



Citation: *RL v Canada Employment Insurance Commission*, 2022 SST 930

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

**Decision**

**Appellant:** R. L.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (445568) dated January 13, 2022 (issued by Service Canada)

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**Tribunal member:** Mark Leonard

**Type of hearing:** Teleconference

**Hearing date:** May 31, 2022

**Hearing participants:** Appellant

**Decision date:** June 3, 2022

**File number:** GE-22-721

## Decision

[1] The appeal is dismissed.

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

## Overview

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

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

[5] The Commission says that the Claimant doesn't have enough hours because he needs 420 hours, but has only 388.

[6] The Claimant disagrees and says that he has worked more hours but that the hours were not properly recorded by his employers. Further, he adds that regardless of the hours he has worked. He needs assistance and should be granted EI benefits.

## Issue

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

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<sup>1</sup> 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.<sup>2</sup> 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 benefits.

[9] To qualify, you need to have worked enough hours within a certain timeframe. This timeframe is called the “qualifying period.”<sup>3</sup>

[10] The number of hours depends on the unemployment rate in your region.<sup>4</sup>

### The Claimant’s region and regional rate of unemployment

[11] The Commission decided that the Claimant’s region was “Niagara” and that the regional rate of unemployment at the time was 6.2%.

[12] The emergency Covid-19 provisions of the *Employment Insurance Act* (the Act) provide that regardless of economic region, to qualify for regular benefits for a claim made between September 27, 2020, and September 25, 2021, a claimant must have worked 420 insurable hours.

[13] This means that the Claimant would need to have worked at least 420 hours in his qualifying period to qualify for EI benefits.<sup>5</sup> There are provisions in the Act to assist claimants in reaching the 420-hour threshold. I will examine these provisions later to determine if they apply to the Claimant.

[14] The Claimant did not contest his regional area nor the unemployment rate applied by the Commission.

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<sup>2</sup> See section 48 of the EI Act.

<sup>3</sup> See section 7 of the EI Act.

<sup>4</sup> See section 7(2)(b) of the EI Act and section 17 of the *Employment Insurance Regulations*.

<sup>5</sup> 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.

[15] I find that the Commission correctly identified the regional area, but made an error in determining the rate of unemployment at the time of the Claimant's initial application for benefits.

[16] The Commission confirmed that the Claimant made his initial claim on September 21, 2021. The Commission concluded that his qualifying period began September 27, 2020, and ended September 25, 2021. Essentially this means that it established his new claim effective September 25, 2021.

[17] Subsection 10(1) of the Act states a benefit period begins 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.

[18] The Claimant's interruption of earnings occurred in July 2021. He made his initial claim on September 21, 2021, so the correct day to establish his benefit period is the Sunday of the week that he made his claim. For the purposes of the Act, a week begins on Sunday. The Claimant made his claim in the week that began on Sunday, September 19, 2021. Therefore, the correct date for establishing his claim is September 19, 2021, not September 25, 2021.

[19] Prior to September 25, 2021, the *minimum* unemployment rate in all regions was 13.1%. Therefore, since the Claimant established his claim prior to September 25, 2021, the correct unemployment rate is 13.1%, not 6.2%.

### **The Claimant's qualifying period**

[20] 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.<sup>6</sup>

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<sup>6</sup> See section 8 of the EI Act.

[21] 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. Your qualifying period is calculated back from first day of your benefit period.

[22] The Commission decided that the Claimant's qualifying period was the usual 52 weeks. It determined that the Claimant's qualifying period went from September 27, 2020, to September 25, 2021.

[23] I have already determined that the date the Claimant's benefit period would have begun is September 19, 2021. Therefore, his qualifying period is calculated back from September 19, 2021. Ordinarily, the 52-week qualifying period would apply; however, a current qualifying period can't overlap with an earlier qualifying period. The Claimant's qualifying period would overlap with an earlier qualifying period if it went back to a time before September 27, 2021.

[24] I find that the Claimant's qualifying period is from September 27, 2020, to September 19, 2021. The period cannot extend further back than September 27, 2020, because the Claimant had a prior EI claim that began on that date.

[25] As a result of the Covid-19 pandemic, the Federal Government established emergency provisions to assist Canadians who lost employment as a result of the pandemic. Those who lost jobs could qualify for either EI benefits or Canada Emergency Response Benefits (CERB). These emergency benefits lasted until September 27, 2020, when new measures were introduced to extend benefits to new applicants and to those still unable to return to work.

[26] The Claimant testified that early in the Covid-19 pandemic, around March 2020, he was laid off from his restaurant job. He says that he applied for and received EI benefits. He found a new job at another restaurant in June 2020. He said that he continued to make claims for EI benefits to supplement his lost wages because he was working fewer hours. The Claimant continued to receive EI benefits past September 27, 2020, until September 2021, when he was informed that his benefits had run out and that he had insufficient hours in his qualifying period to establish a new claim.

[27] The Act was amended to include “Temporary Measures to Facilitate Access to Benefits.”<sup>7</sup> The measures apply to claims made after September 27, 2020.

