



Citation: *JB v Canada Employment Insurance Commission*, 2022 SST 1023

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

Decision

Appellant: J. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (460107) dated March 16, 2022 (issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Videoconference

Hearing date: June 6, 2022

Hearing participants: N/A

Decision date: June 10, 2022

File number: GE-22-1182

Decision

[1] The appeal is dismissed.

[2] The Claimant hasn't shown that he has worked enough hours to qualify for Employment Insurance (EI) benefits and, unfortunately, I cannot write off his overpayment.

Overview

[3] The Claimant applied for employment insurance (EI) benefits on December 8, 2020.

[4] There were several records of employment (ROE) on file with the Canada Employment Insurance Commission (Commission) but, there was no ROE from the Claimant's job working as a security guard.

[5] The Claimant told the Commission he had not been given an ROE and was not able to get one from his employer.

[6] The Commission attempted to contact the employer, but was unable to get a hold of them.

[7] So, the Commission took information from the Claimant regarding his job as a security guard and estimated how many hours of employment he would have to make an interim ROE, until they could get an actual one from the employer.

[8] The Commission, using the interim ROE from the Claimant's security job, the other ROEs on file, and giving him the 300 hour credit under the temporary COVID measures, found he had enough hours to qualify for benefits and started a benefit period for the Claimant.

[9] He was paid benefits from December 6, 2020, to November 27, 2021.

[10] In March 2021, the employer whom the Claimant worked for as a security guard issued an official ROE.

[11] When the Commission got this ROE they saw that the Claimant had stopped work much earlier than he had told them, and therefore had far less hours of employment than they had estimated when they made the interim ROE.

[12] After recalculating the Claimant's hours of employment using the new official ROE from his security job, and the other ROE's on file, along with the 300 hours credit, the Commission determined the Claimant did not have enough hours to qualify for benefits when he filed a claim in December 2020.

[13] This means the Commission is asking the Claimant to repay all the weeks of benefits they paid him since he does not have enough hours to qualify for benefits.

[14] I need to determine if the Claimant can qualify for benefits.

Matter I have to consider first

The Claimant wasn't at the hearing

[15] The Claimant wasn't at the hearing. A hearing can go ahead without the Claimant if the Claimant got the notice of hearing.¹ I think that the Claimant got the notice of hearing.

[16] The Claimant called and told the Tribunal we could communicate with him by email and provided his email address.

[17] The notice of hearing was sent to the email the Claimant provided the Tribunal and I do not see any evidence it was not delivered.

[18] On June 6, 2022, after the start time of the hearing, the Claimant sent in a written request for an adjournment as he said he was not prepared and wanted to reschedule.²

[19] I denied his adjournment request for the following reasons:

¹ Section 12 of the *Social Security Tribunal Regulations* sets out this rule.

² GD05

[20] The documentation from the file was mailed to the Claimant on May 3, 2022, which is over one month prior to the June 6, 2022, hearing.

[21] There is no evidence the Claimant did not receive the documentation.

[22] So, even taking into account mailing time, the Claimant had ample time to review the documentation prior to the date of the hearing and prepare for the hearing.

[23] Even if the Claimant, for some reason, chose not to start preparing until he received the notice of hearing on May 25, 2022, that still allows sufficient time to prepare for the hearing.

[24] Further, a reminder email was sent to him three days before the hearing so the Claimant would have been alerted at this point as well that he had a hearing coming up.

[25] In his June 6, 2022, adjournment request, what I based my denial on, the Claimant has not explained why he did not prepare prior to the hearing or offer sufficient information to support that he was unable to prepare before the hearing due to exceptional circumstances.

[26] The Claimant had called the Tribunal and left messages prior to the hearing, so he was aware of how to contact the Tribunal. This means he could have contacted the Tribunal prior to his hearing if he felt he was unprepared and needed more time to prepare. Instead, he sent nothing until the day of the hearing, after the hearing had already started. It is reasonable to assume the Claimant would have known prior to the day of the hearing if he was prepared or not.

[27] So, since I have denied the adjournment request and am confident the Claimant got the notice of hearing, this means the hearing was not rescheduled and I proceeded without the Claimant having been at the hearing.

Issue

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

Analysis

How to qualify for benefits

[29] 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 benefits.

[30] To qualify, you need to have worked enough hours within a certain timeframe. This timeframe is called the “qualifying period.”⁴

[31] Your **benefit period** isn’t the same thing as your **qualifying period**. It is a different timeframe.

[32] While a qualifying period is generally the 52 weeks prior to the start date of a benefit period, the Commission says the Claimant’s qualifying period is from May 26, 2019, to December 5, 2020, as the law allows him an extension of 28 weeks since he had previously received CERB benefits.⁵

[33] The Commission submits the Claimant resides in the Oshawa economic region and with an unemployment rate of 13.1% at the time of his application, he required 420 hours of insurable employment in his qualifying period to get benefits.⁶

[34] I note the Claimant has not disputed his qualifying period, or the amount of hours the Commission says he needs in his qualifying period.

