



[TRANSLATION]

Citation: *JV v Canada Employment Insurance Commission*, 2022 SST 606

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

Decision

Appellant: J. V.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (443721) dated February 9, 2022 (issued by Service Canada)

Tribunal member: Normand Morin
Type of hearing: Teleconference
Hearing date: June 3, 2022
Hearing participants: Appellant
A witness supporting the Appellant
Decision date: June 24, 2022
File number: GE-22-910

Decision

[1] The appeal is dismissed. I find that the Appellant does not have the required number of hours of insurable employment to establish an Employment Insurance (EI) benefit period effective the week beginning September 19, 2021.¹ This means that he does not qualify for regular benefits or sickness benefits (special benefits).²

[2] I would point out that, in its arguments, the Canada Employment Insurance Commission (Commission) says that the Appellant has never asked to have his benefit period start before he made his claim for benefits.³ It says it has not made any decision about antedating that claim.⁴ So, I find that it is up to the Appellant to ask the Commission whether the claim for benefits made on September 25, 2021, can be antedated so that it can be considered as having been made earlier.

Overview

[3] From September 12, 2019, to October 21, 2019, the Appellant was an election worker for Elections Canada. He stopped working for that employer because of a shortage of work.⁵

[4] From August 18, 2021, to August 27, 2021, he was an election worker (“office staff”) for the Government of Canada (Elections Canada). He stopped working for that employer because of a shortage of work.⁶

[5] On September 25, 2021, he applied for EI benefits (regular benefits).⁷

[6] On October 26, 2021, the Commission informed him that he did not qualify for EI special or regular benefits. It explained to him that he did not have any hours of

¹ See sections 7 and 153.17(1) of the *Employment Insurance Act* (Act) and section 93 of the *Employment Insurance Regulations* (Regulations).

² See sections 7 and 153.17(1) of the Act and section 93 of the Regulations.

³ See GD9-1.

⁴ See GD9-1. Antedating a claim for EI benefits allows a late claim for benefits to be considered as having been made on an earlier day than the day it was actually made.

⁵ See GD2-11 and GD2-12.

⁶ See GD3-19 and GD3-20.

⁷ See GD3-3 to GD3-14.

insurable employment (0 hours of insurable employment) between March 8, 2020, and September 18, 2021, when he needed 420 hours of insurable employment to qualify for benefits. It indicated that, if he had other hours of insurable employment after September 18, 2021, and had not provided them on his application for benefits, he had to submit a Record of Employment. In addition, it indicated that that employment could help him qualify for benefits. The Commission also specified that, if he had other hours of insurable employment after September 18, 2021, and then became unemployed, he had to make a new claim for benefits.⁸

[7] On February 9, 2022, after a request for reconsideration, the Commission informed him that a new decision had replaced the October 26, 2021, decision. It explained to him that, according to that new decision, it had determined that he had 363 hours of insurable employment in his qualifying period from March 8, 2020, to September 18, 2021, which was not enough, since he needed 420 to get EI benefits.⁹

[8] The Appellant says that he is entitled to benefits because of the periods of employment he has had since 2019 and the number of insurable hours he has worked. He argues that a Record of Employment is valid for a period of two years when applying for benefits. He also argues that the COVID-19¹⁰ situation got in the way of him going back to work. He explains that he has health problems and that he stopped working for medical reasons in August 2021. He says he puts in volunteer hours at a non-profit organization. He explains that, if he had applied for benefits between September 2020 and December 2020, he could have received benefits. He wants regular benefits or sickness benefits (special benefits). On March 10, 2022, he challenged the Commission's reconsideration decision before the Tribunal. That decision is now being appealed to the Tribunal.

⁸ See GD3-15 and GD3-16.

⁹ See GD2-9, GD2-10, GD3-28, and GD3-29.

¹⁰ Coronavirus disease 2019.

