



Citation: *BB v Canada Employment Insurance Commission*, 2022 SST 1128

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

## Decision

**Appellant:** B. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (493341) dated June 16, 2022 (issued by Service Canada)

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**Tribunal member:** Solange Losier

**Type of hearing:** Teleconference

**Hearing date:** August 22, 2022

**Hearing participant:** Appellant

**Decision date:** November 3, 2022

**File number:** GE-22-2336

## Decision

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

[2] The Claimant has not shown that he has worked enough hours to qualify for Employment Insurance (EI) regular benefits.

## Overview

[3] B.B. is the Claimant in this case. The Claimant applied for EI regular benefits, but the Canada Employment Insurance Commission (Commission) decided that the Claimant had not worked enough hours to qualify.<sup>1</sup>

[4] The Commission says that the Claimant does not have enough hours because he needs 420 hours, but has only 252 hours during the qualifying period.<sup>2</sup> Because of this, they say he is not entitled to receive EI benefits.<sup>3</sup>

[5] The Claimant disagrees with the number of hours on his record of employment.<sup>4</sup> He explains that he has been struggling financially and going into debt.

[6] I have to decide whether the Claimant has worked enough hours to qualify for EI benefits.

## Matters I have to consider first

### Canada Revenue Agency (CRA) ruling + File was put on hold

[7] This hearing was held by teleconference on August 22, 2022.<sup>5</sup> Only the Claimant attended. The Claimant testified that the hours on his record of employment<sup>6</sup> may not

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<sup>1</sup> See 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” and application for EI benefits at GD3-3 to GD3-16.

<sup>2</sup> See Commission’s representations at GD4-1 to GD4-6.

<sup>3</sup> See initial decision at GD3-22 to GD3-23 and reconsideration decision at GD3-27.

<sup>4</sup> See notice of appeal forms at GD2-1 to GD2-24.

<sup>5</sup> See notice of hearing at GD1-1 to GD1-3.

<sup>6</sup> See record of employment (ROE) issued June 21, 2021 at GD3-17 that says he has 252 insurable hours.

be correct. Because of that, I had to put the file on pause (“in abeyance”) so that the Commission could request a CRA ruling on the number of hours.<sup>7</sup>

[8] On October 21, 2022, the Claimant and Commission provided the Tribunal with a copy of the CRA ruling.<sup>8</sup> The CRA ruling will also be discussed further below.

[9] On October 25, 2022, I wrote to the Claimant to invite him to provide any comments to the Tribunal by October 28, 2022.<sup>9</sup> The Claimant has not provided any comments as of the date of this decision.

## **Issue**

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

## **Analysis**

### **How to qualify for EI benefits**

[11] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for EI benefits.<sup>10</sup> 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 EI benefits.

[12] To qualify, you need to have worked enough hours within a certain timeframe. This timeframe is called the “qualifying period.”<sup>11</sup>

[13] The number of hours depends on the unemployment rate in your region.<sup>12</sup>

### **The Claimant’s region and regional rate of unemployment**

[14] The Commission decided that the Claimant’s region was Kingston and that the regional rate of unemployment at the time was 6.0%.

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<sup>7</sup> See section 90(1) of the *EI Act*; the file was put in abeyance on August 22, 2022.

<sup>8</sup> See CRA ruling at GD12-1 to GD12-4 and GD13-1 to GD13-3.

<sup>9</sup> See GD14-1 to GD14-3.

<sup>10</sup> See section 48 of the *EI Act*.

<sup>11</sup> See section 7 of the *EI Act*.

<sup>12</sup> See section 7(2)(b) of the *EI Act* and section 17 of the *Employment Insurance Regulations*.

[15] This means that the Claimant would need to have worked at least 420 hours in his qualifying period to qualify for EI benefits.<sup>13</sup>

### **The Claimant agrees with the Commission**

[16] The Claimant agrees with the Commission's decision about which region and regional rate of unemployment apply to him.

[17] Accordingly, I accept as fact that the Claimant needs to have worked 420 hours to qualify for EI benefits.

### **The Claimant's qualifying period**

[18] As noted above, the hours counted are the ones that the Claimant worked during his qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.<sup>14</sup>

[19] Your **benefit period** is not the same thing as your **qualifying period**. It is a different timeframe. Your benefit period is the time when you can receive EI benefits.

[20] The Commission decided that the Claimant's qualifying period was the usual 52 weeks. It determined that the Claimant's qualifying period ran from February 7, 2021 to February 5, 2022.<sup>15</sup>

### **The Claimant does not agree with the Commission**

[21] The Claimant disagrees with the Commission about his qualifying period.

[22] The Claimant initially said that his qualifying period should be from April 27, 2020 to April 26, 2021 because his last day of work was April 27, 2021.

[23] Alternately, the Claimant says that the qualifying period should run from June 7, 2021 to June 6, 2022 because that is when he applied.

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<sup>13</sup> See section 7 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.

<sup>14</sup> See section 8 of the *EI Act*.

<sup>15</sup> See GD4-1 to GD4-6.

