



Citation: *KM v Canada Employment Insurance Commission*, 2022 SST 1573

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

## Decision

**Appellant:** K. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (461557) dated March 16, 2022 (issued by Service Canada)

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**Tribunal member:** Solange Losier

**Type of hearing:** Teleconference

**Hearing date:** June 13, 2022

**Hearing participant:** Appellant

**Decision date:** June 14, 2022

**File number:** GE-22-1378

## Decision

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

[2] The Claimant has not shown that she has 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.<sup>1</sup>

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

[5] The Commission says that the Claimant does not have enough hours because she needs 420 hours, but has only 376 hours.<sup>2</sup>

[6] The Claimant disagrees with the Commission's decision because she was on a short term and long term disability leave from work and was unable to obtain the hours she needed to qualifying for EI benefits.<sup>3</sup>

## Matter I have to consider first

### I asked the Commission for more information before the hearing

[7] Before the hearing happened, I wrote to the Commission to ask them to provide more information about an "extension to the qualifying period" and wage loss insurance payments they say the Claimant received.<sup>4</sup>

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<sup>1</sup> 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"; see GD3-3 to GD3-16.

<sup>2</sup> See GD3-26 to GD3-27; see GD3-32 to GD3-33.

<sup>3</sup> See GD2-1 to GD2-10.

<sup>4</sup> See GD5-1 to GD5-3; section 32 of the *Social Security Tribunal Regulations*.

[8] The Commission wrote back and said that the Claimant did not qualify for an extension to the qualifying period because it cannot be extended since she was paid wage loss benefits as part of her paid leave from work.<sup>5</sup> A copy of their response was sent to the Claimant before the hearing.

## Issue

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

## Analysis

### How to qualify for benefits

[10] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.<sup>6</sup>

[11] The Claimant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that she qualifies for benefits.

[12] To qualify, you need to have worked enough hours within a certain timeframe. This timeframe is called the “qualifying period.”<sup>7</sup>

[13] The number of hours depends on the unemployment rate in your region.<sup>8</sup>

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

[14] The Commission decided that the Claimant’s region was Toronto and that the regional rate of unemployment at the time was 7.7%.<sup>9</sup>

[15] This means that the Claimant would need to have worked at least 420 hours in her qualifying period to qualify for EI benefits.<sup>10</sup>

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<sup>5</sup> See GD7-1 to GD7-2.

<sup>6</sup> See section 48 of the EI Act.

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

<sup>8</sup> See section 7(2)(b) of the EI Act and section 17 of the *Employment Insurance Regulations*.

<sup>9</sup> See GD3-22 to GD3-25.

<sup>10</sup> 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.

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

[16] The Claimant agrees that she is part of the economic region of Toronto.<sup>11</sup>

[17] However, the Claimant does not agree about the regional rate of unemployment that is applicable to her. She believes that the rate of unemployment is likely higher. She explained that she did not have any evidence to support her position on this issue.

[18] I preferred the evidence submitted by the Commission on this issue for the following reasons.

[19] First, the Commission submitted a chart from the Government of Canada that identifies specific details about the “Unemployment Rate and Benefit Information” for the period from February 6, 2022 to March 12, 2022.<sup>12</sup> It identifies that the rate of unemployment is 7.7% and that 420 hours of insurable employment are needed to qualify for EI benefits.

[20] Second, the footnote from the chart identifies that the regional rates of unemployment are produced by *Statistics Canada* for use by the Employment Insurance program.<sup>13</sup>

[21] I acknowledge that the Claimant might believe the unemployment rate is higher, but she had no evidence to support this belief.

[22] I find that the Claimant is in the economic region of Toronto where the unemployment rate was 7.7% when she applied for EI benefits. This means that she needs to have worked 420 hours to qualify for EI benefits.

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<sup>11</sup> See GD3-22.

<sup>12</sup> See GD3-23 to GD3-25.

<sup>13</sup> See GD3-25.

– **The Claimant's qualifying period**

[23] 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.<sup>14</sup>

[24] 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.

[25] The Commission decided that the Claimant's qualifying period was the usual 52 weeks. It determined that the Claimant's qualifying period went from February 7, 2021 to February 5, 2022.

[26] The Commission also considered whether the Claimant could qualify for an extension to the qualifying period.<sup>15</sup> However, since the Claimant has received wage loss payments while she was off work, they say she was not entitled to an extension to the qualifying period.<sup>16</sup>

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

[27] The Claimant disagrees with the Commission's decision about her qualifying period. She would like it extended to an earlier date, as early as October 2019.

[28] The Claimant agrees that she received wage loss benefits for her short term disability leave and long term disability leave through her employment benefits. She explained that it started around February 2020 until around the end of July 2021.

[29] I find that the Claimant's qualifying period is from February 7, 2021 to February 5, 2022. She applied for EI benefits on February 6, 2022. This is the 52 week period before the benefit period started.

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

<sup>15</sup> The law allows for an extension to

<sup>16</sup> See GD7-1 to GD7-2; section 8(2) and 8(5) of the EI Act.

[30] I also find that the Claimant was not entitled to an extension of the qualifying period because even though she was injured from a severe motor vehicle accident and unable to work, she did receive assistance from employment benefits and it was insurable employment.<sup>17</sup>

[31] In any event, the Claimant is asking for the qualifying period to extend to October 2019, which is more than 104 weeks. The law only allows an extension up to 104 weeks.<sup>18</sup>

### **The hours the Claimant worked**

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

[32] The Commission decided that the Claimant had worked 376 hours during her qualifying period. The Claimant does not dispute that she only worked 376 hours.

[33] This is consistent with the record of employment on file.<sup>19</sup> Accordingly, I accept it as fact that the Claimant has 376 hours of insurable employment during the qualifying period.

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

[34] I find that the Claimant has not proven that she has enough hours to qualify for EI benefits because she needs 420 hours, but has worked 376 hours.

[35] EI is an insurance plan and, like other insurance plans, you have to meet certain requirements to receive benefits.

[36] In this case, the Claimant does not meet the requirements, so she does not qualify for EI benefits.

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<sup>17</sup> See section 8(2) of the EI Act; section 8(5) of the EI Act.

<sup>18</sup> See section 8(7) of the EI Act.

<sup>19</sup> See GD3-17 to GD3-18.

[37] The Claimant presented very compassionate circumstances, including how difficult her life has been since her motor vehicle accident. She would like an exception made her in case.

[38] The law does not give me any authority or discretion to grant her benefits for compassionate reasons. While I sympathize with the Claimant's situation, I cannot change the law.<sup>20</sup>

## **Conclusion**

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

[40] This means that the appeal is dismissed.

Solange Losier

Member, General Division – Employment Insurance Section

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<sup>20</sup> See *Pannu v Canada (Attorney General)*, 2004 FCA 90.