Issue

[9] I have to decide whether the Appellant has the required number of hours of insurable employment to be entitled to EI benefits from the week beginning September 19, 2021, and whether he qualifies for them as a result.¹¹

Analysis

[10] You do not automatically receive EI benefits when you stop working. You have to prove that you qualify for benefits.¹² You have to prove this on a balance of probabilities. This means that you have to show that it is more likely than not that you are entitled to benefits.

[11] To qualify for benefits, you need to have worked enough hours within a certain time frame. This time frame is called the “qualifying period.”¹³ In general, the qualifying period is the 52 weeks before your benefit period would start.¹⁴

[12] Your benefit period is not 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.

[13] In general, the number of hours used to determine whether you are entitled to benefits depends on the unemployment rate in your region of residence.¹⁵

¹¹ See sections 7 and 153.17(1) of the Act and section 93 of the Regulations.

¹² See section 48 of the Act.

¹³ See section 7 of the Act.

¹⁴ See section 8 of the Act.

¹⁵ See section 7(2)(b) of the Act and section 17 of the Regulations.

[14] Because of COVID-19, changes were made to the *Employment Insurance Act* (Act). For example, temporary measures were introduced to facilitate access to benefits.¹⁶ These measures include the following:

- a) A regional unemployment rate of 13.1% that applies to benefit periods that began during the period from September 27, 2020, to September 25, 2021, if that rate is greater than the rate that would otherwise apply to them.¹⁷
- b) An “increase in hours of insurable employment.” Under this measure, a claimant who makes an initial claim for benefits 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 an additional 300 hours of insurable employment or an additional 480 hours in the case of special benefits (for example, sickness benefits, critically ill child benefits, critically ill adult benefits, and compassionate care benefits).¹⁸
- c) An “extension of [the] qualifying period” by 28 weeks for a claimant who makes an initial claim for benefits on or after September 27, 2020, or in relation to an interruption of earnings that occurs on or after that date.¹⁹

[15] In this case, I find that the Appellant has not shown that he has worked enough hours to qualify for EI regular benefits, the type of benefits he applied for when he made his claim for benefits on September 25, 2021.²⁰ He also has not shown that he may be entitled to sickness benefits (special benefits), which he also asked for in his notice of appeal.²¹

[16] In this case, the Commission determined that the Appellant’s qualifying period went from March 8, 2020, to September 18, 2021.²² The Commission explains that the

¹⁶ See Part VIII.5 of the Act.

¹⁷ See section 153.16 of Part VIII.5 of the Act.

¹⁸ See section 153.17(1) of Part VIII.5 of the Act.

¹⁹ See section 153.18(1) of Part VIII.5 of the Act.

²⁰ See GD3-5.

²¹ See GD2-5.

²² See GD4-3 and GD9-2.

qualifying period was extended by 28 weeks in accordance with the Act, which includes the temporary measures to facilitate access to benefits.²³

[17] The evidence on file shows that, during the period from September 12 to 25, 2021, that is, the period during which the Appellant made his claim for benefits, the unemployment rate was 13.1% in his region of residence—the EI Economic Region of Lower Saint Lawrence and North Shore—and that the minimum number of insurable hours required to qualify for EI regular benefits was 420.²⁴

[18] The evidence on file also shows that the Appellant has only 363 insurable hours in his qualifying period, when he needs 420 insurable hours to be entitled to EI regular benefits.²⁵

[19] The Appellant argues as follows:

- a) He says that he is entitled to benefits given the periods of employment he had from August 12, 2019, to October 21, 2019,²⁶ and from August 18 to 27, 2021,²⁷ and the insurable hours he has worked. Records of Employment are valid for a period of two years (104 weeks) when applying for benefits.²⁸
- b) If he had applied for benefits during the period from September 2020 to December 2020, he could have been entitled to benefits, given the reduction in the number of hours required to be able to get benefits. However, he did not know then that he could have received benefits. At the time, his focus was on his efforts to get the Canada Emergency Response Benefit (CERB).²⁹

²³ See GD4-3 and GD9-2.

