Citation: *Canada Employment Insurance Commission v BK*, 2022 SST 548

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	Canada Employment Insurance Commission
Respondent:	B. K.
Representative:	J. H.

Decision under appeal:	General Division decision dated February 15, 2022 (GE-21-2597)

Tribunal member:	Melanie Petrunia
Type of hearing:	On the Record
Decision date:	June 21, 2022
File number:	AD-22-160

Decision

[1] The appeal is allowed.

Overview

[2] As a temporary measure associated with the pandemic, claimants could get a credit of 300 insurable hours toward employment insurance (EI) regular benefits or 480 hours toward EI special benefits.[1] This appeal raises the question of whether the extra hours have to apply to the first claim made on or after September 27, 2020,[2] or if they can apply to a later claim.

[3] B. K., the Claimant, had a claim for EI regular benefits beginning on October 4, 2020. In April 2021, she filed a claim for sickness benefits, to be followed by maternity and parental benefits. The General Division decided that the Claimant qualified for a new claim in April 2021.

[4] The Claimant needed 600 insurable hours in her qualifying period, but had only 320 hours from employment. The General Division interpreted the law to allow the extra hours to apply to the second claim after September 2020, when the Claimant needed them. In this way, the Claimant had more than 600 insurable hours.

[5] Commission is now appealing the General Division's decision. It submits that the General Division erred in law in its interpretation of section 153.17 of the EI Act.

[6] I am allowing the Commission's appeal.

Preliminary matters

[7] A teleconference hearing in this matter was scheduled for June 1, 2022. Neither party attended at the scheduled time. The Tribunal contacted the parties and confirmed

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[1] See section 153.17(1) of the *Employment Insurance Act*. Special benefits include sickness, maternity, parental, compassionate care, and family caregiver benefits, in sections 21 to 23.3 of the *Employment Insurance Act.*

[2] Or, made in relation to an interruption of earnings after that date. This situation does not apply in the present appeal.

that the Notice of Hearing was received. Neither party wanted to have the hearing rescheduled. Both the Commission and the Claimant asked that I decide the appeal based on the record.

Issues

[8] The issues in this appeal are:

a) Did the General Division err in law in its interpretation of section 153.17 of the EI Act?

b) If so, how should the error be fixed?

Analysis

[9] I can intervene in this case only if the General Division made a relevant error, which is known as a "ground of appeal."[3] One of the grounds of appeal is that the General Division made an error of law in making its decision. The interpretation of legislation is a question of law.[4]

[10] The General Division found that the one-time credit should not have been applied to the Claimant's October 4, 2020 claim. It decided that the legislation does not explicitly say that it must apply to the first claim made after September 27, 2020.[5] It found that automatically applying the credit the first claim produces an absurd result that is contrary to the intention of the legislation.[6]

[11] In its analysis, the General Division considered the wording of section 153.17(1)(a) and (b) of the EI Act. This section reads:

> 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

[3] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) sets out the grounds of appeal.
[4] See *Canada (Attorney General) v Trochimchuk*, 2011 FCA 268 at paragraph 7.
[5] See General Division decision at paragraph 44.
[6] See General Division decision at paragraph 44.

> 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.

[12] The General Division found that section 153.17(1) does not explicitly say that the one-time credit must apply to the first claim and therefore the words of the section are not clear.

[13] Finding that the words of the section are not clear, the General Division decided that the section should be interpreted in a way that best meets the overriding purpose of the statute.[7] It found that applying the one-time credit to the first claim, when the hours are not needed, and denying those hours to a later claim when they are needed results in an absurdity.[8] The General Division also found that interpreting the provision as only applying to the first claim is incompatible with the object of the legislation.[9]

[14] The General Division found that the word “deemed” in the section only creates a rebuttable presumption. It determined that this language does not require the additional hours to apply to the first claim made on or after September 27, 2020.[10]

[15] The General Division decided that there is nothing in the wording of the legislation that prevents the Commission from deeming the Claimant to have the extra hours in her qualifying period for a later claim.[11]

The General Division made an error of law in its interpretation of section 153.17

[7] See General Division decision at paragraph 54.
[8] See General Division decision at paragraph 60.
[9] See General Division decision at paragraph 62.
[10] See General Division decision at paragraph 68.
[11] See General Division decision at paragraph 70.

