



Citation : *DP v Canada Employment Insurance Commission*, 2022 SST 1276

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant:

D. P.

Respondent:

Canada Employment Insurance Commission

Decision under appeal:

Canada Employment Insurance Commission
reconsideration decision (0) dated September 7, 2022
(issued by Service Canada)

Tribunal member:

Solange Losier

Type of hearing:

Teleconference

Hearing date:

December 7, 2022

Hearing participant:

Appellant

Decision date:

December 9, 2022

File number:

GE-22-3019

Decision

[1] The appeal is dismissed. This means that I disagree with the Claimant.

[2] The Claimant is only entitled to receive 36 weeks of Employment Insurance (EI) regular benefits. His claim cannot be set up as an EI-Emergency Response Benefit (EI-ERB).

Overview

[3] D.P. is the Claimant in this case. He stopped working on February 25, 2020. A few days later, he applied for EI regular benefits on February 28, 2020.¹ The Canada Employment Insurance Commission (Commission) made his benefit period effective on March 1, 2020.

[4] The Commission decided that the Claimant was entitled to 36 weeks of EI regular benefits. After the 36 weeks of EI regular benefits ended, the Claimant asked the Commission to reconsider and saying that his claim should have been established as EI-ERB claim.²

[5] The Commission decided that his EI claim was properly set up and he could not be paid more than 36 weeks of EI regular benefits.³

[6] The Claimant appealed the Commission's decision and said that he should be able to get 50 weeks of EI-ERB instead, instead of 36 weeks of EI regular benefits.⁴

¹ See application for EI regular benefits at GD3-3 to GD3-28.

² See reconsideration request at GD3-44 to GD3-45.

³ See initial decision at GD3-43 and reconsideration decision at GD3-51.

⁴ See notice of appeal forms at GD2-1 to GD2-9.

Matter I have to consider first

This case was returned to the General Division

[7] This case was previously heard, and a decision was made by the General Division (GD) of this Tribunal.⁵ The Claimant then appealed the GD decision to the Appeal Division (AD) of this Tribunal.⁶ The AD allowed the appeal to go forward.⁷

[8] The AD held a hearing and agreed with the parties that an error happened at the GD level.⁸ The AD then decided that the case had to be returned to the GD for “reconsideration”.

[9] At the new GD hearing, the Claimant said that he understood his case was being returned to the GD only to consider one of the resolutions he wanted. He explained that it had been a long process and it was frustrating.

[10] I explained to the Claimant that I reviewed the AD decision and it was returned to the GD for a brand new hearing.⁹ I acknowledged the Claimant’s concerns and told him that I would expedite this decision given the amount of time he has been waiting.

The Tribunal has no authority to compel the Commission to attend

[11] The Claimant said that the Commission has failed to attend the hearing – again. He is asking the Tribunal to find in his favour because they did not attend.

[12] I explained to the Claimant that the Tribunal has no authority in law to compel or require parties to attend the hearing. It is their choice. In this case, the Commission

⁵ See GD decision dated March 10, 2022 at AD01A-1 to AD01A-6.

⁶ See request for leave to appeal at AD01-1 to AD01-8.

⁷ See leave to appeal decision dated May 4, 2022.

⁸ See AD decision dated September 6, 2022. The AD said that the GD made a error because they did not follow a fair process.

⁹ The Claimant emailed the Tribunal before the hearing took place – see RDG03 and RGD05. I wrote back to him to let him know that a new GD hearing was taking place and he could submit new documents at any time before or at the hearing – see RGD04 and RGD06.

decided to put their arguments in writing and as a party to the appeal, they are allowed to do that.

Issues

[13] Whether the Claimant's EI regular benefit claim should have been set up as an EI-ERB claim instead?

[14] Is the Claimant entitled to more than 36 weeks of EI regular benefits?

