



Citation: *AT v Canada Employment Insurance Commission*, 2022 SST 908

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

Decision

Appellant: A. T.
Representative: A. T.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (449339) dated December 30,
2021 (issued by Service Canada)

Tribunal member: Linda Bell
Type of hearing: Teleconference
Hearing date: August 25, 2022
Hearing participant: Appellant's representative
Decision date: August 31, 2022
File number: GE-22-2223

Decision

[1] I am dismissing the appeal.

[2] The Commission correctly determined the Claimant was only entitled to receive 50 weeks of Employment Insurance (EI) benefits.

Overview

[3] The Claimant's last day of work was March 21, 2020. He established a claim for the EI Emergency Response (EI-ERB) benefits. When the EI-ERB benefits ended, the Commission automatically set up a benefit period for regular EI benefits effective October 4, 2020.

[4] The Commission determined the Claimant had 324 hours of insured employment in his qualifying period. It applied the temporary one-time credit of 300 hours for a total of 624 hours.¹ The Commission considered the Claimant's regular regional rate of unemployment (RRU) because it was higher than RRU provided by the temporary measures.²

[5] Then the Commission determined the Claimant had the required hours to qualify for the maximum 50 weeks of benefits.³ So the Commission established the benefit period effective October 4, 2020.

[6] The Claimant received payment for 50 weeks of regular benefits on the October 4, 2020, benefit period. He requested reconsideration of the number of weeks he was entitled to receive. The Commission conducted a review and determined the Claimant received the correct entitlement of 50 weeks of EI benefits.

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

² See section 153.16 of the Act.

³ See sections 7(2) and 12(2.1) of the Act.

[7] The Claimant appealed to the General Division of the Social Security Tribunal (Tribunal) because he wants to ensure there were no errors in fact or law when determining his weeks of entitlement.

Matters I must consider first

Appeal returned by the Appeal Division

[8] A Member of the Tribunal's General Division heard this appeal on March 3, 2022, under appeal number GE-22-355. They issued a written decision on March 4, 2022, dismissing the appeal.

[9] The Claimant appealed the March 3, 2022, decision to the Tribunal's Appeal Division stating the Claimant and his representative have the same name. They argued that during the March 3, 2022, hearing and in the written decision, the General Division Member erred when confusing the representative as being the Claimant.

[10] On June 17, 2022, the Appeal Division Member allowed the appeal finding the Claimant was denied an opportunity to be heard. The Appeal Division referred the matter back to the General Division for reconsideration by a different General Division Member. I am that Member.

[11] I scheduled the teleconference hearing for August 25, 2022. The Claimant didn't appear at the hearing but his representative did. The representative said the Claimant didn't attend the hearing because he has no new evidence to present. The representative said everything is on the record. He also said the record is fair and accurate.

[12] The representative clarified that they appealed the General Division's March 3, 2022, decision because they wanted someone else to take a second look at the calculations. They want to ensure there were no errors of fact or law because they want to make sure the Claimant received all the appropriate benefits he was entitled to receive.

Costs

[13] At the hearing, the representative asked for reimbursement of costs. He argued he should be entitled to costs because they were successful with their appeal to the Appeal Division.

[14] As explained during the hearing, you may be able to get reimbursement for some costs. This happens only in special cases.⁴ The Tribunal's Chairperson decides.⁵ If the Claimant or his representative wish to pursue a request for costs, they are at liberty to submit a request in writing to the Chairperson.

The representative didn't want to pursue an appeal under the Canadian Charter of Rights and Freedoms

[15] During the hearing, the representative said they wish to ensure the Commission's decision meets the requirements of section 15 of the Charter and there is no discrimination within the meaning of said Charter. He said an inference could be drawn that there was mistreatment if the wrong location was used to determine the RRU. He explained the Claimant was working for the TsuuT'ina Nation on Treaty land so he wanted to make sure the correct region was considered.