²⁴ See the excerpt from the Government of Canada website—GD3-21 to GD3-23.

²⁵ See GD2-9, GD2-10, GD3-19, GD3-20, and GD3-27 to GD3-29.

²⁶ See GD2-11, GD2-12, and GD3-6.

²⁷ See GD3-19 and GD3-20.

²⁸ See GD2-5, GD2-11, GD2-12, GD3-17, GD3-19, and GD3-20.

²⁹ See GD7-1 and GD7-2.

- c) He made efforts to find a job but was unsuccessful. There were no jobs available during the period from March 2020 to March 2021. The COVID-19 pandemic prevented him from having a job.³⁰
- d) For the past four years, he has been putting in volunteer hours at X. This organization was supposed to hire him around March 2020, but the job fell through because of the COVID-19 pandemic.³¹
- e) He has health problems. He stopped working in August 2021 for health reasons. He has not been seeing a doctor, but he has been talking to a support worker (peer supporter) since March 2020.³² A Commission representative contacted this support worker to assess whether the Appellant could receive sickness benefits (special benefits).³³
- f) On his application for benefits, the Appellant indicated that he had not had any other periods of work in the last 52 weeks and that he had not been unable to work for medical reasons.³⁴ In his notice of appeal, he indicated that he had left a job in August 2021 for health reasons.³⁵
- g) The Appellant cared for both of his elderly parents, especially during the various waves of COVID-19 spread. His father needed a lot of help. He passed away in December 2021. The Appellant receives social assistance benefits.³⁶
- h) In his notice of appeal, he asked to receive regular benefits, sickness benefits, or the Canada Recovery Benefit (CRB).³⁷

³⁰ See GD3-17, GD3-24, GD7-1, and GD7-2.

³¹ See GD3-17, GD3-27, GD7-1, GD7-2, and GD7-5.

³² See GD2-5, GD3-17, GD3-24 to GD3-26, GD7-1, GD7-2, and GD7-4.

³³ See GD3-25.

³⁴ See GD3-7 and GD3-8.

³⁵ See GD2-5.

³⁶ See GD2-5, GD7-1, and GD7-2.

³⁷ See GD2-5.

- i) He is going through a very difficult situation. He has not received the support he expected or wanted from the government. He is also disappointed with the lack of help from the political attaché of his local Member of Parliament to guide him in his efforts to get EI benefits during the period from September 2020 to December 2020.³⁸

[20] In its arguments, the Commission gives the following explanations:

- a) The Appellant has not shown that he has enough hours to establish a benefit period, whether for regular benefits or sickness benefits (special benefits).³⁹
- b) The exceptional circumstance of the COVID-19 pandemic is a situation that was taken into account in determining the Appellant's qualifying period, since this period was extended under temporary measures to facilitate access to benefits.⁴⁰ This means that the Appellant's qualifying period was determined to be from March 8, 2020, to September 18, 2021, after adding 28 weeks. The Appellant's benefit period started on September 19, 2021; so, without the temporary measures, his qualifying period would have been from September 20, 2020, to September 18, 2021.⁴¹
- c) The Appellant says that he has not worked since his last job, and he has not mentioned any factors that support extending his qualifying period and having it start before March 8, 2020. He also admits having no medical evidence to support his statement that he was unable to work for health reasons during a specific period. He has not shown cause for extending his qualifying period for health reasons. The fact that he had to care for his parents does not support extending his qualifying period either.⁴²

³⁸ See GD2-5, GD7-1, and GD7-2.

³⁹ See GD4-4 to GD4-6.

⁴⁰ See section 153.18 of the Act.

⁴¹ See GD4-3 and GD9-2.

⁴² See GD3-7, GD4-5, and GD9-2.

