Citation: *CW v Canada Employment Insurance Commission*, 2021 SST 979

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	C. W.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (434144) dated September 17, 2021 (issued by Service Canada)

Tribunal member:	Gary Conrad
Type of hearing:	Videoconference
Hearing date:	November 12, 2021
Hearing participant:	Appellant
Decision date:	November 22, 2021
File number:	GE-21-1892

Decision

[1] The appeal is allowed. The one-time hours credit should not have been applied to the Claimant's benefit period which began on September 27, 2020.

Overview

[2] The Claimant applied for employment insurance (EI) maternity and parental benefits and her claim began on September 27, 2020.

[3] On September 10, 2021, the Claimant asked the Commission to remove the 480 hours credit that was applied to her September 27, 2020, claim.

[4] The Claimant says she had no idea the credit was automatically added to her claim when she applied in September 2020, and she did not need the credit as she had more than enough hours to qualify for benefits without it.

[5] The Commission says the one-time hours credit was added to the Claimant's September 27, 2020, claim as the one time hours are automatically added to a claim whether the Claimant needs the hours or not.

[6] The Commission says that once the one-time hours credit is applied once it cannot be applied again, so the Claimant could not use the one-time hours credit on a future claim.

Issue

[7] Should the one time hours credit have been applied to the Claimant's September 27, 2020, claim?

Analysis

[8] No, the one-time hours credit should not have been applied to the Claimant's September 27, 2020, claim. The legislation does not explicitly say it must be applied to the first claim made on or after September 27, 2020, and to automatically do so would

produce an absurd result that is illogical and not in line with the intentions of the legislation.

[9] The part of the law at the heart of the disagreement between the Claimant and the Commission resides in Part VIII.5 of the *Employment Insurance Act* (Act) and reads as follows:

> 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
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> (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; and
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> (b) in any other case, an additional 300 hours of insurable employment.

[10] The Commission submits that the one-time hours credit is added to a claim with a benefit period start date on or after September 27, 2020, regardless of whether the claimant needs the hours to qualify.[1]

[11] The Commission says since they have applied the one-time hours to the September 27, 2020, claim, and the one-time hours credit can only be used once, the Claimant could not apply the one-time hours credit to a future claim.[2]

[12] The Claimant submits that she does not want the one-time hours credit applied to her claim which began on September 27, 2020.

[13] The Claimant submits that the legislation does not specifically say that the one-time hours credit must be applied to the first claim filed on or after September 27, 2020.

[14] The Claimant submits that the legislation is created to help people who do not have enough hours.

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[1] GD04-3
[2] GD04-3

[15] The Claimant submits that applying the one-time hours credit to her September 27, 2020, claim, when she does not need the extra hours to qualify, makes no sense. The Claimant submits automatically applying the one-time hours credit when she does not need it will hurt her, as it will prevent her from qualifying for maternity and parental benefits for her second pregnancy.

[16] The Claimant says she had no idea the one-time hours credit would be automatically applied to her claim which began on September 27, 2020, and was never told this by the Commission.

[17] I find that subsection 153.17(1) of the Act does not explicitly say that the one-time credit of hours must be applied to the first claim made on or after September 27, 2020. While that is how the Commission interprets this section of the legislation, the Claimant argues for a different interpretation.

[18] The Supreme Court of Canada (SCC) has said that "…statutory interpretation cannot be founded on the wording of the legislation alone. The 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."[3]

[19] The SCC stated that the grammatical and ordinary sense of a section is not determinative and does not constitute the end of the inquiry as the total context of the provisions to be interpreted must be considered no matter how plain the disposition may seem upon initial reading.[4]

[20] The SCC said that when interpreting a statue, the words, if clear, will dominate; if not they yield to an interpretation that best meets the overriding purpose of the statute.[5]

[21] The *Interpretation Act* states that every enactment shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.[6]

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[3] *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27
[4] *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*, 2006 SCC 4, paragraph 48
[5] *Celgene Corp. v Canada (Attorney General)*, 2011 SCC 1 paragraph 21
[6] Section 12 of the *Interpretation Act*

[22] So, what is the overall purpose of the Act?

[23] The Federal Court of Appeal (FCA) has said that the Act is "…a contributory scheme providing social insurance for those who lose their jobs…"[7] and for "…compensating unemployed workers for their loss of employment income and ensuring their economic and social security for a time, thus assisting them in returning to the labour market."[8]

[24] The SCC has said that the overall purpose of the Act is to make benefits available to the unemployed and that it should be liberally interpreted and any doubt arising from the difficulties of the language should be resolved in favour of the claimant.[9]

[25] I find that the words of subsection 153.17(1) are not clear. They do not explicitly state that the one-time credit must be used on the first claim made on or after September 27, 2020. Since they are not clear, they must yield to an interpretation that best meets the overriding purpose of the statute.[10]

[26] The SCC and FCA have said that the purpose of the Act is to provide benefits to people who are unemployed.