[16] When the representative raised this issue at the hearing, I had a conversation with him about an appeal under the *Canadian Charter of Rights and Freedoms* (Charter). I explained how appeals under the Charter proceed differently from the usual appeals under the Act. Charter appeals are more complex and have different notice requirements.⁶

[17] I explained how I can't consider any arguments relative to the Charter under the regular appeal process. So if they wished to proceed with a Charter appeal, I would have to stop the hearing and reassign it through a Charter process. The representative decided to proceed through the regular appeal process, relying upon the *Employment*

⁴ <https://sst-tss.gc.ca/en/your-appeal/ei-general-division-appeal>

⁵ See section 63(1) of the Department of Employment and Social Development Act.

⁶ See section 20 of the *Social Security Tribunal Regulations*.

Insurance Act, and opted not to pursue a constitutional appeal. For these reasons, I have not considered the representative's arguments from a Charter perspective.

Issues

[18] What is the maximum number of weeks the Claimant is entitled to receive on his October 4, 2020, benefit period?

Analysis

Previous method of determining weeks of entitlement to EI benefits

[19] Prior to the implementation of the EI temporary measures, when determining the weeks of entitlement for EI benefits, I considered the following factors.

- The Regional Rate of Unemployment (RRU) in the region where the claimant resides⁷
- the dates of the qualifying period
- the hours of insurable employment that fall within the qualifying period, and
- the maximum weeks of entitlement listed in the table in Schedule 1 of the Act

– The RRU in the Claimant's area of residence

[20] I find the region, which applies to the Claimant's RRU, is the Calgary region. Here is what I considered.

[21] The law states the RRU that applies to a claimant is the rate assigned to the economic region where the claimant ordinarily resides.⁸

⁷ See section 17(1.1)(b) of the *Employment Insurance Regulations* (Regulations).

⁸ See section 17(1.1) of the Regulations.

[22] The Commission determined the Claimant was residing in the Calgary region when he applied for EI benefits on March 19, 2020. This is consistent with the address listed on the Claimant's application for EI benefits.⁹

[23] The representative did not dispute the fact that the Claimant normally resides in Calgary. Instead, he questioned whether the location where the Claimant worked was to be used when determining the RRU. He said the Claimant worked for TsuuT'ina Nation on Treaty land.

[24] The representative reviewed the RRU map provided in the Commission's submissions. He indicated the place of employment was possibly located in the bottom left region of the RRU map for the Calgary region. However, as set out above, the region is where the Claimant resides.

[25] The Government of Canada determines the monthly RRU for each region. When the Claimant submitted his application for EI benefits on March 23, 2020, the RRU in the Calgary region, was 7.6%.¹⁰ I see no evidence to dispute this. Therefore, I accept that the RRU in the Claimant's region of Calgary, at the time he applied for benefits on March 23, 2020, was 7.6 %.

[26] At the time when the Commission considered the Claimant's application for the October 4, 2020, benefit period, the RRU in the Calgary region was 14.6%. So this is the RRU the Commission considered.

– **The qualifying period**

[27] The law says that the qualifying period is the shorter of:

- a) The 52-week period immediately before the start of the claim (benefit period),
and

⁹ See page GD3-5.

¹⁰ The RRU is listed by region and date in the table found at the website, https://srv129.services.gc.ca/ei_regions/eng/rates.aspx?id=2010

- b) The first day of an immediately preceding benefit period and ends with the day before the beginning of the new benefit period.¹¹

[28] The Commission determined the Claimant was entitled to extend his qualifying period so it was from March 24, 2019, to October 3, 2020. The Claimant submitted his application for benefits on March 23, 2020. He established a claim for the EI Emergency Response Benefits (EI-ERB) so he was entitled to an extension to his qualifying period when establishing his October 4, 2020, benefit period.¹² The Claimant did not dispute that this was his qualifying period.