- d) The Appellant applied for EI regular benefits, which means that he has a credit of 300 insurable hours, plus the 63 insurable hours he worked for his last employer.⁴³
- e) The Appellant needs 420 or more hours of insurable employment in his qualifying period to be able to receive regular benefits, based on his region of residence, or 600 hours of insurable employment if entitled to sickness benefits (special benefits).⁴⁴
- f) The 208 insurable hours that the Appellant worked during the period of employment from September 12, 2019, to October 21, 2019, fall outside his qualifying period. So, those hours were excluded from the calculation of the insurable hours in his qualifying period.⁴⁵
- g) The Appellant cannot accumulate hours of insurable employment through his job search and volunteer hours.⁴⁶
- h) Although the Appellant argues that he could have had a claim for benefits established if it had been made between September 2020 and December 2020, this was not the case. He did not file his claim for benefits in 2020, and he has never asked to have his benefit period start before September 25, 2021. So, the Commission has never considered whether he might have qualified on an earlier day. A decision has never been made about antedating his claim for benefits. As a result, that issue cannot be the subject of this appeal. The reasons why the Appellant did not make a claim before September 25, 2021, are irrelevant, since the issue is not about antedating his claim, but about the number of hours needed to have a claim for benefits established effective September 19, 2021.⁴⁷

⁴³ See GD4-4.

⁴⁴ See GD4-4 and GD4-5.

⁴⁵ See GD4-5.

⁴⁶ See GD9-2.

⁴⁷ See GD9-1.

[21] The evidence on file shows that the Appellant has only 363 insurable hours in his qualifying period, when he needs 420 hours to be entitled to EI regular benefits.

[22] According to the table in section 7(2) of the Act and to temporary measures to facilitate access to benefits, the unemployment rate in the Appellant's region of residence was 13.1%, and the minimum number of hours required to be entitled to EI benefits was 420.⁴⁸

[23] Since he also asked for sickness benefits (special benefits) in his notice of appeal,⁴⁹ he would need to have worked 600 insurable hours and show that he was unable to work for medical reasons during a specific period.

[24] I do not accept the Appellant's argument that the insurable hours he worked during the periods of employment from August 12, 2019, to October 21, 2019,⁵⁰ and from August 18 to 27, 2021,⁵¹ entitle him to benefits.

[25] I also do not accept his argument that Records of Employment are valid for a period of two years (104 weeks) when applying for benefits. The Appellant's qualifying period was not extended so that his Records of Employment would be used to determine the number of insurable hours he worked over a two-year period.

[26] I find that only the hours he worked during the period of employment from August 18 to 27, 2021, can be considered in establishing his benefit period effective September 19, 2021.

[27] The hours he worked during the period of employment from August 12, 2019, to October 21, 2019, fall outside his qualifying period from March 8, 2020, to September 18, 2021. The 203 insurable hours he worked during that period cannot be included in calculating the total number of insurable hours in his qualifying period.

⁴⁸ See GD3-21 to GD3-23.

⁴⁹ See GD2-5.

⁵⁰ See GD2-11, GD2-12, and GD3-6.

⁵¹ See GD3-19 and GD3-20.

[28] The Commission explains that it extended his qualifying period by 28 weeks under temporary measures to facilitate access to benefits. This extension brought the total length of the Appellant's qualifying period to 80 weeks, when, in general, this period is 52 weeks long.

[29] The Federal Court of Appeal (Court) tells us that hours worked outside the qualifying period cannot be used to qualify the claimant for benefits.⁵²

[30] Although he says he stopped working for health reasons in August 2021,⁵³ the Appellant has not shown that he had any periods of employment other than the one from August 18 to 27, 2021, which ended because of a shortage of work. I would point out that, on his application for benefits, the Appellant indicated that he had not had any other periods of work in the last 52 weeks and that he had not been unable to work for medical reasons during the last 2 years.⁵⁴ He has not provided any medical evidence that he was unable to work for health reasons during a specific period. The medical documents he provided in this regard do not support this.⁵⁵

[31] I find that the Commission correctly determined that the Appellant has not shown cause for extending his qualifying period, given his statement about not having worked since his last job and despite the health problems he has mentioned. The Commission says that he has not submitted any medical evidence to support such an extension.

