Citation: *RP v Canada Employment Insurance Commission*, 2022 SST 1699

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	R. P.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (459452) dated April 4, 2022 (issued by Service Canada)

Tribunal member:	Paul Dusome
Type of hearing:	Videoconference
Hearing date:	December 12, 2022
Hearing participant:	Appellant
Decision date:	December 23, 2022
File number:	GE-22-1750

Decision

[1] The appeal is dismissed.

Overview

[2] The Claimant is an American citizen who worked in Canada under a work permit expiring in August 2021. He worked in Canada for an employer from September 3, 2019, to May 12, 2020. He applied for employment insurance (EI) benefits on September 7, 2021. When he made the application he had already moved back to the United States, and applied from there. The Commission determined he was entitled to receive 14 weeks of EI benefits. The Claimant says that he is entitled to more weeks of benefits.

Matter I have to consider first

[3] The Claimant had raised the *Canadian Charter of Rights and Freedoms* (Charter) as a ground of appeal. He said that the EI rules used to calculate his weeks of benefit were in violation of the Charter. The Claimant used the Tribunal`s Charter challenge process to review that issue. The Tribunal member dealing with the Charter challenge reviewed the Claimant`s materials and granted a few adjournments to allow more time to present his case. That member ruled that the Claimant`s materials did not meet the requirements to have a hearing on the Charter issue. He had not shown an arguable ground of discrimination to support a Charter challenge. She returned the appeal to the regular process.

[4] At the first hearing date of the regular process, the Claimant attended before me prepared to deal with the Charter issue. I explained that the Charter issue was closed at this stage of the process. The hearing that day was to deal with the issue of the number of weeks of EI benefits he should receive. He requested an adjournment because he had not prepared for that issue. I granted the adjournment for the reasons set out in GD22. I spent time reviewing with the Claimant the issues that I could and could not deal with at the adjourned hearing (outlined in GD22). Since the Tribunal has

ruled on the Claimant`s Charter challenge, I will not be dealing with the Charter in this decision.

Issue

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

Analysis

[6] The starting point is the rule that a claimant is not entitled to receive EI benefits while he is outside Canada. Exceptions to that rule are allowed in limited circumstances.[1]

[7] Section 55 of the Regulations deals with a number of exceptions to the above rule. One of them is this. A person who resides outside Canada may receive EI benefits if they meet the following conditions:

- They are not self-employed
- The claim does not involve insurable employment outside of Canada
- The claimant resides in a state of the United States of America that is next to Canada
- The claimant is available for work in Canada
- The claimant is able to report personally to an office of the Commission in Canada and does so when requested.[2]

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[1] See *Employment Insurance Act*, section 37(b). Exceptions are only allowed if made by prescribed Regulations made under the Act. The only prescribed Regulations relating to persons outside Canada is *Employment Insurance Regulations,* section 55.
[2] See *Employment Insurance Regulations,* section 55(6)(a). A claimant who meets these conditions still has to prove that he also meets other qualification criteria. That is not an issue in this appeal.

[8] A claimant who meets those conditions (and any other qualifying conditions) is entitled to a number of weeks of EI benefits determined under the Regulations.[3]

[9] In dealing with the above rules, it will be necessary to consider other rules that are involved in determining the number of weeks of benefits to be paid. Those rules are about

- the benefit period during which benefits may be paid
- for the qualifying period, and its possible extension (or increase)
- the hours of insurable employment (for simplicity, I will abbreviate this expression to "hours" in the rest of the decision)

I will set out those rules below when reviewing the Commission's decision to pay 14 weeks of benefits.

[10] The Claimant has raised a number or arguments that the Tribunal cannot give effect to within its limited legal authority (jurisdiction). I will deal with those arguments below, after ruling on the merits of the appeal.

Findings of fact

[11] The Claimant is an American citizen who worked in Canada under a work permit expiring in August 2021. He moved here with his family to take a job. He worked in Canada for an employer from September 3, 2019, to May 12, 2020. The employer let him go due to a restructuring. The employer's Record of Employment showed that the Claimant had worked 1448 hours from September 3, 2019, to May 12, 2020. The Claimant confirmed in testimony that this information was correct.

[12] The Claimant stated in his notice of appeal and in his testimony that he had received incorrect information from the Commission about the number of weeks of

[3] See *Employment Insurance Regulations,* section 55(7). The regular benefits the Claimant applied for fall under section 55(6) and (7)(b), where the Table sets out the number of weeks of benefits based on the hours of insurable employment.

benefits he would receive. On April 6, 2021, the Commission told him that he would receive 25 weeks of benefits if he applied from outside Canada before September 19, 2021. In a later conversation, he was told he would receive 30 weeks of benefits if he applied from outside Canada. The Commission never told him that he would receive fewer weeks of benefits because he was outside Canada. The government website giving information about EI was unfriendly. Based on this incorrect information, he delayed in applying for benefits.

