



Citation: *CR v Canada Employment Insurance Commission*, 2022 SST 1614

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

Decision

Appellant: C. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (474700) dated May 24, 2022 (issued by Service Canada)

Tribunal member: Linda Bell

Type of hearing: Videoconference

Hearing date: September 26, 2022, November 16, 2022, and November 28, 2022

Hearing participant: Appellant

Decision date: December 2, 2022

File number: GE-22-1758

Decision

[1] I am allowing the appeal. I agree with the Appellant (Claimant).

[2] The Claimant is entitled to 35 weeks of Employment Insurance (EI) benefits at a weekly benefit rate of \$522.00. This means the Claimant was underpaid EI benefits.

Overview

[3] The Claimant applied for regular EI benefits. The Commission established the claim (benefit period) effective February 9, 2020.

[4] The Claimant provided the Commission with her hours and weekly salary information when her employer failed to issue a Record of Employment (ROE). The Commission created an interim ROE. It determined she was entitled to 36 weeks of EI benefits at a weekly benefit rate of \$506.00.

[5] The Claimant's employer issued a hand-written ROE on March 10, 2020. The following month the employer submitted an electronic ROE on April 1, 2020. The Commission waited two years before recalculating the Claimant's claims.

[6] Based on the recalculations, the Commission determined the Claimant was only entitled to 18 weeks of benefits at \$506.00 per week. This resulted in a \$9,108.00 overpayment of benefits. The Commission upheld this decision upon reconsideration.

[7] The Claimant appeals to the Social Security Tribunal (Tribunal). She says she should not have to repay the overpayment caused by the Commission's error. She says the ROEs issued by the employer X, are wrong. This is because she always worked full-time hours and was paid \$920.00 per week.

Matters I must consider first

Canada Revenue Agency (CRA) ruling

[8] I asked the Commission to obtain an insurability ruling from CRA. Specifically, I asked that CRA determine the Claimant's total insurable hours and earnings from her employment with X.

[9] On November 18, 2022, the Commission provided supplementary representations in which it lists the details of the CRA ruling. I have considered these submissions as they are relevant to the issues under appeal.

[10] However, I disagree with the Commission when it states, in light of the above ruling, a recalculation of the claim shows that the claimant's entitlement weeks are increased to 35 and the benefit rate would be \$573 per week. I have determined the Claimant is entitled to 35 weeks at \$522.00 per week. I have set out my reasons below.

Issues

[11] How many weeks of benefits is the Claimant entitled to receive?

[12] What is the Claimant's benefit rate?

[13] Was the Claimant overpaid or underpaid EI benefits?

Analysis

Entitlement weeks

[14] I find the Claimant is entitled to 35 weeks of benefits on her February 9, 2020, claim (benefit period).

[15] When determining the weeks of entitlement for regular EI benefits, I considered the following factors.

- The Regional Rate of Unemployment (RRU) in the region where the claimant resides¹
- the dates of the qualifying period
- the hours of insurable employment that fall within the qualifying period, and
- the maximum weeks of entitlement listed in the table in Schedule 1 of the *Employment Insurance Act* (Act)

¹ See section 17(1.1)(b) of the *Employment Insurance Regulations* (Regulations).

– **The RRU in the Claimant’s area of residence**

[16] I find the region that applies to the Claimant’s RRU, is the Toronto region.

[17] The law states the RRU that applies to a claimant is the rate assigned to the economic region where the claimant ordinarily resides.²

[18] The Commission determined the Claimant was residing in the Toronto region when she applied for EI benefits. This is consistent with the address listed on the Claimant’s application for EI benefits.³

[19] The Government of Canada determines the monthly RRU for each region. The RRU in the Toronto region as of February 9, 2020, was 5.5%.⁴ I see no evidence to dispute this. Therefore, I accept the RRU in the Claimant’s region of Toronto, as of the start of her benefit period on February 9, 2020, was 5.5 %.

– **The qualifying period**

[20] The law says the qualifying period is the shorter of:

- a) The 52-week period immediately before the start of the claim (benefit period), and
- b) The first day of an immediately preceding benefit period and ends with the day before the beginning of the new benefit period.⁵

[21] I agree with the Commission’s determination that the Claimant’s qualifying period is from February 10, 2019, to February 8, 2020. The Claimant does not dispute this.

– **Hours of insurable employment**

[22] I find the Claimant has 1794.39 insurable hours in her qualifying period.

² See section 17(1.1) of the Regulations.

³ See page GD3-5.

⁴ The RRU is listed by region and date in the table found at the website, https://srv129.services.gc.ca/ei_regions/eng/rates.aspx?id=2010

⁵ In cases where the claimant has not had a previous benefit period in the preceding year, the qualifying period is the 52-week period immediately before the start of their benefit period as per Subsection 8(1) of the Act.

[23] Based on the CRA ruling, the Claimant has 1820 insurable hours from X during the 53-week period from February 3, 2019, to February 7, 2020. The Claimant says she worked the same number of hours each week. This means she worked an average of 34.34 hours each week ($1820 \text{ hours} \div 53 \text{ weeks} = 34.34 \text{ hours per week}$).

[24] As set out above, the Claimant's qualifying period is the 52 weeks from February 10, 2019, to February 8, 2020. This means she has 1785.68 hours of insurable employment from X in her qualifying period ($52 \text{ weeks} \times 34.34 \text{ hours} = 1785.68 \text{ hours}$).

