



Citation: *KM v Canada Employment Insurance Commission*, 2023 SST 236

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

Decision

Appellant: K. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (456503) dated March 4, 2022 (issued by Service Canada)

Tribunal member: Angela Ryan Bourgeois

Type of hearing: Teleconference

Hearing date: December 14, 2022, and February 16, 2023

Hearing participant: Appellant

Decision date: February 27, 2023

File number: GE-22-3045

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

[2] The Tribunal doesn't have authority to look at the antedate issue because there is no reconsideration decision on that issue yet.

[3] The March 4, 2022 letter is a reconsideration decision under section 112 of the *Employment Insurance Act* (EI Act).

[4] Based on her January 2022 application for benefits, the Claimant doesn't have enough hours to qualify for Employment Insurance (EI) benefits.

Overview

[5] The Claimant applied for EI benefits in January 2022. The Canada Employment Insurance Commission (Commission) decided that the Claimant hadn't worked enough hours to qualify.¹

[6] The Commission says the Claimant doesn't have enough hours because she needs 420 hours, but has only 151.

[7] The Claimant disagrees. She says that:

- her January 2022 application is antedated to September 2021
- the March 4, 2022 reconsideration decision about whether she qualifies for EI benefits is not a legal decision
- she has enough hours to qualify for benefits.

[8] The Claimant appealed to the General Division of the Tribunal. The Tribunal dismissed the Claimant's appeal summarily (without a hearing). The Claimant appealed the summary dismissal decision to the Tribunal's Appeal Division. The Appeal Division

¹ Section 7 of the *Employment Insurance Act* (EI Act) says that the hours worked have to be "hours of insurable employment." In this decision, when I use "hours," I am referring to "hours of insurable employment."

decided there was procedural unfairness and returned the matter to the General Division to be reconsidered.

Issues

[9] I have to decide the following:

- Is the antedating (backdating) of the January 2022 application an issue before me?
- Is the March 4, 2022 reconsideration decision illegal?
- Does the Claimant have enough hours to qualify for EI benefits?

Analysis

Antedating (backdating)

[10] The Claimant says that she has enough hours to qualify for EI benefits because her claim is antedated to September 2021.

[11] I can only hear appeals on issues that have been reconsidered by the Commission.²

[12] The Claimant says the Commission made a reconsideration decision about the antedating of her claim, and that this is an issue before me.

[13] I find that the Commission hasn't made a reconsideration decision about the antedate. This is why:

- There is no initial decision letter about the antedate in the file.
- The Commission says that no formal decision was made about the antedate.³
- There is no reconsideration request about the antedate in the file.

² See sections 112 and 113 of the EI Act.

³ See page RGD12-1.

- There is no supplementary record of claim or notice of decision in the file about the reconsideration of an antedate decision.
- There is no written reconsideration decision about an antedate in the file.

[14] The Claimant says that her claim is antedated to September 26, 2021. She says she meets the requirements of section 10(4) of the EI Act (the antedate section), so her claim is antedated. She says the Act doesn't require the Commission to make a decision because she meets the requirements.

[15] But that isn't how the EI Act works. If a claimant wants their claim antedated, they must tell the Commission that they want an antedate. The Commission will then decide if the Claimant meets the requirements under the antedate section. It isn't enough for a claimant to say that they meet the requirements.

[16] In this case, the Commission says the Claimant doesn't meet the requirements for an antedate. If the Claimant isn't satisfied with this decision, which she clearly isn't, she must ask for a reconsideration decision. Assuming she meets the requirements under the law, the Commission will then have to reconsider its decision.⁴

[17] There is no reconsideration decision about the antedate. This means I can't consider the antedate issue because the Tribunal can only consider appeals of reconsideration decisions.⁵

The March 4, 2022 reconsideration decision

[18] The March 4, 2022 reconsideration decision letter is about whether the Claimant has enough hours to qualify for benefits.⁶

⁴ Section 112 of the EI Act deals with reconsideration requests and the deadlines for making a request. The Commission says that it didn't make a formal antedate decision. So the Claimant's first step may be to ask for an initial decision, and if she isn't satisfied with the initial decision, she can then request a reconsideration decision.

⁵ See section 113 of the EI Act.

⁶ The letter is on page GD3-26.

[19] The Claimant says that the March 4, 2022, reconsideration decision wasn't made legally because:

- the Commission sent her a letter dated February 25, 2022, asking her to contact the Commission within 10 days
- the Claimant didn't receive the February 25, 2022, letter until after March 4, 2022
- she did not talk to the Commission within those 10 days
- she talked to the Commission's officer, Mary, but it was after March 4, 2022.

[20] I find that the Commission reconsidered its initial decision that the Claimant didn't have enough hours to qualify for EI benefits.⁷ I see nothing illegal about the reconsideration decision.

