



Citation: *DD v Canada Employment Insurance Commission*, 2022 SST 558

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

## Decision

**Appellant:** D. D.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (443473) dated December 17, 2021 (issued by Service Canada)

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**Tribunal member:** Raelene R. Thomas

**Type of hearing:** Videoconference

**Hearing date:** March 22, 2022

**Hearing participant:** Appellant

**Decision date:** March 29, 2022

**File number:** GE-22-272

## Decision

[1] The appeal is dismissed.

[2] The Claimant cannot change the start date of the benefit period that began on November 15, 2020 to begin on July 14, 2021.

[3] This means the Claimant cannot be paid EI benefits after November 13, 2021.

## Overview

[4] The Claimant applied for EI benefits on November 18, 2020. The Commission started a benefit period for the Claimant on November 15, 2020. The Commission decided that he was not entitled to receive EI benefits because he was self-employed.

[5] The Claimant next applied for EI benefits on July 6, 2021. The Commission used the claim the Claimant made in November 2020 to pay him EI benefits from July 14, 2021 to November 13, 2021. The Commission says it cannot pay the Claimant EI benefits after November 13, 2021, because his benefit period ends on that date.

[6] The Claimant says that when the Commission denied him EI benefits from the November 2020 claim that claim was closed. The Claimant wants to be paid 52 weeks of EI benefits from July 4, 2021. The Commission says that it cannot do that because the Claimant has not met the conditions to have the benefit period that started on November 18, 2020 changed to start on July 6, 2021.

## Issues

[7] Can the Claimant's benefit period that started on November 15, 2020 be cancelled to allow him to start a benefit period on July 4, 2021?

## Analysis

[8] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.<sup>1</sup> The Claimant has to prove this on a balance of probabilities.

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<sup>1</sup> See section 48 of the *Employment Insurance Act* (EI Act).

This means that he has to show that it is more likely than not that he qualifies for benefits.

[9] To qualify, you need to have worked enough hours within a certain timeframe. This timeframe is called the “qualifying period.”<sup>2</sup> The qualifying period is usually the 52 weeks before you apply for EI benefits.<sup>3</sup>

[10] The number of hours you are required to work in the qualifying period depends on the unemployment rate in your region, if you are claiming regular EI benefits.<sup>4</sup>

[11] If you apply for EI benefits, the Commission will start a benefit period for you.<sup>5</sup> Your benefit period is the time when you can receive EI benefits.<sup>6</sup>

[12] A benefit period is usually 52 weeks long.<sup>7</sup> Once a benefit period ends you can no longer be paid benefits. You cannot “pause” a benefit period, it continues even when you are not receiving EI benefits.

[13] In some cases, your benefit period can be extended.<sup>8</sup> But this does not apply to this Claimant’s circumstances because he does not meet any of the criteria for an extension.

[14] You can cancel your benefit period in favour of starting a new one if the existing benefit period has ended and no benefits were paid or payable during the period.<sup>9</sup> The

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<sup>2</sup> See section 7 of the EI Act.

<sup>3</sup> See section 8 of the EI Act.

<sup>4</sup> See section 7(2)(b) of the EI Act and section 17 of the *Employment Insurance Regulations* (EI Regulations).

<sup>5</sup> Benefit periods are established under section 10(1) of the EI Act.

<sup>6</sup> See section 9 of the EI Act.

<sup>7</sup> See section 10(2) of the EI Act.

<sup>8</sup> Section 10(10) of the EI Act says that your benefit period can be extended if you couldn’t collect EI benefits during a week of your benefit period because: you were in a jail or similar institution, and not found guilty of the offense; you were receiving separation money because your employment ended; you were receiving worker’s compensation benefits; or, you were receiving payments under a provincial plan to protect pregnant or breastfeeding mothers (sometimes called “preventative withdrawal payments”). Other grounds for benefit period extensions are found in sections 10(12) to 10(13.03). But, these grounds only apply to claimants asking for parental benefits or special benefits only.

<sup>9</sup> See section 10(6)(a) of the EI Act.

Claimant does not meet this condition because he was paid benefits from July 4, 2021 to November 13, 2021. As a result, he cannot take advantage of this provision.

