



Citation: *JG v Canada Employment Insurance Commission*, 2022 SST 645

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

Decision

Claimant: J. G.

Commission: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (457183) dated February 9, 2022
(issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: Teleconference

Hearing date: March 23, 2022

Hearing participant: Claimant

Decision date: March 28, 2022

File number: GE-22-602

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

[2] The Claimant hasn't shown that she has worked enough hours to qualify for Employment Insurance (EI) sickness benefits.

Overview

[3] The Claimant applied for EI sickness benefits, but the Canada Employment Insurance Commission (Commission) decided that the Claimant hadn't worked enough hours to qualify.¹

[4] I have to decide whether the Claimant has worked enough hours to qualify for EI sickness benefits.

[5] The Commission says that the Claimant doesn't have enough hours because she needs 420 or more hours, but has only 329.

[6] The Claimant disagrees and says that she had a pregnancy-related illness which meant she could not work some of her shifts. She believes that she should get the one-time credit of insurable hours to be able to qualify for benefits.

Issue

[7] Has the Claimant worked enough hours to qualify for EI sickness benefits?

Analysis

How to qualify for benefits

[8] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.² The Claimant has to prove this on a balance of probabilities.

¹ Section 7 of the *Employment Insurance Act* (Act) and section 93 of the *Employment Insurance Regulations* (Regulations) say that the hours worked have to be "hours of insurable employment." In this decision, when I use "hours," I am referring to "hours of insurable employment."

² See section 48 of the Act.

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

[9] To qualify, you need to have worked enough hours within a certain time frame. This time frame is called the “qualifying period.”³

[10] In general, the number of hours depends on the unemployment rate in your region.⁴ But, the law provides another way to qualify for special benefits, including sickness, maternity and parental benefits.

[11] If you want special benefits, you can qualify if you have 600 or more hours.⁵ But, this is only if you don’t qualify under the general rule. Under the general rule, the number of hours required is 420.⁶

The Claimant’s qualifying period

[12] As noted above, the hours counted are the ones the Claimant worked during her qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.⁷

[13] Your **benefit period** isn’t 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.

[14] The Commission decided that the Claimant’s qualifying period was the usual 52 weeks. It determined that the Claimant’s qualifying period went from December 6, 2020 to December 4, 2021.

– The Claimant agrees with the Commission

[15] The Claimant agrees with the Commission’s decision about her qualifying period.

³ See section 7 of the Act and section 93 of the Regulations.

⁴ See section 7(2)(b) of the Act and section 17 of the Regulations.

⁵ See section 93(1) of the Regulations. The hours need to be hours of insurable employment.

⁶ Section 7 of the Act sets out the general rule and the hours required.

⁷ See section 8 of the Act.

[16] There is no evidence that makes me doubt the Commission's decision. So, I accept as fact that the Claimant's qualifying period is from December 6, 2020 to December 4, 2021.

The hours the Claimant worked

– The Claimant doesn't agree with the Commission

[17] The Commission decided that the Claimant had worked 329 hours during her qualifying period. The Claimant initially disputed this, saying that she had worked more hours than that. She points to hours listed on a paystub from one of her employers. The paystub shows that she received a shift premium.

[18] The Commission contacted the Claimant's employer. They said that they reviewed every pay period the Claimant worked. They confirmed the insurable hours listed on the record of employment (ROE). They explained that shift premiums do not have any hours attached, and this may have confused the Claimant.

[19] The Commission asked the Claimant if she agreed with the insurable hours listed the ROE from the employer noted above. They also asked if she understands that shift premiums are not included in insurable hours. The Claimant said she does agree with the insurable hours listed on the ROE. She explained that she didn't know that shift premium hours weren't included as additional hours of work, but just listed the number of hours she was paid shift premiums. She said she doesn't disagree with the ROE anymore.

[20] The Claimant testified that when she looked at her ROE, she saw 277 year-to-date hours. She said that nowhere on her paystubs does it say insurable hours. She said that she found out when she asked the Commission to reconsider their decision that her employer adds shift premium hours into their year-to-date hours.