[13] He initially remained in Canada as he did not want to take a plane with his children during the early COVID pandemic before vaccines were available. His work permit to remain in Canada expired in August 2021. He also had to return to America at that time to maintain his American health insurance. Having a work permit also made it more difficult to find work in Canada. He and his family moved back to the United States on August 29, 2021.

[14] The Claimant applied for EI benefits on September 7, 2021. When he made the application, he applied from the United States over the internet. The Commission paid him EI benefits from September 5 to December 11, 2021. In its first letter dated December 14, 2021, the Commission said that his employment insurance had ended. It said he was entitled to 14 weeks of benefits, so that no further benefits were payable until he worked another 420 hours. This was the first time he had been told that he would only receive 14 weeks of benefits.

Ruling

– **Regulations section 55(7) applies to the Claimant**

[15] There were amendments made by Bill 30 to section 55(5) and (6) of the Regulations to deal with the COVID-19 pandemic.[4] These amendments became effective on September 26, 2021, after the Claimant applied for EI benefits. Those amendments are not relevant to this appeal, because I must apply the law as it was

[4] See Bill 30, *Budget Implementation Act, 2021, No. 1*, S.C. 2021, c. 23, sections 349 and 351. This Act made changes to section 55 of the Regulations but those changes do not affect the outcome of this appeal.

when the Claimant did apply. Even if they were relevant, they would not change the result in this decision.

[16] The Claimant also referred to Bill C-24.[5] That Bill does not assist the Claimant. That Bill did not make any changes to section 55 of the Regulations. The changes that the Claimant cites deal with the maximum number of weeks during which benefits will be paid. The Claimant raised this in support of his argument based on fairness, and on reciprocity. I will deal with that argument, and others, after ruling on the merits of this appeal.

[17] The Commission did not dispute that the Claimant meets the criteria of section 55(6). I see no evidence in the file or from the Claimant's testimony that casts any doubt on the Claimant meeting the criteria. I find that the Claimant did qualify to receive EI benefits under section 55(6)(a) of the Regulations. It was necessary to establish this first in order to proceed to the issue of the number of weeks of benefit the Claimant was entitled to receive. The number of weeks varies depending on which category the claimant falls under. For most regular benefits, the number of weeks of benefits varies depending on the rate of unemployment in the claimant's region, and the number of hours.[6] For pregnancy or sickness benefits, the maximum is 15 weeks.[7] Since the Claimant is outside of Canada, he falls under section 55 of the Regulations, rather than under the general rule for regular benefits.

[18] In order to determine the number of weeks of benefits, it is necessary to deal with what is called the benefit period, the qualifying period, and how the number of hours is decided. Once the outcome of those matters has been determined, then the number of

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[5] See Bill C-24, *An Act to amend the Employment Insurance Act (additional regular benefits), the Canada Recovery Benefits Act (restriction on eligibility) and another Act in response to COVID-19*, S.C. 2021, c. 3. The amendments to the *Employment Insurance Act* came into force on March 17, 2021, so it could apply to the Claimant. The Claimant referenced the amendments to section 12 of the *Employment Insurance Act*. The rules in section 12 of the *Employment Insurance Act* before and after the amendments are not applicable in this appeal. Those rules are limited by section 37(b) of the *Employment Insurance Act* which does not allow payment of benefits to persons outside Canada, except as prescribed by regulation. Section 55 of the Regulations was not amended by Bill 24. Section 55 was amended by Bill 30, as noted in the previous footnote. Section 55(7) sets the number of weeks of benefits the Claimant can receive.
[6] See *Employment Insurance Act*, section 12(2) and the Table in Schedule 1 to the Act.
[7] See *Employment Insurance Act*, section 12(3)(a) and (c).

weeks of benefits the Claimant can receive can be decided. I will deal with these under the following subheadings.

[19] I note that the Claimant, in his discussions with the Commission, in his request for reconsideration, and in his testimony, said he was acquainted with the calculations of his qualifying period and the 759 hours. He did not dispute those calculations.

– **The benefit period**

[20] It is necessary to determine the beginning of the benefit period, as that will fix the start of the qualifying period discussed under the next subheading. The benefit period is the time during which a claimant may be paid benefits. It is normally 52 weeks.[8] That does not mean that a claimant will receive 52 weeks of benefits. The number of weeks actually payable will vary. This is important, as at some points the Claimant said that he should be entitled to 50 weeks of benefits, like people inside Canada. At other points, he recognized that he might receive up to 50 weeks. The benefit period is not the number of weeks of benefits that a claimant will definitely receive. Under the EI rules, many will receive fewer weeks.

