



Citation: *Canada Employment Insurance Commission v RH*, 2022 SST 663

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Julie Villeneuve

Respondent: R. H.

Decision under appeal: General Division decision dated February 8, 2022
(GE-22-89)

Tribunal member: Charlotte McQuade

Type of hearing: Teleconference

Hearing date: June 15, 2022

Hearing participants: Appellant's representative
Respondent

Decision date: July 22, 2022

File number: AD-22-135

Decision

[1] I am allowing the appeal.

[2] The General Division made errors of law.

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

Overview

[4] The Claimant stopped working on September 24, 2021, and applied for Employment Insurance (EI) regular benefits that day. The Canada Employment Insurance Commission (Commission) decided that the Claimant didn't have the required 420 insurable hours to qualify for benefits. The Claimant appealed this decision to the Tribunal's General Division.

[5] The General Division decided that the Claimant had enough hours to qualify to start a benefit period on September 26, 2021. 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 With the credit, along with her earned hours, the Claimant had enough hours to qualify.

[6] The Commission appealed the General Division's decision. The Commission says that the General Division erred in law when it:

- decided that the Claimant's benefit period began on September 26, 2021, instead of September 19, 2021; and
- misinterpreted the temporary credit provision to mean it could apply to a benefit period starting after September 25, 2021.

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

[7] The Commission says, without the credit, the Claimant does not have enough hours to qualify for benefits from September 26, 2021. It also says that even if the Claimant's benefit period was to start on September 19, 2021, and the 300 hours were applied, the Claimant still does not have enough hours to qualify.

[8] I have decided that the General Division made errors of law. This means that I can replace the General Division's decision with my own. Unfortunately, the Claimant does not have enough hours to qualify for benefits, whether her benefit period started on September 19, 2021, or September 26, 2021.

Issues

[9] 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 beginning on September 26, 2021?
- c) If so, how should I fix the General Division's errors?

Analysis

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

[10] The Claimant's benefit period cannot begin on September 26, 2021.

[11] The Commission decided the Claimant did not have enough hours in her qualifying period to qualify for benefits. The Claimant appealed that decision to the Tribunal's General Division.

[12] To decide whether the Claimant had enough hours, the General Division had to decide what the Claimant's qualifying period was. Since that is the 52-week period

before the benefit period begins, the General Division first had to decide when the Claimant's benefit period began.²

[13] The law says that a benefit period begins on the later of:³

- 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.

[14] The Claimant stopped working on September 24, 2021, and applied for EI regular benefits on September 24, 2021.

[15] An "interruption of earnings" occurs when a person's employment has ended, followed by seven or more consecutive days on which the person does not work for and make earnings from the employer.⁴

[16] The General Division decided this meant that since the Claimant's last day of work was September 24, 2021, and she did not work for any employer or receive earnings for the period after September 24, 2021, her interruption of earnings occurred on October 1, 2021.⁵

[17] So, the General Division concluded that the Claimant's benefit period began on September 26, 2021.⁶

[18] The Commission says the General Division erred in law in deciding the interruption of earnings was on October 1, 2021. The Commission says the interruption of earnings occurs on the last day of work, being September 24, 2021, not seven days later. The Commission says this means the Claimant's benefit period was to start on September 19, 2021, not September 26, 2021.

² See section 8(1) of the EI Act, which says that, unless a claimant has had an immediately preceding benefit period, the qualifying period is the 52-week period immediately before the beginning of a benefit period. In the Claimant's case, there was no evidence of an immediately preceding benefit period.

³ See section 10(1) of the EI Act.

⁴ See section 14(1) of the *Employment Insurance Regulations* (EI Regulations).

⁵ See paragraph 17 of the General Division decision.

⁶ See paragraph 17 of the General Division decision.

[19] The Claimant says she stopped work on September 24, 2021, but thinks the General Division made the correct decision as to the start of her benefit period.

[20] I find the General Division erred in law when it decided the Claimant's interruption of earnings was on October 1, 2021. The General Division has to follow Federal Court of Appeal decisions that interpret sections of the EI Act. The General Division did not consider that the Federal Court of Appeal has interpreted "interruption of earnings" as defined in the EI Regulations to mean that it occurs on the date of lay-off or separation from employment and not seven days later.⁷

[21] This means the Claimant's interruption of earnings was on September 24, 2021, and not October 1, 2021. Therefore, the Claimant's benefit period has to begin on September 19, 2021.