[15] Or, you can cancel part of a benefit period that has not yet ended immediately before the first week for which you want to have benefits paid.<sup>10</sup> In other words, this part of the law allows the Commission to end a benefit period before the 52 weeks has passed so that it can start a new benefit period for a claimant. The Commission can only do this when the claimant meets certain conditions.

[16] The conditions are: the claimant asks for a cancellation; the claimant qualifies to start a new benefit period; and, the claimant can show good cause for delaying his request to cancel the benefit period.

[17] A claimant has to meet all three of these conditions to cancel a benefit period in favour of starting a new benefit period at a later date.

[18] As noted above, one of the conditions the Claimant has to meet is that he must qualify to start the new benefit period. To start a new benefit period you have to work enough hours in your qualifying period. If the Claimant's benefit period were changed to start on July 4, 2021, he would need to have worked 120 hours in the qualifying period.<sup>11</sup> This means the Claimant would need to have worked 120 hours from July 4, 2020 to July 3, 2021.

[19] The Claimant stopped working on April 13, 2020. He has not been successful finding a job since that date. This means that he did not work from July 4, 2020 to July 3, 2021. So, he has zero hours in his qualifying period. This means that he does not qualify to start a new benefit period. So, the Claimant does not meet the conditions to have the benefit period that started on November 15, 2020 cancelled. This means the Claimant's benefit period cannot be changed to start on July 4, 2021.

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<sup>10</sup> See section 10(6) of the EI Act.

<sup>11</sup> See section 153.17 of the EI Act, a temporary measure in effect from September 27, 2020 to September 25, 2021. Budget Implementation Act, 2021, No. 1 S.C. 2021, c. 23, requires that people must work 420 hours in their qualifying period. That measure will be repealed on September 25, 2022.

[20] Having determined that the Claimant does not meet one of the three conditions to cancel a portion of his benefit period I do not need to decide if he meets the other two conditions.

[21] The start date of the Claimant's benefit period cannot be changed because he does not meet the conditions that allow him to end the benefit period in favour of starting a new one. This means the end date for the benefit period will be November 13, 2021 and benefits cannot be paid beyond that date.

### **Other Matters**

[22] The Claimant testified that in November 2020 he was planning to start a taxi service using his own vehicle. He said that he did not pursue the taxi business.

[23] The appeal file shows that the Claimant was disentitled from receiving EI benefits from November 15, 2020, because the Commission said he was self-employed and had not shown he was available for work.

[24] This matter of the Claimant's availability for work is not before me to decide.

[25] However, nothing in my decision prevents the Claimant from asking the Commission to reconsider its decision to disentitle him from receiving benefits due to his self-employment. The Claimant would have to request the reconsideration and the Commission is free to reconsider its November 2020 decision, or not, in light of the Claimant's delay for making the request.<sup>12</sup>

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<sup>12</sup> Claimants must make a request for reconsideration within 30 days of receiving the Commission's decision. The Commission may decide not to reconsider its decision if more than 30 days have passed since it made the decision. The Commission may allow a longer period for a reconsideration request if it is satisfied the claimant had a continuing intention to request reconsideration and a reasonable explanation for the delay in making the request. I have paraphrased section 112 of the EI Act and the *Reconsideration Regulations* for this footnote.

## Conclusion

[26] I am sympathetic to the Claimant's circumstances, but, as tempting as it may be in such cases (and this may well be one), I am not permitted to re-write the law or to interpret it in a manner that is contrary to its plain meaning.<sup>13</sup> I must follow the law and render decisions based on the relevant legislation and precedents set by the courts.

[27] The Claimant cannot cancel the benefit period that began on November 15, 2020. This means that he cannot start a new benefit period on July 4, 2021 and he cannot be paid any EI benefits after November 13, 2021.

[28] The appeal is dismissed.

Raelene R. Thomas  
Member, General Division – Employment Insurance Section

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<sup>13</sup> *Canada (Attorney General) v. Knee*, 2011 FCA 301. This is how I refer to the court cases containing principles the law requires me to apply to the circumstances of this appeal.