[27] With that purpose in mind, I note that the title to the section of the Act the disputed section falls into, Part VIII.5, has the title of "Temporary Measures to Facilitate Access to Benefits." I find this shows that the purpose of the sections under this title are to help workers access unemployment benefits.

[28] The SCC has said that it is a well established principle of statutory interpretation that the legislature does not intend to produce absurd consequences.[11]

[29] The SCC says an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical

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[7] *Canada (Attorney General) v Lesiuk*, 2003 FCA 3
[8] *Canada (Attorney General) v Jean*, 2015 FCA 242, paragraph 26
[9] *Abrahams v Attorney General of Canada*, 1983 1 SCR 2
[10] *Celgene Corp. v Canada (Attorney General)*, 2011 SCC 1 paragraph 21
[11] *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, paragraph 27.

or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment.[12]

[30] The Claimant did not need the one-time hours credit to qualify on September 27, 2020. The information from the Commission says the Claimant had 1,820 insurable hours[13] which is significantly more than she needed to qualify for maternity and parental benefits.

[31] I find that interpreting subsection 153.17(1) in the way the Commission has, that the one-time credit of hours must be applied to the first claim on or after September 27, 2020, whether the Claimant needs it or not, leads to an absurd result, as it is illogical and incompatible with the object of the legislative enactment.

[32] The object of the Act is to provide benefits to people who are unemployed. Parliament added sections to the Act, under a title Temporary Measures to Facilitate Access to Benefits, showing they wanted the sections under it help people access benefits.

[33] I find that interpreting subsection 153.17(1) as the Commission does, that the one-time credit of hours must be applied to the first claim after September 27, 2020, whether the claimant needs it or not, is also incompatible with the object of the legislative enactment. The title of the section in which 153.17(1) is in is clear these sections are to help people access benefits. Applying the one-time hours credit when it is not needed would go against that objective.

[34] Such an action would also be illogical. It does not make any sense to give a claimant additional hours they do not need to qualify, as that would take away the chance of helping them qualify when they do need it.

[35] Further, the wording of subsection 153.17(1) itself shows that it is intended to help people qualify for benefits by giving them additional hours to help meet the qualifying requirements. Applying those additional hours when they are not needed

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[12] *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, paragraph 27.
[13] GD03-20

would not only do nothing to help people qualifying, but would actually harm people as it would remove a chance for them to qualify at a later date when they actually need the additional hours. Interpreting this section the way the Commission does would go against the object of the legislative enactment since it would not help people qualify as it is intended to.

[36] I also find that the word ‘deemed’ in subsection 153.17(1) does not mean the one-time hours credit must be applied to the first claim made on or after September 27, 2020.

[37] The word ‘deemed’ simply creates a rebuttable presumption, that is, something that is presumed unless the contrary is proven.

[38] In this sense the legislation says it is ‘deemed’, in other words assumed, the Claimant has extra hours in their qualifying period for a claim made on or after September 27, 2020.

[39] I find that assumption in no way mandates the hours be added to the first claim made on or after September 27, 2020, whether the claimant needs it or not as doing so would produce an absurd result and go against object of the legislative enactment as I have noted above.

[40] Why would Parliament want the Commission to assume a person has additional hours in their qualifying period if not but to help them qualify when the actual amount of hours they have is not enough?

[41] I find that nothing in the legislation prevents the Commission from deeming, in other words assuming, the Claimant has an extra amount of hours in her qualifying period, for a claim other than the first one made on or after September 27, 2020; such as a claim where she actually needs the assumed hours to qualify.

[42] Finally, I keep in mind the words of the SCC, that the overall purpose of the Act is to make benefits available to the unemployed, and that it should be liberally interpreted and any doubt arising from the difficulties of the language should be resolved in favour

of the claimant.[14] This lends further support that subsection 153.17(1) should not be interpreted the way the Commission wants, as it would not provide the help it could to make benefits available to the unemployed. Further, since there are difficulties in the language, I would resolve it in favour of the Claimant.

[43] I find the Commission's interpretation of subsection 153.17(1), that the one-time credit of hours must be applied to the first claim made on or after September 27, 2020, whether a claimant needs it or not, cannot stand.

[44] I find subsection 153.17(1) should be interpreted as being used only if the claimant needs the additional hours to qualify. This interpretation prevents absurd results and is more compatible with the object of the legislative enactment.

[45] I therefore find the one-time credit of hours should not have been applied to the Claimant's claim starting September 27, 2020, as she did not need them to qualify.

Conclusion

[46] The appeal is allowed.

[47] I find section 153.17(1) should be interpreted as being used only if the claimant needs the additional hours to qualify. This interpretation prevents absurd results and is more compatible with the object of the legislative enactment.

[48] With that interpretation, I find the one-time hours credit should not have been applied to the Claimant's benefit period which began on September 27, 2020.

Gary Conrad
Member, General Division – Employment Insurance Section

[14] *Abrahams v Attorney General of Canada*, 1983 1 SCR 2