



Citation: *Canada Employment Insurance Commission v RG*, 2022 SST 648

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Isabelle Thiffault

Respondent: R. G.

Decision under appeal: General Division decision dated February 15, 2022
(GE-21-2390)

Tribunal member: Charlotte McQuade

Type of hearing: Teleconference

Hearing date: June 16, 2022

Hearing participants: Appellant's representative
Respondent

Decision date: July 15, 2022

File number: AD-22-161

Decision

[1] I am allowing the appeal.

[2] The General Division made an error of law.

[3] The Respondent, R. G. (Claimant), does not have enough hours of insurable employment to establish a benefit period starting on either September 19, 2021, or on September 26, 2021.

Overview

[4] The Claimant stopped working on September 22, 2021. He applied for Employment Insurance (EI) regular benefits on September 25, 2021. The Canada Employment Insurance Commission (Commission) decided that the Claimant did not have the required 420 hours to qualify for benefits. The Claimant appealed this decision to the Tribunal's General Division.

[5] The General Division decided that the Claimant did have enough hours to qualify. To reach this conclusion, the General Division relied on a temporary change in the law that gave applicants for regular benefits an extra 300 insurable hours.¹

[6] This temporary measure expired on September 25, 2021.² The General Division decided the Claimant's benefit period began on September 26, 2021, but because, by September 25, 2021, the Claimant had applied for benefits and had an interruption of earnings, the credit applied to him. With the credit, he had enough hours to qualify for benefits.

[7] The Commission appealed the General Division decision. The Commission says that the General Division made an error of law when it decided the Claimant's benefit period began on September 26, 2021. It also says the General Division misinterpreted

¹ See section 153.17(1)(b) of the *Employment Insurance Act* (EI Act).

² Section 153.196(1) of the EI Act says that section 153.17 "ceases to apply" on September 25, 2021. Although section 153.17 ceased to apply "on" September 25, 2021, this means that it was in effect up to and including that date. See section 6(1) of the *Interpretation Act*.

the temporary credit provision to mean the Claimant could have a credit for a benefit period starting after September 25, 2021. The Commission says, without the credit, the Claimant does not have enough hours to start a benefit period on September 26, 2021. The Commission says even if the benefit period was to start on the correct date of September 19, 2021, and the credit is applied, the Claimant still does not have the required 420 hours to qualify.

[8] I have decided that the General Division made several errors of law.

[9] Since the General Division made an error of law, I can replace the General Division decision with my own. I find that, unfortunately, the Claimant does not have enough hours to qualify for benefits whether his benefit period starts on September 19, 2021, or on September 26, 2021.

Issues

[10] The issues in this appeal are the following:

- a) Did the General Division make an error of law when it decided the Claimant's benefit period began on September 26, 2021?
- b) Did the General Division misinterpret section 153.17 of the *Employment Insurance Act* (EI Act) when it decided the credit could apply to the Claimant's benefit period starting on September 26, 2021?
- c) If so, how should the error or errors be fixed?

Analysis

The General Division made an error of law when it decided the Claimant's benefit period began on September 26, 2021

[11] The General Division made an error of law when it decided the Claimant's benefit period began on September 26, 2021.

[12] The Claimant stopped working on September 22, 2021, and he applied for EI regular benefits on September 25, 2021.³

[13] The Commission submitted to the General Division that the Claimant's benefit period began on September 26, 2021.⁴

[14] The General Division did not specifically say that it had decided the Claimant's benefit period would begin on September 26, 2021. However, the General Division said the Claimant's qualifying period was from September 27, 2020, to September 25, 2021.⁵ Since the qualifying period is the 52-week period immediately before the beginning of a benefit period, this means that the General Division decided the Claimant's benefit period started on September 26, 2021.⁶

[15] The Commission now argues that the General Division made an error of law when it decided the Claimant's benefit period began on September 26, 2021. The Commission says the benefit period began on September 19, 2021.

[16] The Claimant says that, if his benefit period began on September 19, 2021, he would lose 26 hours from his qualifying period. That means he would be 3 hours short of the required 420 hours to qualify. He says that the General Division was correct when it decided that his benefit period should start on September 26, 2021.