[25] The documents on file show the Claimant worked for another employer, X, during her qualifying period. That Record of Employment (ROE) lists her first day worked as August 20, 2018, her last day paid as September 7, 2019, and 102 insurable hours. This ROE also lists weekly earnings in box 15C, which indicates the Claimant only worked one week during her qualifying period, the week starting September 1, 2019. The Claimant confirmed that her hourly rate of pay was approximately \$15.28. So I find the Claimant had 8.71 hours of insurable employment from X in her qualifying period.

[26] I see no evidence on file that the Claimant worked a third job or had other insurable hours. So I find as fact the Claimant has 1794.39 insurable hours in her qualifying period from February 10, 2019, to February 8, 2020.

– **Weeks of entitlement**

[27] The law says the calculation used to determine the number of weeks a claimant qualifies for EI benefits is purely mathematical. This decision is **not** discretionary.⁶

[28] The law also says the table in Schedule I of the Act sets out the maximum number of weeks of benefits the Claimant can receive. This table lists the entitlement weeks based on the Claimant's RRU and the number of hours of insurable employment in their qualifying period.⁷

⁶ See CUB 63948.

⁷ See section 12(1) of the Act.

[29] In this case, the RRU in the Toronto region as of February 9, 2020, was 5.5%. Schedule I clearly sets out that with a RRU of 6% and under, a claimant with insurable hours between 1785 and 1819 is entitled to 35 weeks of EI benefits.

[30] The Claimant has 1794.39 hours of insurable employment in her qualifying period. This means she is only entitled to 35 weeks of EI benefits.

Benefit Rate

[31] I find the Claimant's weekly benefit rate is \$506.00.

[32] For claimants whose benefit period begins before September 27, 2020, the rate of weekly benefits is 55% of a claimant's weekly insurable earnings.⁸

[33] The **weekly insurable earnings** are determined by using the total insurable earnings in a claimant's best weeks of earnings in their qualifying period divided by the number of best weeks. The **weekly benefit rate** is 55% of that number.

[34] The number of best weeks, whether consecutive or not, ranges from 14 to 22 weeks depending on the claimant's regional rate of unemployment in their ordinary place of residence at the beginning of their benefit period.⁹

[35] As set out above, the Claimant's RRU was 5.5%. This means the Claimant's benefit rate is 55% of her weekly earnings based on the average of her best 22 weeks. The Claimant says her employer always paid her the same amount for each week she worked, which she says was approximately \$920.00 per week.

[36] CRA determined the Claimant had \$50,293.20 insurable earnings during the 53-week period from February 3, 2019, to February 7, 2020. So her gross weekly insurable earnings were \$948.93. This means her benefit rate is **\$522.00**, which is 55% of \$948.93 (rounded up to the nearest dollar).

⁸ See section 14(1) of the Act.

⁹ See section 14(4) of the Act.

Overpayment or underpayment of EI benefits

[37] In this case, the parties agreed to set up the claim using an interim ROE and when the Commission received the ROE it would recalculate the claim. If there was an underpayment, the Commission would reimburse the Claimant and if there was an overpayment the Claimant would repay it.

[38] The Act states the Commission may reconsider a claim for benefits within 36 months after the benefits have been paid or would have been payable.¹⁰

[39] The Federal Court of Appeal recognizes the Commission can't review changes to claims at the exact time they happen. It is precisely for that reason that the Act allows the Commission time to rescind or amend any decision given in any particular claim for EI benefits.¹¹

[40] The Commission conducted its review within the required time limit. The claim for benefits started February 9, 2020. The Commission completed its review, amending the weeks of entitlement and benefit rate, 25 months later, on March 9, 2022. This is within the allowable 36-month time limit.

[41] CRA issued a ruling stating the Claimant has 1820 hours and \$50,293.20 insurable earnings during the 53-week period from February 3, 2019, to February 7, 2020. The Claimant testified that she won't be appealing the CRA ruling.

[42] The Commission states it paid the Claimant 36 weeks at \$506.00, which totals \$18,216.00. I have reviewed the spreadsheet provided by the Commission listing the payment full text screens. It shows the Commission increased the weekly benefit rate to \$573.00 and returned it back to the original \$506.00 benefit rate on the same date, March 9, 2022. It appears that no benefits were paid \$573.00 per week.

[43] In its submissions, the Commission states that based on its recalculation with the ROEs issued by the employer, the Claimant was overpaid by 18 weeks resulting in a

¹⁰ See section 52 of the Act.

¹¹ *Canada (Attorney General) v Landry*, A-532-98.

\$9,108.00 overpayment. This is consistent with the March 12, 2022, Notice of Debt on file. This is also consistent with 18 weeks paid at \$506.00 ($18 \times \$506.00 = \$9,108.00$).

[44] As set out the above, the Claimant is entitled 35 weeks of benefits at the weekly rate of \$522.00. This totals \$18,270.00. This means the Claimant was underpaid by \$54.00 ($\$18,270.00 - \$18,216.00 = \54.00).

[45] I recognize the Commission's oversight and subsequent recalculations caused the Claimant an enormous amount of stress and worry when faced with the possibility of having to repay such a large overpayment. It is truly unfortunate that the Commission failed to recognize the employer's errors on the ROEs when it conducted its review. I commend the Claimant for her efforts with pursuing her appeal to the Tribunal.

Conclusion

[46] The appeal is allowed.

[47] The Claimant is entitled to 35 weeks of EI benefits at the weekly rate of \$522.00. This means she is entitled to an additional \$54.00 for EI benefits.

Linda Bell

Member, General Division – Employment Insurance Section