[28] Each claimant needed 420 insurable hours in order to qualify for benefits. However, these measures included assists including both a one-time credit of 300 hours to be applied to the first claim after September 27, 2020, as well as an option to extend the qualifying period by up to 28 weeks, again, for the first claim after September 27, 2021.<sup>8</sup>

[29] For those claimants who were already in receipt of EI benefits prior to September 27, 2020, the Commission automatically converted their claims establishing a new benefit period effective September 27, 2020. The 300-hour credit was automatically applied to this new claim and the extended qualifying period utilized to obtain enough hours to qualify.

[30] The Commission references these provisions in its submissions. But it made no submissions confirming that the Claimant had a prior claim to the one in question in this appeal. It is only the mere fact that the Claimant explained that he had been receiving benefits after September 27, 2021, that allows me conclude that he had a prior claim established on that date.

[31] Since the Claimant had established a claim and received benefits from September 27, 2021, the temporary measures including the 300-hour credit and extended qualifying period were exhausted to assist him establishing that claim.

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<sup>7</sup> See Part VIII.5 of the *Employment Insurance Act*.

<sup>8</sup> See Sections 153.17(1)(b) and 153.18(1) of the *Employment Insurance Act*.

[32] What this means is that the Commission could not extend the qualifying period for this claim beyond September 27, 2020.

[33] I am satisfied that the Claimant's qualifying period is from September 27, 2020, to September 19, 2021. However, even with this correction to the qualifying period, the Claimant still requires 420 insurable hours to qualify for benefits.<sup>9</sup>

### **The hours the Claimant worked**

[34] The Commission says that the Claimant needs 420 insurable hours of work to qualify for EI benefits. The Commission decided that the Claimant had worked 388 hours during his qualifying period. The Claimant disputed this, saying that he had worked more hours than that.

[35] The Claimant says that he worked for two separate employers.

[36] The Claimant says that his last employer did not account for all his hours. He said that when he started working there he put in 50–60 hours of preparation work to create a dinner menu where none had existed before. However, he claims the employer only credited him 14.75 hours. This is regrettable. The Claimant could not prove that he was paid for these alleged additional hours. Nor did he maintain any records of those additional hours or take any action with his employer at the time to recover the pay from those hours.

[37] The Claimant says that he has lots of work hours in addition to these identified in his Records of Employment (RoE's) but he has nothing to substantiate this assertion. He says he performed lots of volunteer work during the pandemic. Again, the Claimant had no proof of these hours nor could provide any options of how he might obtain that proof.

[38] The Claimant points out that both of his previous employers made errors in calculating the total number of hours he worked. The Commission did contact both employers and obtained amended RoE's that increased the Claimant's hours from 365

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<sup>9</sup> See Section 7(1)(b) of the *Employment Insurance Act*.

to 388. However, no additional hours beyond 388 were identified and the Claimant was unable to show that there were more unaccounted hours.

[39] The Claimant lost his last employment on July 31, 2021. He did not have insurable employment between then and his application for benefits on September 21, 2021. My finding that his qualifying period is reduced by one week has no bearing on the calculation of insurable hours. Since the Claimant did not work during the week of September 19, 2021, to September 25, 2021, I can only conclude that the Commission's calculation of 388 hours would remain the same.

[40] The Claimant raised the issue of backdating his claim to July 31, 2021, when he was separated from his last employment. He says that if his qualifying period was based on that date, he would have enough hours to qualify for benefits. The Act contains provisions to seek backdating of a claim for benefits. It's called "antedate."<sup>10</sup> Antedating a claim is a separate issue from proving qualifying hours and requires a distinct decision from the Commission. The Claimant could not specifically recall if he requested a decision on backdating his claim but says he told the Commission that he was delayed in making his claim in July 2021, because he had personal circumstances that prevented him from doing so.

[41] Only decisions reconsidered by the Commission are subject to appeal to the SST. Since the Commission has not rendered a decision on a request for antedate, the issue is not legally before me and I have no jurisdiction to consider it.<sup>11</sup>

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

[42] I find that the Claimant hasn't proven that he has enough hours to qualify for benefits because he needs 420 hours, but has worked at most 388 confirmed hours. I cannot conclude from the evidence that he would be entitled to any of the temporary measures to facilitate access to benefits that may have increased his qualifying hours because he had a claim and received EI benefits on or after September 27, 2020.

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<sup>10</sup> See Section 10(4) of the *Employment Insurance Act*.

<sup>11</sup> See Section 113 of the *Employment Insurance Act*.



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

[44] In this case, the Claimant doesn't meet the requirements, so he doesn't qualify for benefits. While I empathize with the Claimant's situation, I can't change the law.<sup>12</sup>

## **Conclusion**

[45] The Claimant doesn't have enough hours to qualify for benefits.

[46] This means that the appeal is dismissed.

Mark Leonard  
Member, General Division – Employment Insurance Section

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<sup>12</sup> See *Pannu v Canada (Attorney General)*, 2004 FCA 90.