Analysis

[15] The law outlines the maximum number of weeks for which EI benefits may be paid. It is calculated from looking at the table in "Schedule I"¹⁰ and the regional rate of unemployment and the number of hours in the Claimant's qualifying period.¹¹

[16] The rate of unemployment that applies is determined from the average of the seasonally adjusted monthly rates of unemployment, for the region in which the Claimant was ordinarily resident, for the last three-month period for which statistics were produced by Statistics Canada that precedes the effective date of the benefit period.¹²

[17] In March 2020, the Government of Canada introduced EI-ERB as a temporary measure during the covid19 pandemic.¹³ The new law said that Claimants who have established a benefit period for EI regular benefits between March 15, 2020, and September 26, 2020 will get EI-ERB instead. This became effective as of March 15, 2020.

[18] In this case, the Claimant has to prove that his EI claim for regular benefits should have been established as a claim for EI-ERB benefits. If not, he has to prove that he was entitled to more than 36 weeks of EI regular benefits.

¹⁰ A copy of Schedule I table can be found at GD4-9.

¹¹ See subsection 12(2) of the Act.

¹² See section 17 of the Employment Insurance Regulations (Regulations).

¹³ See subsection 153.8 of the Act says that no benefit period can be established with respect to any of the benefits referred to in paragraph 153.5(3)(a) of the Act. Paragraph 153.5(2)(b) states that a claimant means a person who could have had a benefit period established on or after March 15, 2020.

[19] First, I will start with whether the Claimant's EI claim should have been established as an EI-ERB claim instead. Then I will look at how many weeks of benefits the Claimant is entitled to receive based on the law.¹⁴

EI-ERB Claims

[20] The Claimant testified that he stopped working on February 25, 2020 and he applied for EI regular benefits on February 28, 2020. His benefit period started on March 1, 2020.

[21] The Claimant is asking the Tribunal to change his EI regular benefit claim to an EI-ERB claim because this would allow him to collect additional weeks. He is experiencing financial hardship and needs the extra money.

[22] I find that the Claimant's EI claim was properly established as an EI regular benefit claim based on the date of his application, which was February 28, 2020. His benefit period started on March 1, 2020, so it cannot be changed to start on March 15, 2020.

[23] I have no discretion or authority in law to change his benefit period from March 1, 2020 to March 15, 2020, even though he has a financial need.

[24] I acknowledge that if the Claimant's benefit period had started anytime between March 15, 2020 and September 26, 2020, then it would have been established as an EI-ERB claim.

[25] The Claimant made his request for EI-ERB on December 14, 2021, but I find that it was done after the deadline set out in law.¹⁵ The deadline to make a claim for EI-ERB was December 2, 2020.¹⁶

¹⁴ See subsection 12(2) of the Act.

¹⁵ See GD3-44 to GD3-45.

¹⁶ See section 153.8(2) of the Act.

Coercion to apply

[26] The Claimant said that he was coerced by an EI agent to apply for EI regular benefits a few days after he was laid off from his job due to covid19. Because of that, he says he should be able to get EI-ERB benefits.

[27] I was not persuaded by the Claimant's argument that he was coerced by a Service Canada agent into applying for EI regular benefits. I find it more likely than not, that the Claimant contacted Service Canada for information and was told to come in and apply. Neither the Claimant, nor the Commission could have known that the EI-ERB would have been a better option for him if he had waited until March 15, 2020.

[28] Ultimately, the Claimant made a choice to go into a Service Canada centre and apply for EI regular benefits. He was not forced to do this. He could have waited a few weeks before applying – which he said was his usual practice over many years.

Area of Residence

[29] The parties agree that the area of residence and EI economic region is Calgary, Alberta.¹⁷ This Claimant testified he was living in Calgary at the time of his application for EI regular benefits.

[30] Accordingly, I accept that the Claimant's EI economic region was Calgary, Alberta.

Rate of Unemployment

[31] The Commission wrote that for the Calgary region the unemployment rate was 7.5% for the week beginning March 1, 2020.¹⁸

¹⁷ See employment insurance economic region at GD3-36.

¹⁸ See employment insurance rate information at GD3-38 and GD4-1 to GD4-9.

[32] The Claimant disagrees and says that the unemployment rate increased significantly after the covid19 pandemic was announced. He said that he believes that unemployment rate was around the 15% range.

