



Citation: *Canada Employment Insurance Commission v BW*, 2022 SST 1081

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative:

Respondent: B. W.

Decision under appeal: General Division decision dated March 21, 2022
(GE-22-243)

Tribunal member: Melanie Petrunia

Type of hearing: Teleconference

Hearing date: September 29, 2022

Hearing participants: Appellant's representative
Respondent

Decision date: October 25, 2022

File number: AD-22-217

Decision

[1] The appeal is allowed. The General Division made an error of law. I have given the decision that the General Division should have given. The Claimant does not have enough insurable hours to qualify for benefits.

Overview

[2] As a temporary measure associated with the pandemic, claimants could get a credit of 300 insurable hours.¹ This meant that they could get EI regular benefits after only 120 hours of work, because they needed 420 insurable hours in their qualifying period.² The section giving the extra hours was in place until September 25, 2021.

[3] The Respondent, B. W. (Claimant) applied for employment insurance (EI) regular benefits on September 24, 2021. His employment had ended on September 23, 2021.

[4] The Appellant the Canada Employment Insurance Commission (Commission) decided that the Claimant did not qualify for EI benefits. The Commission said that the Claimant had worked 121 hours in his qualifying period and needed 420 hours to establish a benefit period. The Claimant requested a reconsideration and the Commission maintained its decision.

[5] The Claimant successfully appealed to the General Division. The General Division decided the Claimant was entitled to the credit of 300 insurable hours because he applied for benefits before September 25, 2021.

[6] The Commission has appealed the General Division decision. It argues that the General Division erred in law by failing to consider all applicable provisions of the EI Act when it found that the Claimant was entitled to the additional hours. The Commission says that, without the credit, the Claimant does not have enough hours to qualify for benefits.

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

² See sections 153.16 and 7(2)(b) of the Act, as they read before September 26, 2021.

[7] I have decided that the General Division erred in law in its interpretation of Section 153.17 of the EI Act. I have made the decision that the General Division should have made. Unfortunately, the Claimant is not entitled to the 300 additional hours, and therefore does not have enough insurable hours to qualify for benefits.

Issues

[8] The issues in this appeal are:

- a) Did the General Division err in its interpretation of section 153.17 of the EI Act?
- b) If so, how should the error be fixed?

Analysis

[9] I can intervene in this case only if the General Division made a relevant error, which is known as a “ground of appeal.”³ One of the grounds of appeal is that the General Division made an error of law in making its decision. The interpretation of legislation is a question of law.⁴

[10] The General Division found that the Claimant had an interruption of earnings on September 23, 2021. He applied for benefits on September 24, 2021. It found that his benefit period started on September 26, 2021 because this was the Sunday following both the interruption of earnings and his application for benefits.

[11] The EI Act sets out when a benefit period starts. A benefit period always begins on a Sunday. The EI Act states that a benefit period begins on the later of:

- The Sunday of the week in which the interruption of earnings occurs; and
- The Sunday of the week in which the initial claim for benefits is made.⁵

³ Section 58(1) of the Department of Employment and Social Development Act (DESD Act) sets out the grounds of appeal.

⁴ See *Canada (Attorney General) v Trochimchuk*, 2011 FCA 268 at paragraph 7.

⁵ See section 10(1) of the EI Act.

[12] Before the General Division, the Commission argued that a strict interpretation of this section would mean that the Claimant's benefit period started September 19th, not September 26, 2021. Because the Claimant had insurable hours that week, the Commission considered the benefit period as commencing on September 26th, as this was to the benefit of the Claimant.⁶

[13] In order to qualify for benefits, the Claimant must have 420 insurable hours in his qualifying period. The qualifying period is generally the 52 weeks before the benefit period begins. The Claimant had accumulated 127 insurable hours in the period from September 27, 2020 to September 25, 2021.

The General Division erred in law

[14] The General Division decided that the Claimant was entitled to the 300 additional hours despite that provision ceasing to operate after September 25, 2021. The General Division erred in law in its interpretation of the legislation when it made this decision.

[15] 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.⁷ This means that claimants only needed another 120 hours to reach the 420 hours needed to qualify for regular benefits.

[16] This section only applied until September 25, 2021.⁸ 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, 2021.⁹

⁶ See GD4-6.

⁷ See section 153.17(1)(b) of the EI Act.

⁸ 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*.

⁹ 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.

– **The General Division decision**

[17] The General Division considered the wording of section 153.17 of the EI Act, which states:

(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) [...] ¹⁰

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

[18] The General Division decided that the Claimant could benefit from the credit of 300 hours because he had an interruption of earnings and applied for benefits after September 27, 2020 and before September 25, 2021 when this section stopped applying.¹¹

[19] The Claimant argues that the General Division's interpretation was correct and he should have the benefit of the additional 300 hours in order to qualify for benefits. He says that wording of the section is clear and provides that the additional hours are available when a claimant applies for benefits before September 25, 2021.

[20] The Commission argues that the General Division's interpretation was wrong because it failed to consider other relevant sections of the legislation. 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.