[21] The Claimant had already said that she understood that shift premium hours are not included in her hours worked even though she referred to the difference in what she thought were her insurable hours at the hearing. She also said in her notice of appeal that she had read her paystub wrong. So, I find that the reason she disagrees with the

amount of insurable hours she has accumulated has to do with a one-time pandemic-related credit of insurable hours that she spoke of in her notice of appeal.

[22] Temporary measures in the law say that a claimant “is deemed” to have an additional 300 insurable hours where they apply for regular benefits or 480 insurable hours where they apply for special benefits on or after September 27, 2020.⁸ But the credit of hours is only on the first application made on or after September 27, 2020.⁹

[23] The Commission submits that the one-time credit of 300 insurable hours was applied to the Claimant’s September 27, 2020 claim. I asked the Claimant about this. She testified that at that time, she had accumulated 1,035 insurable hours. She doesn’t understand why they would use the one-time credit when she didn’t need it.

[24] I accept as fact that the Claimant had enough insurable hours to qualify for benefits for her September 27, 2020 claim. I also accept that she didn’t need the credit of insurable hours. However, I also find that the temporary measures deem the Claimant to have an additional 300 insurable hours to what she accumulated before her September 27, 2020 claim, even though she didn’t need it.

[25] From the language of the law, I find that the Commission does not have the discretion to apply a credit of additional insurable hours to a second new claim, whether for regular or special benefits. This is because a new claim for sickness benefits would be the Claimant’s second new claim after September 27, 2020.

[26] The Claimant said that she is only short 91 hours. She said that she doesn’t understand why she can’t use 100 insurable hours from the 1,035 hours she accumulated before September 2020.

[27] Although the Claimant’s suggestion seems like a simple solution, I can’t change the law, but must apply it as written.¹⁰ The law says that the Claimant has to have enough insurable hours in her qualifying period. I have already found that this period is

⁸ See section 153.17(1) of the EI Act.

⁹ Subsection 153.17(2) of the *Employment Insurance Act*.

¹⁰ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

from December 6, 2020 to December 4, 2021. The law does not allow for the use of insurable hours that are outside the qualifying period to qualify for benefits.

The Claimant thinks a Tribunal decision may apply to her situation

[28] The Claimant was pregnant when she stopped working and applied for sickness benefits. She had her baby approximately two and a half weeks after she applied. So much of her argument refers to not being able to get maternity and parental benefits because she doesn't have enough insurable hours.

[29] The Claimant referred to a decision of the Tribunal.¹¹ She said that she saw that in that decision, four women didn't have enough insurable hours, but their appeal was allowed. She said that she doesn't know if her situation is similar to theirs, but reiterated that they were dealing with claims for maternity benefits.

[30] The Tribunal decision the Claimant referred to addressed the question of whether the claimants were being discriminated against because of their sex and their pregnancies. In all cases, the Commission denied the applications for benefits because the claimants did not have enough insurable hours. The Tribunal in that appeal found that the specific provisions of the EI Act "[violated] the right to equality of women who have had children by excluding them from the EI program when they lose their jobs".

[31] I don't find that the Claimant's situation is similar to those in the Tribunal decision. The Claimant was unable to work because she was ill. This is the reason she couldn't work enough hours to qualify for sickness benefits. She said in her application for benefits that she will be returning to her job. She did not say that this has changed.

[32] The Claimant argues that EI benefits are intended to support families. However, she didn't say that the EI Act is treating her differently because of who she is. She simply referred to a case and she's not sure if it's similar to hers. I find that it is not the same.

¹¹ See *LC, EB, KG, VD, MT and CL v. Canada Employment Insurance Commission*, 2022 SST 8.

So, has the Claimant worked enough hours to qualify for benefits?

[33] I find that the Claimant hasn't proven that she has enough hours to qualify for EI sickness benefits because she needs 420 or more hours, but has 329 hours.

[34] EI is an insurance plan and, like other insurance plans, you have to meet certain requirements to receive benefits.

[35] In this case, the Claimant doesn't meet the requirements, so she doesn't qualify for benefits. Again, as noted above, while I sympathize with the Claimant's situation, I can't change the law.

Conclusion

[36] The Claimant doesn't have enough hours to qualify for EI sickness benefits.

[37] This means that the appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section