[22] The EI Act does not allow us to post-date a benefit period (in other words, give it a later start date). So, under the law, it was not possible for the Claimant's benefit period to begin on September 26, 2021.

[23] This means the Claimant's qualifying period cannot be from September 27, 2020, to September 25, 2021, as determined by the General Division.⁸

[24] The qualifying period is the 52-week period immediately before the beginning of the benefit period.⁹ So, the Claimant's qualifying period had to be from September 20, 2020, to September 18, 2021.

[25] Given I have already found that the General Division made an error of law, I do not also have to consider whether the General Division misinterpreted section 153.17 of the EI Act. However, the Claimant understood that she would benefit from the credit if she applied for benefits before September 26, 2021. Both parties have made arguments

⁷ See *Canada (Attorney General) v Hartmann*, 1989 CanLII 5196 (FCA) at paragraph 7. See also *Canada Employment Insurance Commission v CC*, 2022 SST 505.

⁸ See paragraph 17 of the General Division decision.

⁹ See section 8(1)(a) of the EI Act.

about when the credit stopped applying. So, I think it is important that I address this issue.

The General Division misinterpreted section 153.17 of the EI Act

[26] The General Division misinterpreted section 153.17 of the EI Act to mean it could apply to the Claimant's benefit period starting on September 26, 2021.

– Relevant statutory provisions

[27] 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.¹⁰ This means they only needed another 120 hours to reach the 420 hours needed to qualify for regular benefits.

[28] Section 153.17 of the EI Act stopped applying on September 25, 2021.¹¹

[29] 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, 2021.¹²

[30] The dispute in this case is about whether the Claimant's benefit period had to start before September 26, 2021, to get the credit of hours, or whether she could get the credit as long as she applied for benefits or had stopped work before September 26, 2021.

¹⁰ See section 153.17(1)(b) of the EI Act.

¹¹ 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*.

¹² 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.

– **General Division decision**

[31] The General Division decided that the Claimant could benefit from the credit of 300 hours for two reasons:¹³

- a) the Claimant had applied for benefits on September 24, 2021, so she came within the language of section 153.17(b) about making an initial claim; and
- b) the Claimant's qualifying period ended on September 25, 2021, prior to the credit provision ceasing to apply.

[32] The General Division concluded that the Claimant had enough hours to qualify to start a benefit period on September 26, 2021. This was because she needed 420 hours and had earned 135 hours in her qualifying period. With the credit of 300 hours, she had 435 hours.

– **Parties' arguments**

[33] The Claimant says the General Division correctly interpreted section 153.17 of the EI Act. She says the Commission told her that she only needed 120 hours to qualify. She was not told that she needed to start a benefit period before September 26, 2021, and did not see this on the website. She also says that section 153.17 does not say that you need to start a benefit period prior to September 26, 2021, to have the credit.

[34] The Commission says the General Division erred in law because it did not consider the meaning of the words in section 153.17 in the context of two other important provisions in the law. The Commission says that, when considering those other provisions, the meaning of section 153.17 is clear that the credit only applies to people who can establish a benefit period between September 27, 2020, and September 25, 2021.

[35] The first section the Commission relies on is the definition of "initial claim for benefits." The Commission says an initial claim means more than just making an

¹³ See paragraph 20 of the General Division decision.

application. It is defined in the EI Act as “a claim made for the purpose of establishing a claimant’s benefit period.”¹⁴ The Commission says this means an “initial claim” relates to starting a benefit period.

[36] The second provision the Commission relies on is the transitional provision that came into effect after section 153.17 of the EI Act stopped applying on September 25, 2021.¹⁵ The transitional provision says that section 153.17 continues to apply to a claimant whose “benefit period begins during the period beginning on September 27, 2020, and ending on September 25, 2021.”¹⁶

[37] The Commission says the transitional provision makes clear that the credit in section 153.17 does not apply to benefit periods starting after September 25, 2021.

[38] The Commission says, when the words in section 153.17 of the EI Act are considered in light of these two important provisions, they mean the credit cannot apply to benefit periods starting after September 25, 2021. So, it cannot apply to the Claimant with a benefit period beginning on September 26, 2021.

[39] The Commission also argues that even if the Claimant’s benefit period began on September 19, 2021, while she can have the credit of 300 hours, she only has 100 earned insurable hours in her qualifying period from September 20, 2020, to September 18, 2021, so she still does not have the required 420 hours.

