



Citation: *KC v Canada Employment Insurance Commission*, 2022 SST 831

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

Decision

Appellant: K. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (438424) dated January 4, 2022 (issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Teleconference

Hearing date: March 2, 2022

Hearing participant: Appellant

Decision date: March 7, 2022

File number: GE-22-320

Decision

[1] The appeal is allowed. The one-time hours credit should not have been applied to the Claimant's benefit period which began on September 27, 2020, so she can use it for her September 21, 2021, claim to allow her to qualify for benefits.

Overview

[2] The Claimant applied for employment insurance (EI) sickness benefits on September 21, 2021. On her application she also asked for her maternity benefits to start right after her sickness benefits and her parental benefits to start right after her maternity benefits.

[3] On October 18, 2021, the Canada Employment Insurance Commission (Commission) told the Claimant they could not pay her benefits as she only had 151 hours of insurable employment in her qualifying period and she needed 420 to qualify for benefits.¹

[4] The Claimant says that she should qualify as when the one-time hours credit is added to her 151 hours she has enough hours to qualify for benefits.

[5] The Commission says that the one-time hours credit was already used on the Claimant's prior claim which started on September 27, 2020, so she cannot use it again on her September 21, 2021, claim.

[6] The Commission says that since the Claimant cannot use the one-time hours credit again, and she only has 151 hours but needs 420 hours to qualify for benefits, they cannot pay her benefits.

[7] The Claimant argues no one ever told her they were going to use the one-time hours credit on her previous claim and she did not even need it to qualify on her previous claim.

¹ GD04-1

Issue

[8] Can the Claimant use the one-time hours credit on her September 21, 2021, claim?

Analysis

[9] Yes, the Claimant can use the one-time hours credit on her September 21, 2021, claim as the one-time hours credit should not have been applied to the Claimant's September 27, 2020, claim. The legislation does not explicitly say it must be applied to the first claim made on or after September 27, 2020, and to automatically do so would produce an absurd result, as it would be illogical, inequitable and not in line with the intentions of the legislation.

[10] The Claimant says that she was told over and over by agents of the Commission that all she needed to do was get 120 hours and she would be able to qualify for benefits due to the one-time hours credit.

[11] The Claimant says no one ever told her they had already applied the one-time hours credit to her previous claim.

[12] The Claimant says she did not need the one-time hours credit to qualify on her previous claim as she had more than enough hours to qualify without it, having worked full-time for a year prior to that claim.

[13] The Commission submits that they used the one-time hours credit on the Claimant's previous claim which had a benefit period starting September 27, 2020.²

[14] The Commission says that they had to apply the one-time hours credit to the September 27, 2020, claim as they cannot defer implementing the provision set out in the law to allow the Claimant to qualify for a later claim.³

² GD04-3

³ GD04-3

[15] Respectfully, I disagree with the Commission's submissions.

[16] The part of the law at the heart of the disagreement between the Claimant and the Commission resides in Part VIII.5 of the *Employment Insurance Act* (Act) and reads as follows:

153.17 (1) A claimant who makes an initial claim for benefits under Part I 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, an additional 480 hours of insurable employment; and

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

[17] The Commission interprets this section by saying they cannot defer the application of the one-time hours credit to another claim to help the Claimant qualify.

[18] I find that subsection 153.17(1) of the Act does not explicitly say that the one-time credit of hours must be applied to the first claim made on or after September 27, 2020.

[19] However, the fact it does not explicitly say as such does not mean this the end of the analysis, as the Supreme Court of Canada (SCC) has said that "...statutory interpretation cannot be founded on the wording of the legislation alone. The words of an Act are to be read 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."⁴

[20] The SCC stated that the grammatical and ordinary sense of a section is not determinative and does not constitute the end of the inquiry as the total context of the

⁴ *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27

provisions to be interpreted must be considered no matter how plain the disposition may seem upon initial reading.⁵

[21] The SCC said that when interpreting a statute, the words, if clear, will dominate; if not they yield to an interpretation that best meets the overriding purpose of the statute.⁶

[22] The *Interpretation Act* states that every enactment shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.⁷

[23] So, what is the overall purpose of the Act?

[24] The Federal Court of Appeal (FCA) has said that the Act is "...a contributory scheme providing social insurance for those who lose their jobs..."⁸ and for "...compensating unemployed workers for their loss of employment income and ensuring their economic and social security for a time, thus assisting them in returning to the labour market."⁹

[25] The SCC has said that the overall purpose of the Act is to make benefits available to the unemployed and that it should be liberally interpreted and any doubt arising from the difficulties of the language should be resolved in favour of the claimant.¹⁰

[26] I find that the words of subsection 153.17(1) are not clear. They do not explicitly state that the one-time credit must be used on the first claim made on or after September 27, 2020.

[27] I also find that the word 'deemed' in subsection 153.17(1) does not mean the one-time hours credit must be applied to the first claim made on or after September 27, 2020.

⁵ *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*, 2006 SCC 4, paragraph 48

⁶ *Celgene Corp. v Canada (Attorney General)*, 2011 SCC 1 paragraph 21

⁷ Section 12 of the *Interpretation Act*

⁸ *Canada (Attorney General) v Lesiuk*, 2003 FCA 3

⁹ *Canada (Attorney General) v Jean*, 2015 FCA 242, paragraph 26

¹⁰ *Abrahams v Attorney General of Canada*, 1983 1 SCR 2

[28] The word ‘deemed’ simply creates a rebuttable presumption, that is, something that is presumed unless the contrary is proven.