[21] In this appeal, the benefit period started on September 5, 2021. That is the Sunday of the week in which the Claimant made his application for benefits. He applied on Tuesday, September 7, 2021.[9]

– **The qualifying period**

[22] The qualifying period is normally the 52 weeks prior to the beginning of the benefit period.[10] The number of hours a claimant has accumulated in that period is used to determine the number of weeks of benefit payable. I will review the number of hours under the next subheading.

[23] In this appeal, the Claimant's normal 52-week qualifying period would have run from September 6, 2020, to September 4, 2021. In that period, the Claimant had no

[8] See *Employment Insurance Act*, section 10(2).
[9] See *Employment Insurance Act*, section 10(1)(b).
[10] See *Employment Insurance Act*, section 8(1)(a).

hours, so he would have received no EI benefits if that was his qualifying period. The Commission extended his qualifying period back to February 23, 2020. The Claimant does not dispute the calculation of the extension made by the Commission. I see no evidence to contradict the extension to February 23, 2020.

– **The hours**

[24] Claimants are required to have a minimum number of hours in order to receive EI benefits. Those hours must be accumulated during the qualifying period.[11] The number of hours can also impact the length of time during which benefits will be paid. For the Claimant, the minimum number of hours is 420 under section 55(7) of the Regulations.[12]

[25] The Claimant accumulated 1448 hours during his time with the employer, from September 3, 2019, to May 12, 2020. Not all of those hours fall within the Claimant's qualifying period. That period began on February 23, 2020. Only hours accumulated from that date forward can be used to calculate how many hours the Claimant had in his qualifying period. The number of hours from February 23 to May 12, 2020, totals 759. This is not disputed by the Claimant, and I see no evidence that would change the number of hours.

– **The number of weeks of EI benefits payable**

[26] The Claimant's entitlement to receive EI benefits, and the number of weeks of benefits he is entitled to receive, both are determined by section 55 of the Regulations. The Table that is part of section 55(7) shows that with 759 hours, the Claimant is entitled to 14 weeks of benefits. That is the number of weeks he did receive. That means that the Commission's decision to pay for that number of weeks is correct.

Arguments I cannot deal with in making the above decision

[27] The overall theme of the Claimant's arguments is that the legislation is unfair in limiting the number of weeks of benefits he could receive. Before dealing with the particular arguments, I will point out a rule that the Tribunal must follow. I cannot decide

[11] See *Employment Insurance Act*, section 7(1)(b).
[12] See *Employment Insurance Regulations*, section 55(7)(b).

an appeal on the basis of sympathetic circumstances or broad considerations of fairness, as commonly understood. I must decide the appeal on the basis of the proven facts and the EI legal rules that apply.[13] That is what I have done above.

[28] That means that I cannot take into account a number of the factors the Claimant relied on. One is that the Commission's decisions and Representations (GD4) did not take into account his family situation, such as protecting his children from COVID by not flying back to America when his job ended, his work permit expiring in August 2021, and the loss of U.S. health insurance if he remained in Canada. He said that the Commission denied him benefits when he needed them most. He said that the Commission ignored these extenuating circumstances. The Commission too is not allowed to decide applications based on sympathetic circumstances or fairness.

[29] Another factor is that there was a lack of transparency on how the EI program works. Material on the Commission's and the federal government's websites was not clear. The Commission gave him wrong advice on the number of weeks of benefits he would receive. One time it was 25 weeks; the next time it was 30 weeks. The Commission did not disclose that he would only receive 14 weeks of benefits until after those 14 weeks had ended. Had he known about the number of weeks, he would have stayed in Canada to receive additional weeks of benefit. There are additional reasons why I cannot deal with this factor, beyond not being able to decide on the basis of sympathy or fairness. The law is clear that claimants for EI benefits have an obligation to take reasonably prompt steps to determine entitlement to benefits and to ensure their rights and obligations under the Act.[14] This is especially important when, as here, the Claimant has received conflicting information from the Commission. It was his obligation to clarify his rights, particularly when the Commission had given him conflicting information. In addition, misinformation by the Commission is no basis for relief from the operation of the Act.[15]

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[13] See *Canada (Attorney General) v Shaw*, 2002 FCA 325; *Canada (Attorney General) v Knee*, 2011 FCA 301; and *Nadji v Canada (Attorney General)*, 2016 FC 885.
[14] See *Canada (Attorney General) v Carry*, 2005 FCA 367.
[15] See *Canada (Attorney General) v Shaw*, 2002 FCA 325.