[35] There is no evidence that makes me doubt the Commission’s decision. So, I accept as fact that the Claimant’s qualifying period is from May 26, 2019, to December 5, 2020, and that he needs to have worked 420 hours to qualify for benefits.

³ See section 48 of the EI Act.

⁴ See section 7 of the EI Act.

⁵ GD04-6

⁶ See section 7(2)(b) of the EI Act, section 17 of the *Employment Insurance Regulations* and the chart in Section 7 of the EI Act as it sets out the minimum number of hours that a claimant needs depending on the different regional rates of unemployment

The hours the Claimant worked

[36] The Commission tried to get in touch with the Claimant's employer regarding the missing ROE from his security guard job, but could not get a hold of them.

[37] Since the Commission could not get a hold of the employer, the Commission created an interim ROE based on the information the Claimant gave them, that his first day of work was in April 2020, and his last day was in July 2020, and he usually worked 8-10 hours a week.

[38] With this interim ROE they guessed the Claimant's hours were 264 based on the information he told them.

[39] When his employer issued an official ROE, it said the Claimant's last day of work was in May 2020, and he only worked 51 hours.

[40] It is the difference between the hours on the interim ROE and the actual ROE for the Claimant's job as a security guard that led to him not having enough hours to get EI benefits.

[41] The Commission submits that when they use the hours in the actual ROE sent out by the Claimant's security guard job, not the hours they calculated when they made an interim ROE with the information the Claimant gave them, and combine that with his other ROE's and the 300 hours credit from the COVID measures, the Claimant only has 408 hours of employment.⁷

[42] The Commission says that while the Claimant did send them his paystubs from his security guard job the amount of hours they show is actually three hours less than the ROE, as the paystubs show 48 hours and the actual ROE shows 51 hours, so they went with the number on the ROE.⁸

⁷ GD04-7

⁸ GD04-7

[43] The Claimant says that he did not give any incorrect information to the Commission when he spoke to them about his application for benefits and spoke about his ROE and even provided them with his paystubs.

[44] He says that all he is missing is 12 hours which is one day of work so this whole overpayment should be written off and that this whole issue is causing him a lot of stress.

[45] I understand the Claimant's argument that he did not provide incorrect information to the Commission, but it appears the problem is that the Claimant was not clear in the information he gave to the Commission.

[46] The employer told the Commission that the Claimant never returned to work after May 1, 2020, as they kept asking him to return to work but he just kept sending them doctor notes so eventually they determined he quit.⁹

[47] So, while the Claimant may have told the Commission he was working for the security guard company until a certain date, that was not the actual date he stopped going to work and accumulating hours.

[48] This means that when the Claimant spoke to the Commission and told him his last day was in July 2020 and he worked 8-10 hours a week, it was possible for the Commission agent he spoke with to not be aware that he did not continue performing work for the employer beyond May 2020 thus mistakenly giving him extra hours of work on the interim ROE.

[49] However, I have no reason to doubt the amount of hours the Commission says the Claimant has in his qualifying period.

[50] I note the Claimant has not directly disputed the hours the Commission has calculated from the other ROEs on file,¹⁰ or the 300 hours credit they gave him.

⁹ GD03-47

¹⁰ GD03-21 to GD03-24

[51] I note the Claimant has also not directly disputed the ROE from the security company, but does seem to have an issue with the Commission deciding to use the 51 hours from the actual ROE as opposed to the hours on the interim ROE.

[52] Despite his apparent issue with the Commission using the actual ROE, the Claimant has not provided sufficient proof to show the actual ROE is incorrect, or that he has any more hours than the actual ROE shows.

[53] In fact, the only evidence the Claimant has provided towards his hours of work at the security company is his paystubs, and his last paystub says he only worked 48 hours. This is three hours less than the actual ROE, so this supports the actual ROE, rather than the interim ROE, is showing the Claimant's correct hours.

[54] So, since it is up to the Claimant to prove that he qualifies, and he has not provided sufficient evidence to support that the calculation of hours by the Commission is incorrect, I accept that the Claimant only has 408 hours in his qualifying period.

[55] Since the Claimant needs 420 hours to qualify for benefits, and he only has 408, I find he does not have enough hours to qualify for benefits.

[56] This means that he could not have established a benefit period starting December 6, 2020, so was not entitled to all the benefits he was paid from December 6, 2020, to November 27, 2021, and has to pay them back.¹¹

[57] I understand the Claimant wants the overpayment written off but that is not something I can do. The Claimant would have to ask the Commission to write off the overpayment.

¹¹ See sections 43 and 44 of the EI Act which says you have to pay back benefits you got to which you were not entitled.

Conclusion

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

[59] This means that the appeal is dismissed.

Gary Conrad

Member, General Division – Employment Insurance Section