



Citation: *AA v Canada Employment Insurance Commission*, 2022 SST 1541

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

Decision

Appellant: A. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (526742) dated August 11, 2022 (issued by Service Canada)

Tribunal member: Raelene R. Thomas

Type of hearing: Teleconference

Hearing date: October 5, 2022

Hearing participant: Appellant

Decision date: October 27, 2022

File number: GE-22-2935

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

[2] The Claimant has not shown she 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.¹

[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 she needs 420 hours, but has 263 hours.

[6] The Claimant disagrees and says that she had to stop working due to the premature birth of her child. Had her child not been born prematurely she would have been able to work longer and accumulate enough hours to qualify for EI benefits.

Matter I have to consider first

The Commission made an error

[7] The Commission submitted that it made an error when it first calculated the Claimant's hours of insurable employment in the qualifying period. It said that the Record of Employment (ROE) issued to the Claimant from X showed a specific number of hours worked for each pay period. It says the agent who first calculated the Claimant had 335 hours used an average of the hours from the ROE when they should have used the exact number of hours worked with X. This means the Claimant actually

¹ 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."

worked 230 hours with X. These hours combined with hours she worked at X means that the Claimant had 263 hours in the qualifying period.

[8] Where an error does not cause prejudice or harm, it is not fatal to the decision under appeal.² Because the Commission's error did not prevent the Claimant from seeking reconsideration of the Commission's initial decision and later to appeal the reconsideration decision, I find that the error does not cause the Claimant any prejudice or harm.

I will accept the documents sent in after the hearing

[9] In its submissions to the Tribunal the Commission noted that on the ROE issued by X pay period 3 showed the Claimant worked 3.10 hours but she was paid an amount equal to 54 hours. It said that this should have been clarified. I asked the Claimant why she was paid for 54 hours in that pay period. The Claimant undertook to contact her former employer to see why she was paid that amount. The Claimant emailed the Tribunal stating that she was paid for 3 hours work in that pay period and the rest was vacation pay. I am accepting the information provided after the hearing because it is directly relevant to the issue of whether the Claimant had enough hours of insurable employment in the qualifying period.

Issue

[10] Does the Claimant have enough hours to qualify for EI benefits?

Analysis

How to qualify for benefits

[11] 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 she has to show that it is more likely than not that she qualifies for benefits.

² *Desrosiers v. Canada (AG)*, A-128-89. This is how I refer to the courts' decisions that apply to the circumstances of this appeal

³ See section 48 of the EI Act.

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

[13] The number of hours depends on the unemployment rate in your region.⁵

The Claimant’s region and regional rate of unemployment

[14] The Commission decided that the Claimant’s region was Calgary and that the regional rate of unemployment at the time was 7.1%.

[15] New temporary measures to facilitate access to benefits came into effect on September 26, 2021.⁶ Among these measures was a new provision that regardless of the unemployment rate in a region, the maximum number of hours you need to qualify for regular and special EI benefits is 420 hours.⁷

[16] The Claimant agrees with the Commission’s decisions about which region and regional rate of unemployment apply to her. But she does not agree that she needs 420 hours to qualify for EI benefits.

The Claimant’s qualifying period

[17] As noted above, the hours counted are the ones that the Claimant worked during her qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.⁸

[18] 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.

⁴ See section 7 of the EI Act.

⁵ See section 7(2)(b) of the EI Act and section 17 of the *Employment Insurance Regulations*.

⁶ Budget Implementation Act, 2021, No. 1 S.C. 2021, c. 23. These measures were repealed on September 25, 2022.

⁷ See section 7(1) 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.

⁸ See section 8 of the EI Act.

[19] The Commission decided that the Claimant's qualifying period was the usual 52 weeks. It determined that the Claimant's qualifying period went from May 30, 2021 to May 28, 2022.

[20] The Claimant disagrees with the Commission about her qualifying period. The Claimant says that her qualifying period should be longer. She thinks that it should end on April 24, 2022 because she stopped working on that date because she gave birth prematurely. The Claimant noted that she could not work during some of the qualifying period due to public health guidelines.

