



Citation: *KM v Canada Employment Insurance Commission*, 2023 SST 357

**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 (0) dated January 12, 2023 (issued by Service Canada)
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Tribunal member:	Marc St-Jules
Type of hearing:	Teleconference
Hearing date:	March 6, 2023
Hearing participant:	Appellant
Decision date:	March 20, 2023
File number:	GE-23-275

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant. The Tribunal agrees the Appellant should benefit from the maximum possible extension to the qualifying period. The problem is that there are no additional insurable hours in the maximum extended qualifying period.

[2] Because of this, the Appellant hasn't shown that she has worked enough hours to qualify for Employment Insurance (EI) employment insurance benefits.

Overview

[3] The Appellant was injured in a car accident in October 2019. The accident was serious enough that she was only able to return to work in August 2021. While she was off work, she received short- and long-term disability payments through her employer.

[4] The Appellant worked from August 2021 to October 2021. The Appellant applied for regular Employment Insurance (EI) benefits in February 2022. Her Record of Employment (ROE) showed 376 insurable hours.¹

[5] The Respondent, the Canada Employment Insurance Commission (Commission) decided that the Appellant needed 420 insurable hours but had only accumulated 376. It decided that the Appellant did not qualify for benefits.

[6] The Appellant appealed this decision to the Tribunal's General Division. The General Division found that the Appellant did not work enough hours to qualify for EI benefits. The General Division also found that the Appellant's qualifying period could not be extended because she received wage loss benefits, and this was considered insurable employment.

[7] The Appellant appealed this decision to the Appeal Division (AD), which found that the General Division made an error of law when it found that the Appellant's qualifying period could not be extended. The Appeal Division returned that matter to the

¹ See GD3 page 17.

General Division to reconsider whether the Appellant was on employer-paid leave and if not, whether she has sufficient hours of insurable employment in an extended qualifying period.

Issue

[8] Has the Appellant worked enough hours to qualify for EI benefits?

Analysis

How to qualify for benefits

[9] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.² The Appellant 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.

[10] To qualify, you need to have worked enough hours within a certain time frame. This time frame is called the “qualifying period.”³

[11] In general, the number of hours depends on the unemployment rate in your region.⁴ There are exceptions to this. The government introduced legislation changing this for a limited time.⁵ Without this temporary change, the Appellant would have required more hours.

The Appellant’s qualifying period

[12] As noted above, the hours counted are the ones the Appellant worked during her qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.⁶

² See section 48 of the Act.

³ See section 7 of the Act and section 93 of the Regulations.

⁴ See section 7(2)(b) of the Act and section 17 of the Regulations.

⁵ For EI claims established between September 26, 2021, and September 24, 2022, a person needed 420 hours of insurable employment to qualify for regular benefits. This is the entrance requirement for all regular benefit claims within this period, regardless of where a claimant lived in Canada.

⁶ See section 8 of the Act.

[13] Your **benefit period** isn't the same thing as your **qualifying period**. It is a different time frame. Your benefit period is the time when you can receive EI benefits.

[14] The Commission decided that the Appellant's qualifying period can not be extended beyond 52 weeks because the Appellant was paid insurable employment. So, the Commission decided that the Appellant's qualifying period was February 7, 2021, until February 5, 2022, and that it could not extend beyond this period.

The Tribunal sees no reason why the qualifying period can not be extended

[15] I see no reason why the qualifying period can not be extended to the maximum of 104 weeks. However, this does not allow for benefits to be paid. The problem is that no additional hours are available in this extended qualifying period.

[16] It is uncontested that the Appellant could not work following her October 19, 2019, motor vehicle accident. The Appellant was initially paid by the employer. The employer then issued a record of employment showing illness with a last day paid of February 4, 2020. She was then paid by Sunlife and supplied a medical to support her inability to work following a motor vehicle accident in 2019.⁷

[17] Section 8(1) of the Act says a qualifying period is the shorter of

(a) the 52-week period immediately before the beginning of a benefit period under subsection 10(1), and

(b) the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period under subsection 10(1).

[18] Section 8(2) of the EI Act states that:

A qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission may direct, that throughout

⁷ See AD01 page 9.

the week the person **was not employed in insurable employment** because the person was

- (a) incapable of work because of a prescribed illness, injury, quarantine or pregnancy
- (b) confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the person was being held or any other offence arising out of the same transaction;
- (c) receiving assistance under an employment support measure other than one referred to in paragraph 59(c) or
- (d) receiving payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the person, her unborn child or a child whom she was breast-feeding.

[19] The Appellant has not proven she was in insured employment other than the uncontested 376 hours. The Appellant has proven that she was unable to work because of an injury.

[20] Section 8 makes no mention that a qualifying period can not be extended if there are no hours to add.

[21] Section 8(7) does add a limit to the extension. It states that the qualifying period can not exceed 104 weeks.

[22] This means that the maximum extended qualifying period would be February 9, 2020, until February 5, 2022. This is what the law says. The Tribunal has not authority to change the law.⁸

⁸ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

[23] The Appeal Division returned that matter to the General Division to reconsider whether the Appellant was on employer-paid leave and if not, whether she has sufficient hours of insurable employment in an extended qualifying period.