[29] In this sense the legislation says it is ‘deemed’, in other words assumed, the Claimant has extra hours in her qualifying period for a claim made on or after September 27, 2020.

[30] I find that assumption in no way mandates the hours be added to the first claim made on or after September 27, 2020, as doing so produces an absurd result as it is illogical and inequitable.

[31] Why would Parliament want the Commission to assume a person has additional hours in their qualifying if not but to help them qualify when the actual amount of hours they have is not enough?

[32] I find that nothing in the legislation prevents the Commission from deeming, in other words assuming, the Claimant has an extra amount of hours in her qualifying period, for a claim other than the first one made on or after September 27, 2020; a claim where she actually needs the assumed hours to qualify.

[33] As the words of subsection 153.17(1) are not clear, they must yield to an interpretation that best meets the overriding purpose of the statute.¹¹

[34] The SCC and FCA have said that the purpose of the Act is to provide benefits to people who are unemployed.

[35] With that purpose in mind, I note that the title to the section of the Act the disputed section falls into, Part VIII.5, has the title of “Temporary Measures to Facilitate Access to Benefits.” I find this shows that the purpose of the sections under this title are to help workers access unemployment benefits.

¹¹ *Celgene Corp. v Canada (Attorney General)*, 2011 SCC 1 paragraph 21

[36] The SCC has said that it is a well established principle of statutory interpretation that the legislature does not intend to produce absurd consequences.¹²

[37] The SCC says an interpretation can be considered absurd if it leads to ridiculous or frivolous consequences, if it is extremely unreasonable or inequitable, if it is illogical or incoherent, or if it is incompatible with other provisions or with the object of the legislative enactment.¹³

[38] The Claimant says she did not need the one-time hours credit to qualify for the benefit period starting on September 27, 2020.

[39] The Commission has not disputed this assertion from the Claimant and her Record of Employment shows 2,000 hours of insurable employment from April 5, 2019, to September 28, 2020,¹⁴ which seems to support her assertion she did not need the one-time hours credit for her benefit period starting September 27, 2020.

[40] I find that interpreting subsection 153.17(1) in the way the Commission has, that the one-time credit of hours must be applied to the first claim on or after September 27, 2020, whether the Claimant needs it or not, leads to an absurd result as it is illogical and inequitable, or in other words, unjust.

[41] Such an interpretation as the Commission advocates is illogical, inequitable and incompatible with the object of the legislative enactment as it unfairly punishes people by preventing them from using the one-time hours credit to qualify for benefits on a claim when they actually need it.

[42] It is inequitable as it punishes a person *because* they had sufficient hours to qualify in their first claim, since the one time hours credit is used when it is not needed and thus not available for a later claim when they are truly needed.

¹² *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, paragraph 27.

¹³ *Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 SCR 27, paragraph 27.

¹⁴ GD03-24

[43] Was it truly the intention of Parliament to punish people who applied on or after September 27, 2020, with sufficient hours to qualify for benefits by never allowing them to take advantage of the one-time hours credit when they actually need it? I cannot imagine that was the intent.

[44] The object of the Act is to provide benefits to people who are unemployed. Parliament added sections to the Act, under a title Temporary Measures to Facilitate Access to Benefits, showing they wanted the sections under it help people access benefits.

[45] I find that interpreting subsection 153.17(1) as the Commission does, that the one-time credit of hours must be applied to the first claim after September 27, 2020, whether the claimant needs it or not, is incompatible with the object of the legislative enactment. The title of the section in which 153.17(1) is in is clear these sections are to help people access benefits. Applying the one-time hours credit when it is not needed would go against that objective.

[46] Further, the wording of subsection 153.17(1) itself shows that it is intended to help people qualify for benefits by giving them additional hours to help meet the qualifying requirements. Applying those additional hours when they are not needed would not only do nothing to help people qualify, but would actually harm people as it would remove a chance for them to qualify at a later date when they actually need the additional hours. Interpreting this section the way the Commission does would go against the object of the legislative enactment since it would not help people qualify as it is intended to.

[47] Finally, I keep in mind the words of the SCC, that the overall purpose of the Act is to make benefits available to the unemployed, and that it should be liberally interpreted and any doubt arising from the difficulties of the language should be resolved in favour of the claimant.¹⁵ This lends further support that subsection 153.17(1) should not be interpreted the way the Commission wants, as it would not provide the help it could to

¹⁵ *Abrahams v Attorney General of Canada*, 1983 1 SCR 2

make benefits available to the unemployed. Further, since there are difficulties in the language, I would resolve it in favour of the Claimant.

[48] I find the Commission's interpretation of subsection 153.17(1), that the one-time credit of hours must be applied to the first claim made on or after September 27, 2020, whether a claimant needs it or not, cannot stand.

[49] I find subsection 153.17(1) should be interpreted as being used only if the Claimant needs the additional hours to qualify. This interpretation prevents absurd results and is more compatible with the objective of the legislative enactment.

[50] I therefore find the one-time credit of hours should not have been applied to the Claimant's claim starting September 27, 2020, and thus it is free to be used on her claim of September 21, 2021.

Conclusion

[51] The appeal is allowed.

[52] I find section 153.17(1) should be interpreted as being used only if the Claimant needs the additional hours to qualify. This interpretation prevents absurd and unjust results and is more compatible with the object of the legislative enactment.

[53] With that interpretation, I find the one-time hours credit should not have been applied to the Claimant's benefit period which began on September 27, 2020.

Gary Conrad
Member, General Division – Employment Insurance Section