[21] The Commission relies on the transitional provision that came into effect after section 153.17 of the EI Act stopped applying on September 25, 2021.¹² The transitional provision says that section 153.17 continues to apply to a claimant whose "benefit

¹⁰ This section addressed special benefits such as sickness and parental benefits.

¹¹ General Division decision at para 20.

¹² See section 153.196(1) of the EI Act.

period begins during the period beginning on September 27, 2020, and ending on September 25, 2021.”¹³

[22] The Commission argues that the transitional provision makes clear that the credit in section 153.17 does not apply to benefit periods starting after September 25, 2021. It argues that the General Division erred in law when it found that the Claimant was entitled to the credit of additional hours for a claim with a benefit period starting on September 26, 2021 because he applied on September 24, 2021.

– **The General Division misinterpreted the section 153.17**

[23] There are no court decisions from the Federal Court or Federal Court of Appeal that specifically address this issue. However, the Tribunal’s Appeal Division has issued a number of decision interpreting section 153.17 of the EI Act contextually to mean that it cannot apply to benefit periods starting after September 25, 2021.¹⁴

[24] I do not have to follow other decisions from the Tribunal’s Appeal Division. However, I agree with the reasoning in those cases. 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. I find the Claimant cannot have the credit with a benefit period beginning on September 26, 2021.

[25] These decisions have considered the wording of the legislation, in the context of the EI Act, in keeping with the purpose of the provision.¹⁵

[26] These decisions found that the purpose of the section was to make it easier to access EI benefits for a temporary period. The wording of section 153.17 alone does not specifically say that the credit will only apply to a benefit period that starts before September 26, 2021. However, the section must be interpreted in the context of the EI

¹³ See section 333 of the *Budget Implementation Act, 2021, No. 1* (S.C. 2021, c. 23).

¹⁴ See *Canada Employment Insurance Commission v PG et al*, 2022 SST 388; *Canada Employment Insurance Commission v RG*, 2022 SST 648 (“RG”); *Canada Employment Insurance Commission v RH*, 2022 SST 663.

¹⁵ See *Rizzo & Rizzo Shoes Ltd. (Re)*, 1998 CanLII 837 (SCC), [1998] 1 SCR 27, at paragraph 21 and *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paragraph 117.

Act.¹⁶ The General Division made an error of law by not considering the words of the section contextually.

[27] As interpreted by the Appeal Division in the other cases referenced, the date of the application and interruption of earnings are connected to the establishment of a benefit period. The date of the commencement of the benefit period is related to the qualifying period to which the credit of additional hours will apply. When considered in context, it is clear that the benefit period must be established before September 25, 2021 for the credit of additional hours to apply.¹⁷

[28] The related transitional provision also that tells us how section 153.17 continues to operate after it ceased to have effect on September 25, 2021.¹⁸ This provision says section 153.17 of the EI Act continues to apply to claimants with benefit periods beginning between September 27, 2020, and September 25, 2021. This wording 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.

[29] I find that the credit only applies to claimants with benefit periods beginning between September 27, 2020, and September 25, 2021. I find that the General Division made an error of law when it decided that section 153.17 of the EI Act could be interpreted to mean that the credit of hours would apply to the Claimant if his benefit period began on September 26, 2021, because he applied before September 25, 2021.

¹⁶ See *ATCO Gas & Pipelines Ltd. v Alberta (Energy & Utilities Board)*, 2006 SCC 4.

¹⁷ See RG at paras 58 to 63.

¹⁸ 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 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.

Fixing the error

[30] I have found that the General Division made an error of law. This means that I can send the matter back to the General Division for reconsideration or I can give the decision that the General Division should have given.¹⁹

[31] I find that the relevant facts are not in dispute and because the error is one of law, it is appropriate to give the decision the General Division should have given.

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

[32] With a benefit period commencing on September 26, 2021, the Claimant's qualifying period is from September 27, 2020 to September 25, 2021. The Claimant had 127 insurable hours in that qualifying period, but needed 420 hours. For the reasons discussed above, he cannot have the credit of 300 hours for a benefit period starting after September 25, 2021.

[33] I have also considered whether the Claimant would have enough hours to start a benefit period on September 19, 2021, when he would have the benefit of the additional 300 hours.

[34] As found by the General Division, the Claimant only had 91 insurable hours in his qualifying period, which was the 52 weeks before September 19, 2021. With the 300 additional hours allowed by the temporary measures, the Claimant had 391 hours, which is not enough to qualify for benefits.

[35] I understand that the Claimant thought he applied in time to get the additional hours. He is only a few hours short to establish a benefit period on September 19, 2021.

[36] I am sympathetic to the Claimant's circumstances. Unfortunately, I must apply the law, no matter how compelling the circumstances.²⁰

¹⁹ See section 59(1) of the *Department of Employment and Social Development Act*, which gives me this authority.

²⁰ See *Canada (Attorney General) v Lévesque*, 2001 FCA 304.

Conclusion

[37] The Commission's appeal is allowed.

[38] The General Division made an error of law in its interpretation of the legislation. The Claimant cannot start a benefit period on September 19, 2021, or September 26, 2021, because he does not have enough insurable hours to qualify.

Melanie Petrunia
Member, Appeal Division