[24] For this reason, prior to the second General Division hearing, the Appellant was asked to provide any and all insurable employment information in this extended qualifying period. The Appellant's response was received on March 2, 2023.⁹ The information provided can be summarized as:

- 1800 insurable hours accumulated until June 28, 2019.
- 1177 insurable hours accumulated from June 29, 2019, until February 4, 2020. Illness was the reason for issuing this record of employment (ROE).
- 376 insurable hours accumulated between August 2, 2021, until October 29, 2021.

[25] The Appellant agreed to the dates to the best of her abilities.¹⁰ The Appellant testified that she was not aware of any other insurable employment. The Appellant was asked about the insurability of the payments by Sunlife paid from February 5, 2020, until her gradual return to work on August 2, 2021.

[26] The Appellant testified that she has no knowledge of the insurability of these payments. She says she was told by the Commission and the General Division that the payments were insurable.

[27] The Appellant testified she was not issued a record of employment from Sunlife.¹¹

⁹ See RGD03.

¹⁰ The Appellant testified that her memory is not the same since the accident. It is getting better but she has not fully recovered.

¹¹ The Appellant agreed that Sunlife did not issue a ROE for the long-term disability payments between February 5, 2020, and her return to work on August 2, 2021. Sunlife, however, is also the parent company of her former employer, X. The Appellant agrees that Sunlife did issue ROEs through this subsidiary company as outlined in the list provided above.

[28] I am unable to add any hours that Sunlife paid as part of its long-term disability payments. I am not persuaded these hours are in fact insurable. I have the initial evidence which suggests that the Commission say these hours were insurable, but they have since agreed this was an error.¹²

[29] Insurability is determined by the Canada Revenue Agency (CRA).¹³ CRA determines the insurability when they are asked by an individual or employer to do so. Neither party provided any evidence that the payments made by Sunlife as part of the long-term disability payments were in fact insurable.

[30] If the Appellant wishes to have an insurability ruling, she can do so. She would be encouraged to read information from the Canada.ca website to do so. The other party to the appeal, the Commission, can also request an insurability ruling.

So, has the Appellant worked enough hours to qualify for benefits?

[31] I find that the Appellant hasn't proven that she has enough hours to qualify for EI benefits because she needed 420 but has 376 hours.

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

[33] In this case, the Appellant doesn't meet the requirements, so she doesn't qualify for benefits. While I sympathize with the Appellant's situation, I can't change the law.¹⁴

The Tribunal has no jurisdiction to hear the Appellant's antedate request

[34] The Appellant attended the hearing anticipating the Tribunal to decide on her antedate request. An antedate request is a request to consider an application as if it had

¹² See AD018.

¹³ See section 90 of the EI Act.

¹⁴ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

been filed earlier. With an antedate, the extended qualifying period would overlap another ROE.¹⁵

[35] During the Appellant's Appeal Division hearing, an antedate request was discussed. The evidence before me that this antedate request has since been denied.¹⁶ The Appellant agreed it had been denied and believed this current hearing would be able to address this.

[36] The Appellant testified that she was not sure at what stage her antedate request is. She does not know if it has been reconsidered. I searched the Tribunal database. This current case is the only active appeal. I did not see any other appeals filed by the Appellant regarding an antedate request or any other matter.

[37] Unfortunately, the Tribunal does not have jurisdiction to decide on the antedate issue.¹⁷ The Tribunal has limited jurisdiction. It can only decide on matters that have first been reconsidered by the Canada Employment Insurance Commission (Commission).

[38] The Appellant was advised that the Tribunal would be unable to issue a decision on the antedate request. For the Tribunal to have jurisdiction, on the antedate request, three things need to happen.

- 1) Antedate request submitted and denied by the Commission.
- 2) Reconsideration requested and upheld by the Commission.
- 3) Appeal request submitted to the Tribunal. Include the denial letter from step 2.

[39] The Appellant testified she was very disappointed and will now determine at which stage the antedate request is at with the Commission. If needed, she will request a reconsideration. The Tribunal would then have jurisdiction if the antedate is not granted providing an appeal is filed with the Tribunal.

¹⁵ See RGD03 page 6.

¹⁶ See Appeal Decision dated January 11, 2023.

¹⁷ The Tribunal only has jurisdiction under section 112 of the EI Act.

Conclusion

[40] The Appellant doesn't have enough hours to qualify for EI benefits.

[41] The Tribunal sees no reason why the Appellant would not be eligible for the maximum extended qualifying period of 104 weeks. The problem is that there are no additional insurable hours to add in this time frame.

[42] There are two ways for the Appellant to have more hours. The first is an antedate. The Appellant communicated her intention to follow up with the Commission regarding the antedate request. If the antedate is approved, this would allow the benefit period to start at an earlier date. This would then possibly allow for some of the hours from the ROE issued April 7, 2020, to be used to determine eligibility.¹⁸ The ROE was issued then but with a last day worked of February 4, 2020.

[43] The second way the Appellant can have more hours is via an insurability ruling which can be requested by the Appellant or the Commission. Initially the Commission stated that the payments by Sunlife were insurable and now they say the payments are not.¹⁹ The ruling is done by CRA and can not be requested by the Tribunal. It is beyond its jurisdiction.

[44] This means that the appeal is dismissed.

Marc St-Jules

Member, General Division – Employment Insurance Section

¹⁸ See RGD03 page 6.

¹⁹ See AD018.