[17] A benefit period always begins on a Sunday. The law says that a benefit period begins on the later of:⁷

- a) the Sunday of the week in which the interruption of earnings occurs, and
- b) the Sunday of the week in which the initial claim for benefits is made.

[18] There was no dispute before the General Division that the Claimant's interruption of earnings happened on September 22, 2021, and he applied for benefits on

³ See paragraph 17 of the General Division decision.

⁴ See paragraph 20 of the General Division decision.

⁵ See paragraph 25 of the General Division decision.

⁶ See section 8(1)(a) of the EI Act.

⁷ See section 10(1) of the EI Act.

September 25, 2021. This means the Claimant's benefit period had to begin on September 19, 2021.

[19] The EI Act does not allow us to post-date a benefit period. So, under the law, the Claimant's benefit period could not begin on September 26, 2021.

[20] Since the General Division made an error of law, I can intervene in the General Division decision.

[21] In the circumstances, I do not have to consider whether the General Division also misinterpreted section 153.17 of the EI Act. However, the Claimant understood that he was going to get a credit if his benefit period started on September 26, 2021, as long as he applied by September 25, 2021. Both parties made arguments about when the application of the credit ends. So, I think it is important that I also consider this issue.

The General Division misinterpreted section 153.17 of the EI Act

[22] The General Division misinterpreted section 153.17 of the EI Act by saying it could apply to the Claimant's benefit period with a start date of September 26, 2021.

– Relevant statutory provisions

[23] Section 153.17 of the EI Act was a temporary measure added to the EI Act in response to the Covid-19 pandemic. It says that a person making an initial claim for regular 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 a credit of 300 insurable hours.⁸ This means they only needed another 120 hours to reach the 420 hours needed to qualify for benefits.

[24] Section 153.17 of the EI Act stopped applying on September 25, 2021.⁹

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

⁹ See section 153.196(1) of the EI Act which says that section 153.17 "ceases to apply" on September 25, 2021. Although section 153.17 ceased to apply "on" September 25, 2021, this means that it was in effect up to and including that date. See section 6(1) of the *Interpretation Act*.

[25] However, after that, a transitional (temporary) law came into effect. It said that section 153.17 of the EI Act continues to apply to claimants whose benefit period begins during the period beginning on September 27, 2020, and ending on September 25, 2021.¹⁰

[26] The parties are disputing whether it is enough to have an interruption of earnings and apply for benefits before September 26, 2021, to have the credit, or whether your benefit period has to have started before September 26, 2021.

– **General Division decision**

[27] The General Division focused on the specific words in section 153.17 of the EI Act. The General Division said section 153.17 has two requirements for the credit to apply:¹¹

a) A claimant must have an interruption of earnings.

b) A claimant must apply for benefits on or after September 27, 2020, and by September 25, 2021 (when the temporary measures ended).

[28] The General Division reasoned that section 153.17 does not mention having to establish a benefit period before September 26, 2021. Since the Claimant stopped working on September 22, 2021, and applied for EI regular benefits on September 25, 2021, the General Division decided he met both of the requirements to have the credit of 300 hours added to his qualifying period.

[29] The General Division concluded that, the Claimant had more than the 420 hours he needed to qualify for regular benefits. He worked more than the 120 hours in his qualifying period from September 27, 2020, to September 25, 2021. So, combining those hours with the credit of 300 hours, he had enough to establish a benefit period on September 26, 2021.¹²

¹⁰ See section 333 of the *Budget Implementation Act, 2021 No. 1*. This section applies to Part VIII.5 of the EI Act. Section 153.17 is under that part, so this section applies to it.

¹¹ See paragraph 22 of the General Division decision.

¹² See paragraphs 25 to 27 of the General Division decision.

– **Parties' arguments**

[30] The Claimant says the General Division correctly interpreted section 153.17 of the EI Act. He says his understanding was that as long as he applied for benefits by September 25, 2021, he could have the credit. He says he did apply by September 25, 2021.

[31] The Commission says that the General Division misinterpreted section 153.17 of the EI Act because it did not read the words in section 153.17 in the context of other important provisions in the law. The Commission argues that, when considering those other provisions, the meaning of section 153.17 of the EI Act is that the credit only applies to people who can establish a benefit period between September 27, 2020, and September 25, 2021. So, it can't apply to the Claimant if his benefit period were to start on September 26, 2021.