– **My decision**

[40] There are no court decisions from the Federal Court or Federal Court of Appeal telling me whether a benefit period has to start before September 26, 2021, for the credit to apply. However, the Tribunal’s Appeal Division has recently interpreted

¹⁴ 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.

¹⁵ See section 153.196(1) of the EI Act.

¹⁶ See section 333 of the *Budget Implementation Act, 2021, No. 1* (S.C. 2021, c. 23).

section 153.17 of the EI Act contextually to mean that it cannot apply to benefit periods starting after September 25, 2021.¹⁷

[41] I do not have to follow other decisions from the Tribunal's 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. So, I find the Claimant cannot have the credit with a benefit period beginning on September 26, 2021. I will explain why I have decided that.

[42] 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."¹⁸ In other words, I have to consider the text, context and purpose of the relevant provision.

[43] This means it is not enough to look at the words in a provision alone to understand what the provision 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 interpreting them.¹⁹

[44] The law 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 that if the legislation's wording is ambiguous (unclear), we should resolve that in favour of the person seeking benefits.²⁰

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

¹⁷ See *Canada Employment Insurance Commission v PG et al*, 2022 SST 388.

¹⁸ See *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), at paragraph 21 and *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65, at paragraph 117.

¹⁹ See *Canada Trustco Mortgage Co. v Canada*, 2005 SCC 54, at paragraph 10.

²⁰ See *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC).

– **Purpose**

[46] 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.”

[47] The Commission submits that the purpose of the temporary measures under Part VIII.5 of the Act was to facilitate (make it easier) access to EI benefits.²¹ One of the temporary measures was the introduction of section 153.17 of the EI Act.

[48] The Claimant did not make any specific arguments about the purpose of section 153.17.

[49] 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 under Part VIII.5 states.

[50] However, I agree with the reasoning in the Appeal Division decision I mentioned earlier that both the Commission’s interpretation of section 153.17 and the General Division’s interpretation of section 153.17 are equally consistent with this purpose.²² The purpose doesn’t really help clarify when the application of the extra hours is to end.

– **Text and Context**

[51] Considering just the words alone (text), section 153.17 does not say a benefit period has to start before September 26, 2021, for the credit to apply.

[52] So, one might conclude, based on the words alone, that having a benefit period start before September 26, 2021, was not a requirement for the credit to apply.

[53] However, the words alone are not the only thing that gives section 153.17 its meaning. The words in section 153.17 must be considered in context of the EI Act and any related legislation to decide what they mean.²³

²¹ See AD2-3.

²² See *Canada Employment Insurance Commission v PG et al*, 2022 SST 388.

²³ See *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*, 2006 SCC 4.

[54] I find that the General Division made an error of law by not considering the words used in section 153.17 contextually.

[55] 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 to apply.

[56] So, what is that context? First, it is important to consider how the EI Act operates for a person to receive benefits.

[57] Under the EI Act, an application for benefits or an interruption of earnings alone will not result in benefits. To establish a benefit period, a claimant has to:²⁴

- make an initial claim for benefits,
- have had an interruption of earnings, and
- have the required number of hours in their qualifying period.

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

[59] As the Commission points out, 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.”²⁵ An initial claim, therefore, relates to the starting of a specific benefit period.

[60] A benefit period starts on the later of:²⁶

- 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.

[61] 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 24, 2021, as

²⁴ See sections 7(2) and 49(1) of the EI Act.

²⁵ 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.

²⁶ See section 10(1) of the EI Act. Section 2 of the EI Act says that a week starts on a Sunday.

the Claimant did, that claim would be for a benefit period starting on September 19, 2021. If a person stopped working in the week ending September 25, 2021, and made a claim on September 26, 2021, or after, that claim would be for a benefit period starting on September 26, 2021.

[62] It is not possible to stop working in the week ending September 25, 2021, and make a claim for benefits on September 24, 2021, 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.

[63] 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.

[64] 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).

[65] 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).

[66] This means the date of the application alone or even the date of the interruption of earnings alone cannot determine whether the credit applies. The initial claim and the

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.

interruption of earnings are intrinsically connected to the establishment of a benefit period and qualifying period to which the credit will apply.

