[TRANSLATION]

Citation: *Canada Employment Insurance Commission v MG*, 2022 SST 679

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	Canada Employment Insurance Commission
Representative:	Julie Meilleur
Respondent:	M. G.

Decision under appeal:	General Division decision dated February 11, 2022 (GE-22-99)

Tribunal member:	Jude Samson
Type of hearing:	Teleconference
Hearing date:	July 12, 2022
Hearing participants:	Appellant's representative Respondent
Decision date:	August 11, 2022
File number:	AD-22-159

Decision

[1] The appeal is allowed. The Claimant, M. G., doesn't qualify for Employment Insurance (EI) sickness benefits.

Overview

[2] The Claimant applied for EI sickness benefits on October 11, 2021. She had been unable to work for medical reasons for several years. The Canada Employment Insurance Commission (Commission) refused her application because she didn't have enough hours of insurable employment to qualify for sickness benefits.

[3] The Claimant appealed the Commission's decision to the Tribunal's General Division. The General Division allowed the Claimant's appeal based on the following findings:

- The Claimant's application for benefits has to be treated as though it was made on September 8, 2021.
- At that time, 420 hours of insurable employment were required to establish a claim for special benefits.
- Because of a temporary COVID-19 measure, the Claimant was deemed to have 480 hours of insurable employment.

[4] The Commission is now appealing the General Division decision to the Appeal Division.

[5] The Commission says that the General Division made an error of law by misapplying the number of hours required by law.

[6] I find that the Commission is correct. So, I am allowing its appeal.

Issue

[7] In my decision, the issue before me is this: Did the General Division misinterpret the provisions in the law about the number of hours required to establish a claim for benefits?

Analysis

[8] I can intervene in this case only if the General Division made one or more of the relevant errors.[1] Based on the wording of the law, any error of law could trigger my powers to intervene.

The General Division made an error of law

[9] The issue before the General Division was whether the Claimant had enough hours to establish a claim for benefits.

[10] Because of the COVID-19 pandemic, the government introduced a series of temporary legislative measures to facilitate access to EI benefits, including the following:

- From September 27, 2020, to September 25, 2021, a claimant for special benefits—including sickness benefits—is deemed to have an additional 480 hours of insurable employment in their qualifying period.[2]

- From September 26, 2021, to September 24, 2022, a common national entrance requirement of 420 hours of insurable employment is in place for any claim for regular or special benefits.[3]

[11] This means that the Claimant could take advantage of one of these temporary measures, but not both.

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[1] These errors (also known as “grounds of appeal”) are listed under section 58(1) of the *Department of Employment and Social Development Act*.
[2] See sections 153.16 and 153.196 of the *Employment Insurance Act*.
[3] See sections 303 and 339 of the *Budget Implementation Act, 2021, No. 1*.

[12] The General Division made an error of law in finding that, on September 8, 2021, the Claimant needed only 420 hours of insurable employment to qualify for EI benefits.[4] This measure wasn't in force until September 26, 2021.

[13] From September 27, 2020, to September 25, 2021, the Claimant needed 600 hours of insurable employment in her qualifying period to qualify for sickness benefits.[5]

[14] For this reason, the General Division made a second error of law in finding that it could treat the Claimant's application for benefits as though it had been made on September 8, 2021.[6]

[15] For an initial claim for benefits to be treated as though it was made on an earlier day, the person had to qualify for the benefits claimed on that date.[7]

[16] However, on September 8, 2021, the Claimant needed 600 hours of insurable employment to qualify for sickness benefits. But she had only the additional 480 hours that the law had granted her.

– I can't accept the Claimant's arguments

[17] In support of her case, the Claimant argued as follows:

- There were significant delays in processing her file.
- The Prime Minister said that no one should feel worse off because of COVID-19. But it is because of the pandemic that the Claimant hasn't received the treatments she needs at the appropriate time.

[4] See paragraphs 26 and 40 of the General Division decision.
[5] See section 21(1) of the *Employment Insurance Act*; sections 302, 308, and 339 of the *Budget Implementation Act, 2021, No. 1*; and section 93 of the *Employment Insurance Regulations*.
[6] See paragraph 40 of the General Division decision.
[7] See section 10(4) of the *Employment Insurance Act*.

[18] I understand the Claimant's disappointment over this difficult situation. But my authority is limited to the question of whether she qualified for EI benefits, in accordance with the provisions in force at the relevant time.

[19] Applying the law can sometimes give rise to some harsh results that appear to be at odds with the government's objectives. But the Tribunal can't rewrite or circumvent the law, even in very sympathetic situations or in situations where there have been delays.[8]

– I will give the decision that the General Division should have given

[20] At the hearing before me, the parties agreed that I should give the decision the General Division should have given.[9]

[21] I agree. The facts of the case aren't in dispute. In addition, the Claimant wasn't prevented from presenting her case before the General Division in any way.

[22] This means that I can decide whether the Claimant had enough hours to qualify for EI sickness benefits.

– The Claimant doesn't qualify for EI sickness benefits

[23] On October 11, 2021, when she applied for EI sickness benefits, the Claimant needed 420 hours of insurable employment to qualify for benefits. But she didn't have any in her qualifying period, even if it were extended to the maximum 104 weeks.

[24] In addition, the Commission could not treat the Claimant's application for benefits as though it had been received on September 8, 2021. At that time, the Claimant needed 600 hours of insurable employment to qualify for benefits, but she had only the 480 hours that the law had granted her.

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[8] See *Canada (Attorney General) v Shaw*, 2002 FCA 325; *Canada (Attorney General) v Knee*, 2011 FCA 301; and *Nadji v Canada (Attorney General)*, 2016 FC 885.
[9] Sections 59(1) and 64(1) of the *Department of Employment and Social Development Act* give me the power to fix the General Division's errors in this way. Also, see *Nelson v Canada (Attorney General)*, 2019 FCA 222 at paragraphs 16 to 18.

Conclusion

[25] I am allowing the Commission's appeal. The General Division made an error of law by misinterpreting the provisions in the law about the number of hours required to establish a claim for benefits. Because of this, I find that the Claimant doesn't qualify for EI sickness benefits.

Jude Samson
Member, Appeal Division