[16] The Commission argues that the General Division made an error of law when it found that the one-time credit should be deferred to the Claimant's later claim, in April 2021.

[17] The Commission argues that the law clearly states that a claimant is deemed to have additional hours if they make an initial claim for EI benefits on or after September 27, 2020. It says that there is no room for discretion and no mechanism that allows the Commission or a claimant to waive the application of the additional hours if they are not needed. The purpose is to increase a claimant's insurable hours in their qualifying period on their first application for EI benefits on or after September 27, 2020.

[18] The General Division's analysis considered only the wording of section 153.17(1) of the EI Act. It makes no reference to the rest of that section, namely the limitation in section 153.17(2). I find that the General Division made an error of law when it decided that the wording of the section is ambiguous.

[19] Since the General Division's decision in this matter, the Appeal Division has also considered the wording of section 153.17 of the EI Act.[12] These decisions have found:

- There is no ambiguity in the section.
- The language of deeming in section 153.17 means that there is no discretion available on the part of the Commission.
- The law does not provide an option to apply the additional hours to a future claim.

[20] When a claimant makes an initial application for benefits on or after September 27, 2020, they are deemed to have an additional 300 or 480 hours of insurable employment in their qualifying period. The plain meaning of this section is clear and unambiguous.

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[12] See *Canada Employment Insurance Commission v NK,* 2021 SST 601, *Canada Employment Insurance Commission v SF,* 2022 SST 21, *DM* v *Canada Employment Insurance Commission*, 2021 SST 472 and *Canada Employment Insurance Commission v SS,* 2022 SST 283.

[21] The General Division found that the section does not explicitly say that a claimant is deemed to have the additional hours in their **first** initial claim. However, the language is clear that the additional hours will be included when **an** initial claim is made. The Commission does not have any discretion not to include the additional hours when the first the initial claim is made.

[22] Read on its own, section 153.17(1) could suggest that a claimant is deemed to have the additional hours applied to all initial claims made on or after September 27, 2020. The limitation in section 153.17(2) then clarifies that the credit will only apply to the first initial claim. This section reads:

> Limitation
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> **(2)** Subsection (1) does not apply to a claimant who has already had the number of insurable hours in their qualifying period increased under that subsection or under this section as it read on September 26, 2020, if a benefit period was established in relation to that qualifying period.

[23] When the section is read as a whole, it is clear that the additional hours will only apply to the first claim.

[24] I agree with the Commission, and the decisions of the Appeal Division. Section 153.17(1) requires that the additional hours be included in the qualifying period of the first initial claim made after September 27, 2020. The limitation in section 153.17(2) means that the additional hours cannot also be included in a subsequent qualifying period.

[25] The section is meant to help claimants who do not have enough hours of insurable employment establish a benefit period. It is not meant to help claimants who have enough hours of insurable employment when applying on or after September 27, 2020 establish a later benefit period.[13]

[26] The General Division erred in law in its interpretation of section 153.17 of the EI Act. The section is not ambiguous and cannot be interpreted as though the additional

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[13] See *Canada Employment Insurance Commission v SF,* 2022 SST 21 at paragraph 19.

hours are only deemed to be included in a claimant's qualifying period if they are needed.

I will fix the General Division's error by giving the decision it should have given

[27] Both parties had the opportunity to present their case before the General Division and have asked that I make a decision based on the record. In these circumstances, I will give the decision that should have been given by the General Division.[14]

[28] I am sympathetic to the Claimant's circumstances. However, for the reasons stated above, I find that the legislation is clear. The one-time credit was properly applied to the qualifying period for the Claimant's October 4, 2020 claim. The additional hours were not available to be applied to the qualifying period for a later claim.

[29] Without the additional hours, the Claimant does not have enough hours to establish a new benefit period on April 18, 2021.

Conclusion

[30] The appeal is allowed.

Melanie Petrunia
Member, Appeal Division

[14] In accordance with section 59(1) of the DESD Act.