– **Hours of insurable employment**

[29] The Record of Employment (ROE) lists the Claimant's first day worked as January 24, 2020, his last day paid as March 21, 2020, and 324 insurable hours. The Claimant doesn't dispute he acquired 324 insurable hours from this employment.

[30] I see no evidence on file that the Claimant worked in another job or had other insured hours. So I find as fact that the Claimant has 324 insurable hours in his qualifying period from March 24, 2019, to October 3, 2020.

– **Weeks of entitlement**

[31] The law says that the calculation used to determine the number of weeks a claimant qualifies for EI benefits is purely mathematical. This decision is **not** discretionary.¹³

[32] The law also says that the table in Schedule I of the Act sets out the maximum number of weeks of benefits that a Claimant can receive. This table lists the entitlement weeks based on the Claimant's RRU and the number of hours of insurable employment in their qualifying period.¹⁴

¹¹ In cases where the claimant has not had a previous benefit period in the preceding year, the qualifying period is the 52-week period immediately before the start of their benefit period as per Subsection 8(1) of the Act.

¹² See section 153.18(1) of the Act.

¹³ See CUB 63948.

¹⁴ See section 12(1) of the Act.

[33] In this case, when looking at the previous method of calculation, the Claimant wouldn't qualify for regular EI benefits. This is because the RRU in the Calgary region as of October 4, 2020, is 14.6%. Schedule I clearly sets out that with a RRU of more than 14% but under 15%, a claimant requires a minimum of 420 insurable hours in their qualifying period, to qualify for regular EI benefits.

[34] The Claimant has 324 hours of insurable employment but needs 420 to qualify for EI benefits. This means he wouldn't qualify for any weeks of regular EI benefits if the previous method of calculation was used.

Calculation of entitlement weeks when applying temporary measures

[35] In March 2020, the government made amendments to the Act, in response to the COVID-19 pandemic.¹⁵ The Minister made several orders to amend the Act that were effective March 15, 2020. One of the orders added a new temporary benefit called the EI Emergency Response Benefit (EI-ERB).¹⁶

[36] To continue supporting Canadians when the EI-ERB ended, the government imposed temporary measures to facilitate access to EI benefits. The following measures apply to benefit periods starting between September 27, 2020, and September 25, 2021.

- Claimants receive a one-time credit of 300 hours for regular EI benefits.¹⁷
- The RRU is 13.1%, if that is greater than the rate that would otherwise apply.¹⁸
- The number of weeks of benefit entitlement increases to 50 weeks.¹⁹

[37] As stated above, the Claimant established a claim for the EI Emergency Response (EI-ERB) benefits. When the EI-ERB benefits ended, he established a benefit

¹⁵ Subsection 153.5 of the Act.

¹⁶ See Part VIII.4 of the Act.

¹⁷ See section 153.17 of the Act

¹⁸ See section 153.16 of the Act.

¹⁹ See section 12(2.1) of the Act.

period for regular EI benefits effective October 4, 2020, within the period that the temporary measures apply.

[38] The Commission applied the temporary measures to the October 4, 2020, benefit period. Specifically, it applied the one-time credit of 300 hours to the Claimant's 324 hours of insured employment. This gave the Claimant 624 insured hours in his qualifying period.

[39] Then the Commission considered the RRU of 14.6%, as of the October 4, 2020, benefit period start date. This is higher than the RRU of 13.1% provided in the temporary measures.

[40] Based on the table in Schedule I, a claimant with 624 insured hours and a RRU of 14.6% would qualify for only 30 weeks of regular EI benefits. In this case, the Commission applied a third temporary measure which increased the weeks of benefit entitlement to 50 weeks.

[41] The Commission correctly considered the applicable temporary measures when determining the Claimant was entitled to 50 weeks of benefits. The Claimant has received payment for those 50 weeks of benefits. So for the reasons I've set out above, I find the Claimant's appeal must fail.

Conclusion

[42] The appeal is dismissed.

Linda Bell
Member, General Division – Employment Insurance Section