[32] Specifically, the Commission says that section 153.17 must be interpreted by considering two other sections of the law.

[33] The first section the Commission relies on is the definition of "initial claim for benefits." The Commission says that an initial claim means more than just making an application. The Commission says an "initial claim for benefits" is defined in the EI Act to mean, "a claim made for the purpose of establishing a claimant's benefit period."¹³ So, the Commission says an "initial claim" relates to starting a benefit period.

[34] The Commission says the second provision that must be considered when interpreting section 153.17 is the transitional provision that came into effect after section 153.17 of the EI Act stopped applying on September 25, 2021. The transitional provision said that section 153.17 continues to apply to a claimant whose "benefit period

¹³ Section 153.15 of the EI Act provides the definitions that apply in Part VIII.5 of the EI Act. It states that the definition of an "initial claim for benefits" has the same meaning as in section 6(1) of the EI Act. Section 6(1) of the EI Act states that an "initial claim for benefits" means a claim made for the purpose of establishing a claimant's benefit period.

begins during the period beginning on September 27, 2020, and ending on September 25, 2021.”¹⁴

[35] The Commission argues this transitional provision makes clear that section 153.17 cannot apply to benefit periods starting on or after September 26, 2021.

[36] The Commission says when section 153.17 of the EI Act is interpreted, while considering the above provisions, it means it cannot apply to benefit periods starting after September 25, 2021.

– **My decision**

[37] There are no binding decisions (conclusive decisions that I have to follow) from the Federal Court interpreting section 153.17 of the EI Act. However, in a recent case, the Tribunal’s Appeal Division interpreted section 153.17 of the EI Act to mean that it cannot apply to benefit periods starting after September 25, 2021.¹⁵ The Appeal Division considered more than just the words of section 153.17 to decide this. It took a contextual approach to interpreting section 153.17.

[38] I do not have to follow other decisions of the Appeal Division. However, I agree with the reasoning in that case. A contextual interpretation of section 153.17 of the EI Act means that the credit does not apply to benefit periods starting after September 25, 2021. I will explain why I have decided that.

[39] The law says that, to interpret a provision in the law, I have to consider the words of the provision “in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.”¹⁶ In other words, I have to consider the words in the context of the EI Act, and in keeping with the purpose of the provision.

¹⁴ See section 333 of the *Budget Implementation Act, 2021, No. 1*, SC 2021, c 23.

¹⁵ See *Canada Employment Insurance Commission v PG et al*, 2022 SST 388.

¹⁶ See *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27, at paragraph 21 and *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 117.

[40] This means it is not enough to look at the words in a provision alone to understand what it means. However, the law says that where the words used are “precise and unequivocal,” (in other words, clear and straightforward), their ordinary meaning will usually play a more significant role, when deciding what they mean.¹⁷

[41] The law also says that we have to interpret legislation liberally if the legislation is about providing benefits (the EI Act is an example of this type of legislation). The law also says if the legislation’s wording is ambiguous (unclear), we should resolve that ambiguity in favour of the person seeking the benefits.¹⁸

[42] So, I have to keep all these principles in mind when deciding what section 153.17 of the EI Act means.

– **Purpose**

[43] Section 153.17 of the EI Act is found in Part VIII.5 of the EI Act, under the heading, “Temporary Measures to Facilitate Access to Benefits.”

[44] The Commission says that temporary measures were put in place under Part VIII.5 of the EI Act to make it easier to access to EI benefits.¹⁹ One of the measures was the introduction of section 153.17 of the EI Act.

[45] The Claimant says he thought that, under this provision, if he applied by September 25, 2021, he would be given a credit to help him qualify.

[46] I think it is clear that the purpose of section 153.17 of the EI Act is to make it easier to access EI benefits for a temporary period, as the heading of Part VIII.5 states.

[47] However, I agree with the reasoning in the Appeal Division decision I mentioned above, this purpose is equally consistent with both the Commission’s interpretation and

¹⁷ See *Canada Trustco Mortgage Co. v Canada*, 2005 SCC 54, [2005] 2 SCR 601, at paragraph 10.