[21] Sometimes the qualifying period can be extended in certain circumstances. Those circumstances include being incapable of work due to illness, injury, quarantine or pregnancy, being in jail, receiving assistance under employment benefits or stopping work where the work may cause harm to an unborn child or a child who is being breastfed.⁹ The Claimant testified that she did not meet any of these conditions before May 2021.

[22] The law says that the qualifying period is the 52 weeks before you start a benefit period unless there are circumstances that exist to extend the qualifying period. The Claimant applied for EI benefits on June 3, 2022. I cannot change the law regarding the qualifying period. As a result, I find the Claimant's qualifying period is May 30, 2021 to May 28, 2022.

The hours the Claimant worked

[23] The Claimant testified that during her qualifying period she worked for two employers. She worked for X in one province until August 8, 2021. The appeal file has an ROE issued by X. It shows that she worked for X from May 7, 2019 to August 3, 2021. She was paid bi-weekly with the last pay period ending on August 8, 2021. The Claimant confirmed that for the pay period ending July 11, 2021 she worked 3 hours. Because the start of the qualifying period fell in the pay period ending May 30, 2021 only a portion of the 16.10 hours worked in that pay period can be counted as insurable

⁹ See section 8(2) EI Act

hours.¹⁰ The Commission says the insurable hours worked for X total 32.23 hours. I see no evidence to contradict this.

[24] The Claimant then moved to a new province to accompany her spouse. She took a couple of months off for the move and planned to start working with X in November 2021. For various reasons X was not able to give her any work due until January 25, 2022.

[25] As noted above the Commission said that it made an error when it decided the Claimant had 335 hours of insurable employment from May 30, 2021 to May 28, 2022. It said that the hours worked for X were actually 230. The ROE issued by X shows the Claimant worked 230 hours from January 25, 2022 to April 24, 2022. I see no evidence to contradict this.

[26] The claimant testified that she did not work anywhere else. So I find as fact the Claimant worked 263 hours from May 30, 2021 to May 28, 2022.

[27] Sometimes it is possible to have your claim for EI benefits start earlier if good cause can be shown for the delay in applying for EI benefits. This is called antedating or backdating a claim. The Commission considered backdating the Claimant's claim to April 24, 2022. It said if her claim was backdated to April 24, 2022 the Claimant's qualifying period would be April 25, 2021 to April 23, 2022. In that case, the Commission says the Claimant's hours would be 303 hours. I see no evidence to contradict this.

¹⁰ Only one day, May 30, 2021, of the pay period ending on May 30, 2021 falls in the qualifying period. The Claimant worked 16.10 hours when divided by 14 days in the pay period means 1.61 hours of that pay period can be counted as insurable hours in the qualifying period.

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

[28] No. I find that the Claimant has not proven that she has enough hours to qualify for benefits because she needs 420 hours, but has worked at most 303 hours during the qualifying period.¹¹ This means that she does not qualify for EI benefits.

[29] The Claimant has argued that she would have worked enough hours to qualify for EI benefits had her child not been born prematurely. She expected to work until August 1, 2022 and said that she would have no difficulty reaching 420 hours. She has experienced financial stress because she is without income while staying home to care for her newborn.

[30] I am sympathetic to the Claimant's circumstances. But, as tempting as it may be in such cases (and this may well be one), I am not permitted to re-write the law or to interpret it in a manner that is contrary to its plain meaning.¹² I must follow the law and render decisions based on the relevant legislation and precedents set by the courts.

Conclusion

[31] The Claimant does not have enough hours to qualify for benefits.

[32] This means the appeal is dismissed.

Raelene R. Thomas
Member, General Division – Employment Insurance Section

¹¹ If I accept the Commission's suggestion that it backdate the claim to April 24, 2022 it would result in a qualifying period where the Claimant worked 303 hours versus working 263 hours if her claim started on May 30, 2021.

¹² *Canada (Attorney General) v. Knee*, 2011 FCA 301.