[67] The words in section 153.17 of the EI Act must be considered in this context to be understood. Considering this context, it is clear a benefit period must be started by September 25, 2021, for the credit to apply.

[68] 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

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

[70] 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.

[71] The General Division reasoned in part that the Claimant was entitled to the credit as her qualifying period began before September 26, 2021. Respectfully, I disagree. This interpretation is inconsistent with the transitional provision requiring the establishment of a benefit period by September 25, 2021.

[72] I find that the credit only applies to benefit periods beginning between September 27, 2020, and September 25, 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 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.

[73] I reached this conclusion after considering:

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

[74] The General Division misinterpreted section 153.17 of the EI Act to mean that the credit of hours could be applied to the Claimant with a benefit period starting on September 26, 2021.

Fixing the error

[75] I can send the appeal back to the General Division for reconsideration or give the decision the General Division should have given.²⁹

[76] 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.

[77] At the hearing, both the Commission and the Claimant agreed that, if I were to conclude that the General Division made such an error, I should give the decision the General Division should have given. I agree this is the appropriate remedy (solution).

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

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

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

[79] As I mentioned above, the Claimant's benefit period would begin on September 19, 2021. This means her qualifying period is from September 20, 2020, to September 18, 2021.³⁰

[80] The Commission submitted to the General Division that the Claimant had 100 insurable hours in her qualifying period.³¹ The Commission says the Claimant did not dispute this before the General Division.

[81] The Commission prepared a provisional Record of Employment (ROE) based on information provided by the Claimant. This was because the Claimant's employer delayed in preparing the ROE. The provisional ROE shows the Claimant worked 124 hours between August 31, 2021, and September 24, 2021.³² The actual ROE, later provided, from the Claimant's employer shows she worked 100 hours between August 31, 2021, and September 20, 2021.³³

[82] I have listened to the audio recording from the General Division hearing. The Claimant's testimony reflects a disagreement with the ROE prepared by her employer. The Claimant agreed with the 100 hours noted, but testified that the ROE did not reflect training she had done on September 23, 2021, and work on September 24, 2021.³⁴

[83] However, I see no need to send this matter back to the General Division to seek a ruling from the Canada Revenue Agency about the hours the Claimant earned on September 23, 2021, or September 24, 2021. This is because these hours are outside her qualifying period so they can't be counted anyway.

[84] For the same reason, the 35 hours the Claimant earned from another employer between September 19, 2021, and September 24, 2021, can't be counted.³⁵

³⁰ See section 8(1)(a) of the EI Act.

³¹ See GD4-2.

³² See GD3-19.

³³ GD3-35.

³⁴ I heard this on the audio tape from the General Division hearing at approximately 0:15:58 to 0:24:46.

³⁵ See GD3-35.

[85] I accept that the Claimant worked and earned 100 hours in her qualifying period from September 20, 2020, to September 18, 2021.

[86] After applying the credit of 300 hours, the Claimant has 400 hours of insurable employment, which is less than the 420 hours needed to qualify for benefits.

[87] Even if the Claimant's benefit period were to start on September 26, 2021, she doesn't have enough insurable hours to qualify. Her qualifying period would be from September 27, 2020, to September 25, 2021. She earned 35 hours between September 19 and September 24, 2021. She has 100 hours between August 31, 2021, and September 20, 2021. This amounts to 135 hours, which is less than the required 420 hours.

[88] As above, the Claimant testified the ROE was missing hours for September 23, 2021, and September 24, 2021.³⁶ The provisional ROE shows 124 hours between August 31, 2021, and September 24, 2021. Even if this was the correct number of hours, it still is not enough. Whatever the hours were for September 23 or September 24, 2021, with only 100 hours earned to September 20, 2021, it would not be possible for the Claimant to earn the balance of required hours over a period of two days.

[89] I recognize the unfortunate position the Claimant has been put in. As the Claimant explained to the General Division, she was told by the Commission she would qualify for the credit if she applied by September 25, 2021. The Commission's website did not make clear she had to establish a benefit period by September 25, 2021. She believed she would qualify with the hours she had earned.

[90] I am sympathetic to the Claimant's situation. Unfortunately, I cannot step outside the law, no matter how compelling the circumstances.³⁷

³⁶ See paragraph 18 of the General Division decision.

³⁷ See *Canada (Attorney General) v Lévesque*, 2001 FCA 304.

Conclusion

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

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

Charlotte McQuade
Member, Appeal Division