¹⁸ See *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR. 27.

¹⁹ See AD2-4.

the General Division's interpretation of section 153.17. It does not help clarify when the application of the extra hours is to end.²⁰

– **Text and context**

[48] Read on their own, the words in section 153.17 suggest two things in their ordinary sense:

- a) the credit applies to claimants if they apply for benefits on or after September 27, 2020, and by September 25, 2021 (when section 153.17 stopped applying),
or
- b) if their claim was in relation to an interruption or earnings on or after September 27, 2020, and by September 25, 2021,

[49] As the General Division pointed out, there is nothing in the wording of section 153.17 that specifically says that for the credit to apply, a benefit period must begin prior to September 26, 2021.

[50] However, the grammatical and ordinary sense of the words alone is not the only thing that gives the words their meaning. The words in section 153.17 must be considered in the context of the EI Act and any related legislation to decide what they mean.²¹

[51] I find that the General Division made an error of law by not considering the words in section 153.17 of the EI Act contextually.²²

[52] Considered contextually, section 153.17 of the EI Act is not ambiguous. It clearly requires a benefit period to be established before September 26, 2021, for the credit of hours to apply.

²⁰ See *Canada Employment Insurance Commission v PG et al*, 2022 SST 388.

²¹ See *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*, 2006 SCC 4.

²² See section 333 of the *Budget Implementation Act, 2021, No. 1*, SC 2021, c 23.

[53] So what is that context? First, it is important to consider what the EI scheme requires for a person to receive benefits.

[54] Under the EI Act, a claim for benefits or an interruption of earnings alone will not result in benefits. To establish a benefit period, a claimant has to:²³

- a) make an initial claim for benefits
- b) have had an interruption of earnings
- c) have the required number of hours in their qualifying period.

[55] These provisions all work together. They do not operate independently.

[56] As the Commission points out, an “initial claim for benefits” is defined in the EI Act. It means, “a claim made for the purpose of establishing a claimant’s benefit period.”²⁴An initial claim, therefore, relates to the starting of a specific benefit period.

[57] A benefit period starts on the later of:

- a) the Sunday of the week in which the interruption of earnings occurs, and
- b) the Sunday of the week in which the initial claim for benefits is made.²⁵

[58] Since benefit periods always begin on a Sunday, if a person stopped working in the week ending September 25, 2021, and made a claim on September 25, 2021, that claim would be for a benefit period starting on September 19, 2021.²⁶ If that same person made a claim on September 26, 2021, or after, that claim would be for a benefit period starting on September 26, 2021.

²³ See section 49(1) of the EI Act and section 7(2) of the EI Act.

²⁴ Section 6(1) of the EI Act states that an “initial claim for benefits” means a claim made for establishing a claimant’s benefit period.

²⁵ See section 10(1) of the EI Act.

²⁶ Section 10(1) of the EI Act sets out the beginning of the benefit period, and section 2 of the EI Act says that a week starts on a Sunday.

[59] It is not possible to make a claim for benefits on September 25, 2021, relating to an earlier interruption of earnings, as the Claimant did, and have a benefit period start on September 26, 2021. So, the date of the initial claim and the start of a specific benefit period are linked to each other.

[60] The start date of the benefit period is important. Claimants have to accumulate insurable hours in their qualifying period. That period is the 52-week period immediately before the beginning of the benefit period.²⁷ In other words, you need to know when the benefit period starts to decide when the qualifying period is.

[61] Why does this matter? This matters because the credit of hours provided for in section 153.17 applies to a specific benefit period's qualifying period (the 52 weeks immediately before that benefit period). Here, this means the benefit period set up when the person made their initial claim on or after September 27, 2020.

[62] In short, this means that all of the following are related:

- what the EI Act says about the initial claim
- when the interruption of earnings is
- when the benefit period might start
- how to determine the qualifying period (which is the period the credit of hours applies to).