[32] I cannot weigh in the Appellant's favour his statements about making efforts to find a job and putting in volunteer hours, in addition to spending time caring for his parents. Hours spent looking for work, volunteering, or fulfilling family responsibilities are not insurable hours within the meaning of the Act.

[33] Although he also argues that he could have received benefits if he had made his claim for benefits earlier, for example, during the period from September 2020 to

⁵² The Federal Court of Appeal (Court) established this principle in *Haile*, 2008 FCA 193.

⁵³ See GD2-5.

⁵⁴ See GD3-7 and GD3-8.

⁵⁵ See GD7-3 and GD7-4.

December 2020, but that he did not know this was an option, the fact is that the Appellant chose to make this claim in September 2021.

[34] For the hours worked during the period from August 12, 2019, to October 21, 2019, to be considered in establishing a benefit period, the Appellant would have had to make his claim for benefits earlier to have those hours included in the qualifying period that would have been determined after he made that claim.

[35] However, the Appellant might be able to have the hours in question included by asking the Commission to antedate his September 25, 2021, claim for benefits, provided that he can show good cause for such a request. I would point out that, in its arguments, the Commission mentions that the Appellant has never asked to have his claim for benefits start before September 25, 2021; so, it has never considered whether he might have qualified on an earlier day.⁵⁶ It says that it has never made a decision about antedating the Appellant's claim for benefits.⁵⁷

[36] On this point, I find that it is up to the Appellant to discuss with the Commission how he might be allowed an antedate of his claim for benefits.

[37] As a Tribunal member, I cannot decide this issue, since that is not the issue at hand. The Commission's February 9, 2022, reconsideration decision deals only with the Appellant's hours of insurable employment to establish his benefit period.⁵⁸ The reconsideration decision is what is under appeal before the Tribunal. So, I have to decide that particular issue. That decision does not address the issue of antedating his claim for benefits.

[38] On this point, I would also point out that, as a Tribunal member, I cannot decide an issue that is not before me. The Tribunal can hear only appeals of the Commission's reconsideration decisions.⁵⁹

⁵⁶ See GD9-1.

⁵⁷ See GD9-1.

⁵⁸ See GD3-28 and GD3-29.

⁵⁹ See section 113 of the Act.

[39] For this reason, I am of the view that the specific issue of antedating the Appellant's claim for benefits has to be dealt with between him and the Commission.

[40] Although the Appellant also wants the CRB, he needed to apply to the Canada Revenue Agency (CRA). The CRB was available between September 27, 2020, and October 23, 2021.

[41] In summary, the evidence on file shows that the Appellant does not have enough hours of insurable employment in his qualifying period to be able to receive regular benefits or sickness benefits (special benefits) from the week beginning September 19, 2021. The Appellant has 363 hours of insurable employment in his qualifying period, when he needs 420 hours of insurable employment to be entitled to regular benefits. If he were to prove inability to work for medical reasons, he would need 600 hours of insurable employment to meet one of the requirements for receiving sickness benefits (special benefits).

[42] This means that a benefit period cannot be established for the Appellant so that he can receive regular benefits or sickness benefits using the claim for benefits he made on September 25, 2021.

[43] The Court tells us that the requirements of the Act do not allow any discrepancy and provide no discretion.⁶⁰

[44] While I sympathize with the Appellant's case, the Court tells us that adjudicators, which include the Tribunal, are not permitted to rewrite legislation or to interpret it in a manner that is contrary to its plain meaning.⁶¹

Conclusion

[45] I find that the Appellant has not shown that he has enough insurable hours to receive benefits.

⁶⁰ The Court established this principle in *Lévesque*, 2001 FCA 304.

⁶¹ The Court established this principle in *Knee*, 2011 FCA 301.

[46] This means that the appeal is dismissed.

[47] However, according to the information from the Commission, it is up to the Appellant to discuss with the Commission whether his claim for benefits can be antedated.

Normand Morin
Member, General Division – Employment Insurance Section