[30] The Claimant argued that because he had paid into the EI program, he was therefore entitled to receive EI benefits. At the hearing the Claimant said that because he contributed, he was entitled regardless of what the law says. Both of those statements are incorrect. Employment insurance is not an automatic benefit. A claimant must meet certain requirements to qualify. In this appeal, the Claimant applied for benefits a year and four months after his job ended. Under the normal 52-week qualifying period starting on September 6, 2020, he had zero hours. He would not have qualified for any EI benefits. He did qualify because his qualifying period was extended back to February 23, 2020. He worked for about three months after that date, and accumulated 759 hours. With respect to saying that he was entitled to benefits regardless of what the law says, my role is to apply the law, not to ignore it. If I did ignore the law and grant benefits, my decision would be voidable for two reasons. I would have made a decision based on an error of law, and the decision would have been outside of my jurisdiction.

[31] The Claimant argues that the law discriminates against people residing outside Canada. The law is unjust and contrary to the employment equity principles of Canada. He said in his notice of appeal that he only received 14 weeks, while someone in Canada who worked for 120 hours and paid premiums for those hours, gets 50 weeks of regular benefits. These arguments do not succeed for the following reasons.

[32] The Claimant's Charter challenge on the ground of discrimination based on residence has been dismissed. Residence is not a prohibited ground of discrimination under the *Canadian Human Rights Act*, so I cannot consider the Claimant's allegation of discrimination. The law does properly make distinctions between people on the basis of their residence. People living in one province are liable to pay provincial income tax to that province, but not to other provinces. Drivers' licences are governed by the law of the driver's province of residence. In the EI context, as noted above, for most regular benefits, the number of weeks of benefits varies depending on the rate of

unemployment in the claimant's region, and the number of hours.[16] That ties the level of benefits to the claimant's place of residence.

[33] If a law is unjust, that may be a reason for changing it. But being unjust does not justify those responsible for administering the law to ignore it or to refuse to apply it.

[34] The employment equity principles of Canada refer to Canadian laws on employment equity. The principal law gives its purpose as "to achieve equality in the workplace so that no person shall be denied employment opportunities or benefits for reasons unrelated to ability and, in the fulfilment of that goal, to correct the conditions of disadvantage in employment experienced by women, Aboriginal peoples, persons with disabilities and members of visible minorities…"[17] Place of residence does not appear in the list of disadvantages sought to be corrected. Employment equity does not assist the Claimant.

[35] The claim that someone in Canada who worked for 120 hours and paid premiums for those hours, gets 50 weeks of regular benefits, is wrong. The minimum number of hours needed to qualify for benefits has been 420 hours, both before and after the COVID amendments. As noted above, the number of weeks of benefits varies. Before COVID, a claimant who had 420 hours would only receive 26 weeks of benefit if the rate of unemployment in his region was between 13 and 14 per cent. A claimant with 700 to 769 hours would receive 14 weeks of benefit if the unemployment rate in their region was six percent or less. The maximum number of weeks of benefits ranged from 36 to 45.[18]

[36] Lastly, the Claimant cited the reciprocity principle as follows: "This indefensible practice goes against the reciprocity principle with the USA, which in a similar scenario recognizes the worker's entitlement to the employment insurance benefits he/she paid for regardless of where he/she lives: USA or Canada." Specifically, he argued that the failure to apply the COVID amendments in Bill C-24[19] to section 55 of the Regulations

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[16] See *Employment Insurance Act*, section 12(2) and the Table in Schedule I to the Act.
[17] See *Employment Equity Act*, S.C. 1995, chapter 44, section 2.
[18] See *Employment Insurance Act*, Schedule I.
[19] See paragraphs [15] and [16], and footnotes 4 and 5 above.

was a violation of this principle. At the hearing the Claimant stated that I can consider the reciprocity principle, even if it is outside the Tribunal's jurisdiction. In international relations, the principle states that the benefits or penalties granted by one state (A) to the citizens or legal bodies of another state (B) should be granted by state B to citizens or legal bodies of state A. Consideration of the reciprocity principle is definitely outside my jurisdiction. I therefore cannot consider the principle in deciding this appeal. Even if I could consider the reciprocity principle, I have no evidence of US employment insurance law to compare against Canadian employment insurance law to determine if the principle has been violated.

[37] The outcome of the reasons set out above is that the Commission was correct to fix the Claimant's entitlement at 14 weeks of EI benefits.

Conclusion

[38] The appeal is dismissed.

Paul Dusome
Member, General Division – Employment Insurance Section