[63] This means the date of the application alone or the date of interruption of earnings alone cannot determine when the credit applies. The initial claim and interruption of earnings are intrinsically connected to the establishment of a benefit period and qualifying period to which the credit will apply. The words in section 153.17 must be considered in this context to be understood. Considering this context, it is clear a benefit period must be established by September 25, 2021, for the credit to apply.

²⁷ See section 8(1) of the EI Act. There is a different rule to determine the qualifying period if a claimant had an immediately preceding benefit period.

[64] However, that is not the end of the story. I must also consider the related transitional provision that tells us how section 153.17 continues to operate after it ceased to have effect on September 25, 2021.²⁸

[65] This transitional provision says section 153.17 of the EI Act **continues to apply** to claimants with benefit periods beginning **between September 27, 2020, and September 25, 2021.**

[66] The fact that section 153.17 “continues” to apply to benefit periods beginning between September 27, 2020, and September 25, 2021, makes clear that section 153.17 of the EI Act was intended to apply **only** to benefit periods beginning between September 27, 2020, and September 25, 2021.

[67] I find that the credit only applies to claimants with benefit periods beginning between September 27, 2020, and September 25, 2021. This is my finding after considering:

- a) the context of the definition of “initial claim for benefits”
- b) the context of the provisions for establishing a benefit period
- c) the context of the transitional provision describing how section 153.17 would continue to operate after it ceased to apply on September 25, 2021.

[68] I therefore, find that the General Division made an error of law when it decided that section 153.17 of the EI Act could be interpreted to mean that the credit of hours would apply to the Claimant if his benefit period began on September 26, 2021.

²⁸ See section 333 of the *Budget Implementation Act, 2021 No. 1*. This section applies to Part VIII.5 of the EI Act. Section 153.17 is under that part, so this section applies to it. Section 333 says that that Part VIII.5 of the EI Act, as it read immediately before September 26, 2021, continues to apply in respect of an insured person or claimant, as the case may be, whose benefit period begins during the period beginning on September 27, 2020, and ending on September 25, 2021.

Fixing the error

[69] I can send the appeal back to the General Division for reconsideration or give the decision the General Division should have. I can do this because the General Division made two errors of law.²⁹

[70] Generally, if the relevant facts are not in dispute and the error is one of law, it would be appropriate for the Appeal Division to give the decision the General Division should have given.

[71] The Claimant had no position on whether I should send the appeal back to the General Division or whether I should give the decision the General Division should have given.

[72] At the hearing, the Commission submitted that, if I were to conclude there was an error on the part of the General Division, I should make the decision it should have. I agree this is the appropriate remedy (solution).

– **The Claimant does not have enough insurable hours to start a benefit period**

[73] The Claimant does not have enough insurable hours to start a benefit period on either September 19, 2021, or September 26, 2021.

[74] As I mentioned above, the Claimant's benefit period start date would be on September 19, 2021. His qualifying period is from September 20, 2020, to September 18, 2021. There is no dispute that the Claimant earned 117 insurable hours in this period. After applying the credit of 300 hours, he has 417 hours. Unfortunately, that is 3 hours short of the 420 hours needed to qualify.

[75] Even if the Claimant's benefit period was to start on September 26, 2021, he would not have enough insurable hours to qualify. His qualifying period in that case is from September 27, 2020, to September 25, 2021. There is no dispute that the Claimant earned 143 hours in that qualifying period. Since the benefit period would start on

²⁹ See section 59(1) of the *Department of Employment and Social Development Act*, which gives me this authority.

September 26, 2021, he cannot have the credit of 300 hours. This means he does not have the required 420 hours to start a benefit period on September 26, 2021.

[76] This truly is an unfortunate situation. As the Claimant explained at his hearing, he thought he applied in time to get the credit. He is only 3 hours short to start a benefit period on September 19, 2021. He is in financial difficulty and needs these benefits.

[77] I am sympathetic to the Claimant's circumstances. Unfortunately, I cannot step outside the law, no matter how compelling the circumstances.³⁰

Conclusion

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

[79] The General Division made an error of law. The Claimant cannot start a benefit period on September 19, 2021, or September 26, 2021, because he does not have enough insurable hours to qualify.

Charlotte McQuade
Member, Appeal Division

³⁰ See *Canada (Attorney General) v Lévesque*, 2001 FCA 304.