[24] The Claimant mentioned that he had previously received EI parental benefits for around 6 weeks starting from February 2021. This following by EI regular benefits from June 2021 until those benefits ended in February 2022. This led to a new application for regular EI benefits on February 14, 2022.<sup>16</sup>

[25] I find that the Commission correctly determined the Claimant's **qualifying period from February 7, 2021 to February 5, 2022** because the qualifying period is the 52 week period before the beginning of a benefit period.<sup>17</sup> As noted above, the evidence shows that the Claimant's application for EI regular benefits was submitted to Service Canada on February 14, 2022.<sup>18</sup>

[26] Essentially, the Claimant is asking to have his benefit period run from April 27, 2020 to April 26, 2021 or from June 7, 2021 to June 6, 2022. However, this cannot be done because his application for EI regular benefits was only submitted on February 14, 2022. As well, he testified that he already received EI regular benefits for the period from June 2021 until that ended in February 2022. The Claimant cannot receive EI benefits for a period that he already received them. As well, the hours he previously accrued were likely already used to establish his previous EI claim.

## **The hours the Claimant worked**

### **The Claimant does not agree with the Commission**

[27] The Commission decided that the Claimant had worked 252 hours during his qualifying period based on the record of employment in the file.<sup>19</sup> The Claimant disputed this, saying that he was not sure the record of employment was accurate.

[28] In consultation with the Claimant at the hearing, I discussed the possibility of obtaining a CRA ruling about his hours. So, I wrote to the Commission after the hearing

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<sup>16</sup> See application for EI benefits at GD3-3 to GD3-16.

<sup>17</sup> See sections 8(1)(a) and 10(1)(a) of the *EI Act*.

<sup>18</sup> See application for EI benefits at GD3-3 to GD3-16.

<sup>19</sup> See record of employment (ROE) issued June 21, 2021 at GD3-17 that says he has 252 insurable hours.

asking them to get a CRA ruling on the number of hours the Claimant had.<sup>20</sup> I do not have the power to decide that particular question.<sup>21</sup>

### **The Canada Revenue Agency (CRA) ruling**

[29] The CRA then made a ruling on October 21, 2022 about the number of hours that the Claimant worked during his qualifying period (February 7, 2021 to February 5, 2022). The CRA said that the Claimant had worked 210 hours.<sup>22</sup>

[30] The CRA said the following:

- a) We have ruled that, from **February 7, 2021 to March 21, 2021**, you received a Parental Top-Up Benefit in the amount of \$6,604.78. These earnings are not insurable under paragraph 2(3)(f) of the *Insurable Earnings and Collection of Premiums Regulations* and **there are no insurable hours**.
- b) We have ruled that, from **March 22, 2021 to April 27, 2021**, you were an employee and the employment was insurable under paragraph 5(1)(a) of the *Employment Insurance Act*. Under subsection 2(1) of the *Insurable Earnings and Collection of Premiums Regulations*, the insurable earnings are \$9,325.27 for this period and under 10(1) of the *Employment Insurance Regulations*, **the insurable hours are 210**.
- c) We have ruled that, from **April 28, 2021 to June 30, 2021**, after your employment with “Employer X” was terminated, you received vacation pay in the amount of \$3,193.27 and \$1,976.79 pay in lieu. Vacation pay and pay in lieu are earnings received in respect of an employment and as such, the total earnings of \$5,170.06 are insurable in accordance with paragraph 2(1) of the *Insurable Earnings and Collection of Premiums Regulations*. However, **there are no insurable hours attributed to these earnings**.

[31] I am bound by the CRA’s ruling about the number of hours.<sup>23</sup> In other words, I cannot decide that the number of hours is different. So, 210 hours is the number that I will use in deciding this appeal instead of the 252 hours referenced on his record of employment.

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<sup>20</sup> See GD5-1 to GD5-3 and section 32 of the *Social Security Tribunal Regulations*.

<sup>21</sup> See section 90 of the *EI Act*.

<sup>22</sup> See CRA ruling at GD12-1 to GD12-4 and GD13-1 to GD13-3.

<sup>23</sup> See section 90 of the *EI Act*.

[32] As noted above, the Claimant was invited to provide his comments about the CRA ruling by October 28, 2022, but has not provided a response as of the date of this decision.<sup>24</sup>

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

[33] I find that the Claimant has not proven that he has enough hours to qualify for EI regular benefits because he needs 420 hours, but according to the CRA, he only has 210 hours.

[34] I cannot count hours he worked before the qualifying period because the court has said that I cannot do that.<sup>25</sup> EI is an insurance plan and, like other insurance plans, you have to meet certain requirements to receive EI benefits.

[35] In this case, the Claimant does not meet the requirements, so he does not qualify for EI benefits. While I sympathize with the Claimant's situation, I cannot change the law.<sup>26</sup>

### **Conclusion**

[36] The Claimant does not enough hours to qualify for EI regular benefits.

[37] This means that the appeal is dismissed.

Solange Losier  
Member, General Division – Employment Insurance Section

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<sup>24</sup> See GD14-1 to GD14-3 – a letter was sent to the Claimant on October 25, 2022 asking for his comments about the CRA ruling by October 28, 2022.

<sup>25</sup> See *Haile v Canada (Attorney General)*, 2008 FCA 193.

<sup>26</sup> See *Pannu v Canada (Attorney General)*, 2004 FCA 90.