

Citation: *TP v Canada Employment Insurance Commission*, 2022 SST 1666

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

Decision

Appellant: T. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (474305) dated June 4, 2022
(issued by Service Canada)

Tribunal member: Lilian Klein

Type of hearing: Videoconference

Hearing date: October 13, 2022

Hearing participants: Appellant

Decision date: December 1, 2022

File number: GE-22-2070

Decision

[1] I am dismissing the Claimant's appeal. This decision explains why.

[2] The Claimant did not have enough insurable hours to establish a new claim for Employment Insurance (EI) regular benefits starting on October 11, 2020.

Overview

[3] The Claimant established a claim for EI on November 10, 2019. The Canada Employment Insurance Commission (Commission) says it cancelled his benefit period in March 2020 to establish a claim for EI Emergency Response Benefits (EI ERB). The retroactive cancellation caused an overpayment of \$6,626.

[4] After EI ERB ended, his claim was automatically transitioned to EI regular benefits, with 31 weeks of payments from October 11, 2020, until May 15, 2021.

[5] Then, the Claimant asked the Commission to reconsider its cancellation of his November 2019 claim but it refused to do so. After successfully appealing the cancellation to the Tribunal, his benefit period was reinstated and most of the overpayment removed.¹

[6] But the Claimant's successful appeal to the Tribunal had other consequences. Reinstating his November 2019 claim meant that he no longer had enough unused insurable hours to establish a new claim for benefits on October 11, 2020.

[7] The Commission says the Claimant must repay all the benefits he got from his October 2020 claim since he did not have enough insurable hours to qualify for them.

[8] The Claimant says the Commission is punishing him because he won his last Tribunal appeal. He says any overpayment is due to the Commission's mistakes.

[9] The Claimant also argues that he is owed weeks of regular benefits from his November 2019 claim. He says that claim should have been reactivated after his emergency benefits ended to give him those unused weeks.

¹ A \$316 overpayment remained.

The issue I must decide

[10] The only issue before me is: **Did the Claimant have enough insurable hours to establish a new benefit period for benefits starting on October 11, 2020?**

Analysis

How to qualify for benefits

[11] Not everyone who stops work can receive EI benefits. You have to prove that you qualify.² The Claimant has to prove this on a balance of probabilities. This means he has to show it is more likely than not that he qualified for the benefits he was paid.

[12] To qualify for benefits and establish a benefit period, you need to have worked enough hours within a certain timeframe. The timeframe is called the “qualifying period.”³

[13] The number of hours depends on the unemployment rate in your region.⁴

The Claimant’s region and regional rate of unemployment

[14] The Commission decided that the Claimant lived in the X Region where the regional rate of unemployment was 13.1% at the time he applied for benefits.

[15] This means that the Claimant would need to have worked at least 420 hours in his qualifying period to establish a new claim for EI benefits in October 2020.⁵

[16] The Claimant does not dispute the Commission’s decisions about which region and regional rate of unemployment apply to him.

[17] There is no evidence to make me doubt the Commission’s decisions. So, I accept that **the Claimant needed to have worked 420 insurable hours in his qualifying period to establish a new claim for benefits on October 11, 2020.**

² See section 48 of the *Employment Insurance Act* (EI Act).

³ See section 7 of the EI Act.

⁴ See section 7(2)(b) of the EI Act and section 17 of the *Employment Insurance Regulations*.

⁵ Section 7 of the EI Act includes a chart that tells you the minimum number of hours you need to qualify for benefits depending on your regional rate of unemployment.

The Claimant's qualifying period

[18] As noted, **the hours counted are the ones that the Claimant worked during the qualifying period for his new claim for benefits starting on October 11, 2020.**

[19] In general, the qualifying period is the 52 weeks before a benefit period would start.⁶ **But a qualifying period can be shorter or longer than 52 weeks.**

[20] If you had a recent claim, your qualifying period cannot start any earlier than the first day of the previous claim. This would mean a qualifying period of less than 52 weeks.

[21] If you made an initial claim for benefits on or after September 27, 2020, and had received EI ERB,⁷ you could get a 28-week qualifying period extension.⁸ This would give you a qualifying period of more than 52 weeks, so more insurable hours would be counted.

[22] The Commission says the Claimant's qualifying period for his claim starting on October 11, 2022, was less than 52 weeks, from November 10, 2019, to October 10, 2020.

[23] The Commission says before the November 2019 claim was reinstated, the qualifying period had been from March 31, 2019, to October 10, 2020. Afterwards, the start date could not go back beyond November 10, 2019, the first day of that previous claim.

