be one), adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.

## **Conclusion**

[27] The Claimant doesn't have enough hours to qualify for EI family caregiver benefits.

[28] This means that the appeal is dismissed.

Nathalie Léger  
Member, General Division – Employment Insurance Section