[33] I was not persuaded by the Claimant's testimony on this issue because he has not provided any supporting evidence that would show the unemployment rate was 15%.

[34] The unemployment rate that matters is the rate it was when he applied and the benefit period became active. While it may have increased later, that is not applicable.

[35] I preferred the Commission's evidence on this issue because they provided detailed and reliable information about the unemployment rate as of March 1, 2020.¹⁹

[36] I find that the unemployment rate for the EI economic region of Calgary was 7.5% for week of March 1, 2020. This is based on the "3-Month Seasonally Adjusted Unemployment Rate by EI Region".²⁰ I have no authority to change or increase the unemployment rate.

Hours

[37] There are three Records of Employment (ROE's) in the file.²¹

[38] The Commission says that the Claimant has a total of 1,688 hours of insurable employment during his qualifying period (which ran from March 3, 2019 to February 29, 2020).

[39] This a summary of the ROE's that are part of the file:

ROE #1:	208 hours	GD3-29
ROE #2:	525 hours	GD3-31
ROE #3:	955 hours	GD3-33
	Total: 1,688 hours	

¹⁹ See GD6-1 to GD6-8.

²⁰ See GD6-5 to GD6-8.

²¹ See ROE's at GD3-29 to GD3-34.

[40] I asked the Claimant about whether he agreed with the total number of hours (1,688) as submitted by the Commission and shown on the ROE's.

[41] The Claimant said that he was not sure but he believes the hours are "pretty close". He also said that he had not worked anywhere in the 52-week period prior to his application for EI regular benefits.

[42] The Claimant says that I should be able to use hours outside of the 52-week qualifying period, so that he could have more hours.

[43] I find that I cannot use any hours he may have accumulated outside of his qualifying period (March 3, 2019 to February 29, 2020). He had no other hours during the qualifying period. The court has already said that hours accumulated outside of the qualifying period cannot be included.²²

Weeks of Entitlement

[44] The Claimant said he should be able to collect 50 weeks of benefits because that is why EI-ERB claimants got.²³ He agrees that he was paid 36 weeks of benefits but says that he is still owed 14 weeks.

[45] I find that the Claimant was only entitled to receive 36 weeks of EI regular benefits because he had 1,688 hours of insurable employment and the rate of unemployment for the Calgary region when he applied was 7.5%.²⁴

Damages

[46] The Claimant wants damages for his hardship and is asking the Tribunal to provide a monetary settlement amount. He says that due to unfair practices and the unprecedented nature of the pandemic, he should be entitled to them.

²² See *Haile v Canada (Attorney General)*, 2008 FCA 193.

²³ See payment chart at GD3-41.

²⁴ See section 12(2) of the Act and Schedule I at GD4-9.

[47] I find that the Tribunal does not have authority to award damages. As noted in the AD decision, “neither the Appeal Division nor the General Division has the authority to order any type of monetary settlement or money in the form of damages”.²⁵

Overpaying EI premiums

[48] The Claimant explained that he has worked in construction for over 35 years. He is an ironworker, and some job contracts are longer than others. Because of this, he often works for multiple employers during the year. So, he ends up paying EI premiums with each new employer. He says this usually results in a refund of EI premiums he has overpaid around tax time. He explained that he once got advice from an accountant who told him not to file his taxes for a few years. Once he filed his taxes, he found out that there was a statute of limitation, and he could not collect overpaid EI premiums past 4 years. He says this is unfair as the government can collect debt owing for 20 years and that there should be a centralized system.

[49] I acknowledge the Claimant’s concerns. I am bound by the Employment Insurance Act and Employment Insurance Regulations. I do not have any authority in law to give him the remedy he is seeking (refund of overpaid EI premiums past 4 years).

Conclusion

[50] The appeal is dismissed. The Claimant cannot establish an EI-ERB claim because his EI claim for regular benefits was established before that law was in effect. Also, the Claimant correctly received 36 weeks of EI regular benefits.

Solange Losier
Member, General Division – Employment Insurance Section

²⁵ See para 61 of the AD Decision dated September 6, 2022.