[24] There is no evidence to make me doubt the Commission's decision. So, I accept as fact that **the qualifying period was from November 10, 2019, to October 10, 2020.**

[25] The Claimant has not disputed the Commission's decision about the dates of this qualifying period but he argues that he never applied for regular benefits in October 2020.⁹

[26] The only argument relevant to this appeal is whether the Claimant had enough insurable hours in the qualifying period for the claim starting on October 11, 2020. That discussion now follows.

⁶ See section 8 of the EI Act. Your benefit period is not the same as your qualifying period. It is a different timeframe. Your benefit period is when you receive your benefits if you qualify for them.

⁷ The portion of CERB administered by EI is called EI Emergency Response Benefits (EI ERB).

⁸ See section 153.17(1)(b) of the EI Act.

⁹ Qualified claimants were automatically transitioned to regular benefits after EI-ERB ended

The hours the Claimant worked

[27] The Commission says **the Claimant worked 352 insurable hours during the qualifying period for his October 2020 claim.** This is after a CRA ruling that some of his hours from one employer (X) were not in insurable employment. The CRA also found that the separation monies the Claimant had received did not count towards his insurable hours.¹⁰ The Claimant has not disputed the CRA ruling.

[28] A ruling by the CRA is final and I must abide by it.

[29] The Claimant has not given evidence of any additional insurable hours above what is documented on the Records of Employment (ROEs) on file.

[30] The evidence from the ROEs shows that the Claimant had no more than 352 insurable hours in the qualifying period for his claim for benefits in October 2020.

[31] This means that **352 is the number I will use to decide the Claimant's appeal.**

So, did the Claimant have enough insurable hours to qualify for benefits?

[32] No. For the following reasons, I find that the Claimant has not proved that he had enough insurable hours to qualify for benefits for a claim starting on October 11, 2020.

[33] On that date, **he needed 420 insurable hours but he only had 352 hours.**

[34] When the Commission cancelled the Claimant's November 2019 claim, that freed up some of his earlier insurable hours. He could use these hours to establish a new claim in October 2020. At that point, he was eligible for a qualifying period extension for claimants applying on or after September 27, 2020, who had already received EI ERB.

[35] But reinstating the Claimant's November 2019 benefit period required some of the insurable hours used to establish his October 2020 claim. As well, the CRA ruled that some of his hours were not insurable. This is why he was short of insurable hours in October 2020.

¹⁰ See GD3-56 to GD3-57. The CRA ruling was requested on May 31, 2021, and received on June 17, 2021.

[36] **You cannot use the same insurable hours to qualify on two different claims.**¹¹

To establish new initial claims in both November 2019 and October 2020, the Claimant would have had to use the same insurable hours twice.

[37] The Claimant is now facing a bigger overpayment than before. I note that the previous Tribunal Member warned him that this could happen if he wanted the Commission to correct its mistake in cancelling his November 2019 benefit period.¹²

[38] The Claimant says the Commission acted improperly by cancelling his EI ERB and not informing him that it had automatically transitioned his claim to EI regular benefits. He argues that he is owed weeks of regular benefits left over from his November 2019 claim. He says the Commission should have reactivated that claim after EI-ERB ended.

[39] I sympathize with the Claimant's circumstances but the Commission has already restored his November 2019 benefit period.¹³ There is no evidence to support his allegation that the Commission acted improperly when it later decided that he no longer had enough insurable hours to establish a new benefit period in October 2020.

[40] The Commission was required to make this decision since having enough insurable hours is one of the conditions to qualify for EI benefits.

[41] **EI is an insurance plan. As with other plans, you have to meet the conditions to get benefits.**¹⁴ The Claimant did not meet these conditions because he did not have enough insurable hours to qualify for benefits starting on October 11, 2020.

[42] **This means that the Claimant did not qualify for the 31 weeks of regular benefits that the Commission paid him for that claim.**

[43] The law says the Claimant must repay these benefits.¹⁵ I do have the power to change the law.¹⁶

¹¹ See *Haile v Canada (Attorney General)*, 2008 FCA 193.

¹² Benefit periods cannot be cancelled if benefits were paid. The Tribunal has already ruled on this issue.

¹³ See the Social Security Tribunal's Appeal Division decision GE-21-368.

¹⁴ See *Pannu v Canada (Attorney General)*, 2004 FCA 90 sets out this principle.

¹⁵ See sections 43 and 44 of the EI Act.

¹⁶ See *Canada (Attorney General) v Knee*, 2011 FCA 301.

[44] The issue of whether the Claimant is entitled to more weeks of benefits is not before me. He might want to make a separate reconsideration request to the Commission on that issue.

Conclusion

[45] The Claimant did not have enough insurable hours to establish a claim for the benefits he received starting on October 11, 2020.

[46] This means that I must dismiss the Claimant's appeal.

Lilian Klein
Member, General Division – Employment Insurance Section