



Citation: *RG v Canada Employment Insurance Commission*, 2022 SST 649

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

Decision

Appellant: R. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (438092) dated November 4, 2021 (issued by Service Canada)

Tribunal member: Suzanne Graves

Type of hearing: Teleconference

Hearing date: February 4, 2022

Hearing participant: Appellant

Decision date: February 15, 2022

File number: GE-21-2390

Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

[2] The Claimant has shown that he has worked enough hours to qualify for Employment Insurance (EI) benefits.

Overview

[3] The Claimant applied for EI benefits on September 25, 2021.¹ The Canada Employment Insurance Commission (Commission) decided that the Claimant didn't have enough hours to qualify.²

[4] I have to decide whether the Claimant has enough hours to qualify for EI benefits. The Commission says that the Claimant doesn't have enough hours because he needs 420 hours, but has, at most, 417 hours.

[5] The Claimant disagrees and says that he worked more than 120 hours by September 25, 2021, and should receive 300 additional deemed hours under the legislative amendments related to COVID-19. He made his claim on September 25, 2021, when the legislation deeming him to have an extra 300 hours was still in effect.

[6] He argues that the added 300 hours, together with the hours he worked, mean that he has more than the 420 hours required to qualify for EI benefits.

Issue

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

¹ The Claimant states in his Notice of Appeal that he claimed benefits on September 26, 2021 (GD4-4). But the Claimant's application for benefits is set out at GD3-3 to 16. At GD3-15, the date and time of his claim is recorded as **September 25, 2021, at 18.46 (Atlantic time)**.

² Section 7 of the *Employment Insurance Act* (EI Act) says 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."

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.³ The Claimant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that he qualifies for EI benefits.

[9] To qualify, you need to have worked enough hours within a certain timeframe. This timeframe is called the “qualifying period.”⁴ The number of hours you need depends on the unemployment rate in your region.⁵

[10] Temporary changes to the *Employment Insurance Act* (EI Act) said that if you apply for regular EI benefits on or after September 27, 2020, you are deemed to have an additional 300 hours in your qualifying period.⁶ The extra hours could only be used once.⁷ These temporary measures were in effect until September 25, 2021.

The Claimant’s region and regional rate of unemployment

[11] The Commission decided that the Claimant’s region was Newfoundland and Labrador and that the regional rate of unemployment at the time was 17%.

[12] This means that the Claimant would need to have at least 420 hours in his qualifying period to qualify for EI benefits.⁸

[13] The Claimant agrees with the Commission’s decisions about which region and regional rate of unemployment apply to him.

³ See section 48 of the EI Act.

⁴ See section 7 of the EI Act.

⁵ See section 7(2)(b) of the EI Act and section 17 of the *Employment Insurance Regulations*.

⁶ See section 153.17(1) of the EI Act.

⁷ See section 153.17(2) of the EI Act.

⁸ Section 7 of the EI Act sets out a chart that tells us the minimum number of hours that you need depending on the different regional rates of unemployment.

[14] There is no evidence that makes me doubt the Commission's decision. So, I accept as fact that the Claimant needs to have 420 hours to qualify for benefits.

Hours in the Claimant's qualifying period

[15] As noted above, the hours counted are the ones that the Claimant worked during his qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.⁹

[16] Your **benefit period** isn't the same thing as your **qualifying period**. It is a different timeframe. Your benefit period is the time when you can receive EI benefits.

[17] The Claimant's employment ended on September 22, 2021. The parties agree that he worked a total of 143 hours between April 25, 2021, and September 22, 2021.¹⁰ He applied for regular EI benefits on September 25, 2021.

[18] The Commission says that a benefit period starts on a Sunday. If the Claimant's benefit period was to start on September 19, 2021, it argues that he doesn't have enough hours to qualify. It also says that, if his benefit period started on September 26, 2021, the 300 extra deemed hours cannot be added to his qualifying period.

[19] The additional deemed hours are set out in section 153.17 of the EI Act:

153.17(1) A claimant who makes an initial claim for benefits under Part 1 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

(a) if the initial claim is in respect of benefits referred to in any of sections 21 to 23.3, and additional 480 hours of insurable employment, and

(b) in any other case, an additional 300 hours of insurable employment.

(2) Subsection (1) does not apply to a claimant who has already had the number of insurable hours in their qualifying period increased under that subsection or under this section as it read on September 26, 2020, if a benefit period was established in relation to that qualifying period

⁹ See section 8 of the EI Act.

¹⁰ The Claimant worked for three different employers, for a total of 143 hours. His records of employment are at GD3-17 to 20.

[20] The Commission says it does not matter when an application is made. It argues that the credit goes by the start of the benefit period, which in this case is September 26, 2021, after the September 25, 2021, deadline for the credit to be in effect.

[21] I respectfully disagree with the Commission's argument on this point. Section 153.17(1) of the EI Act clearly states that claimants who apply for benefits on or after September 27, 2020, are deemed to have additional hours added to their qualifying period. Section 153.17(1) makes no reference to establishing a benefit period.

[22] Section 153.17(1) of the EI Act sets out two requirements: a claimant must:

- a) have an interruption in earnings, and
- b) apply for benefits on or after September 27, 2020, and by September 25, 2021, when the temporary measures ended.

[23] In this case, the Claimant stopped work on September 22, 2021, and applied for regular EI benefits on September 25, 2021. He met both of the conditions to have the additional 300 deemed hours added to his qualifying period.

[24] So, I find that the law states that 300 extra hours are deemed to be added to the Claimant's qualifying period.

Does the Claimant have enough hours to qualify for EI benefits?

[25] I find that the Claimant has proved that he has enough hours to qualify for benefits. His qualifying period was from September 27, 2020, to September 25, 2021.

[26] The Claimant worked more than 120 hours during his qualifying period. An additional 300 hours are deemed to be added to his qualifying period.

[27] I find that the Claimant has over 420 hours in his qualifying period, and so he qualifies to receive benefits.

Conclusion

[28] The Claimant has enough hours of insurable employment to qualify for benefits.

[29] This means that the appeal is allowed.

Suzanne Graves
Member, General Division – Employment Insurance Section