[21] Section 112 of the EI Act says that the Commission must reconsider a claim when a claimant asks for a reconsideration within the 30-day deadline, or further time that the Commission may allow.

[22] The Commission's initial decision about whether the Claimant qualified for EI benefits is dated January 10, 2022.⁸

[23] The Claimant asked for a reconsideration on January 28, 2022. This is the date stamped on the Request for Reconsideration form.⁹

[24] So, the Commission had to reconsider its decision about whether the Claimant had enough hours to qualify for EI benefits.

[25] The Commission wrote to the Claimant on February 25, 2022. The letter said that if the Commission didn't hear from her within 10 working days that it would proceed with

⁷ The initial decision letter is dated January 10, 2022, and is on page GD3-21.

⁸ See page GD3-21.

⁹ See page GD3-23.

its review and a decision would be made with the information on file.¹⁰ The letter says that the Claimant could call up to and including March 10, 2022. It says that the sooner contact is made, the sooner the request can be processed.

[26] This means that the Commission would make its reconsideration decision when the Claimant contacted it, or March 11, 2022, whichever came first.

[27] I find that the Commission's officer talked to the Claimant about her reconsideration request on March 4, 2022. There is a Supplementary Record of Claim in the file on page GD3-25. The date of March 4, 2022 is on that page in three different locations. I find it unlikely that the Commission's officer would have written the wrong date three times. So, I find that there was a conversation between the Claimant and the Commission's officer on March 4, 2022.

[28] I find that the reconsideration decision was made on March 4, 2022. The officer wrote the following in the Supplementary Record of Claim:¹¹

Client was advised that the decision she received 20/01/2022 of benefit period not established due to insufficient hours would be maintained by the Commission. She was advised that she would receive written confirmation of this decision.

[29] The March 4, 2022 letter says that it is a reconsideration decision of its January 10, 2022 decision.

[30] I see nothing wrong with the reconsideration decision letter, or how the Commission made its decision. I am satisfied that the Commission didn't make its decision before the deadline it set. The Commission wasn't required to wait until March 11, 2022, to make its decision because it discussed the issue with the Claimant on March 4, 2022.

¹⁰ The letter is found on page RGD12-3.

¹¹ See page GD3-25.

[31] The Claimant says she had at least two conversations with the Commission's officers after March 4, 2022, and the Commission has failed to provide evidence of these calls. The Commission says it has no documented telephone conversations with the Claimant after March 4, 2022.¹²

[32] I accept that the Claimant talked to either Service Canada or the Commission after March 4, 2022. Her statements at the hearing show that she talked to someone about the hours she worked and how the EI Act was amended. I also accept that the Commission doesn't have a record of any other calls because not all calls are documented.

[33] If the Claimant believed that these calls were significant to her appeal, nothing prevented her from providing her own records of the calls, including the date and what was said.

[34] But the fact that there were conversations after the reconsideration decision was made doesn't change this decision.

[35] Next, I will consider the issue the Commission has reconsidered - whether the Claimant has enough hours to qualify for benefits.

Qualifying for EI benefits

[36] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.¹³ The Claimant 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.

[37] To qualify for EI regular benefits, a claimant needs 420 hours within a certain timeframe. This timeframe is called the "qualifying period."¹⁴

¹² See page RGD12-1.

¹³ See section 48 of the EI Act.

¹⁴ See section 7(2) of the EI Act, which came into force on September 26, 2021.

– **The Claimant’s qualifying period**

[38] As noted above, the hours counted are the ones that the Claimant worked during her qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.¹⁵

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

[40] The Commission decided that the Claimant’s qualifying period was the usual 52 weeks. It determined that the Claimant’s qualifying period went from January 3, 2021, to January 1, 2022.

[41] I agree with the Commission. She applied for EI benefits on January 7, 2022.¹⁶ This means that her benefit period would have started on January 2, 2022 (the Sunday of that week). Her qualifying period is the 52 weeks before January 3, 2022. So it is from January 3, 2021, to January 1, 2022.

– **The Claimant has fewer than 288 hours in her qualifying period**

[42] The evidence shows that the Claimant has fewer than 288 hours in her qualifying period.

[43] The Commission decided that the Claimant had worked 151 hours during her qualifying period. It’s unclear how the Commission came up with this number.

[44] The only record of employment in the file shows that the Claimant worked 288 hours between September 20, 2020, and March 30, 2021. As only some of those hours were worked during the qualifying period, I find that the Claimant has fewer than 288 hours in her qualifying period.

¹⁵ See section 8 of the EI Act.

¹⁶ The evidence shows that she stopped working before then, so the relevant date for determining her qualifying period is her application date.

– **The Claimant doesn't have enough hours to qualify for EI benefits**

[45] I find that the Claimant hasn't proven that she has enough hours to qualify for benefits. She needs 420 hours, but has fewer than 288.

[46] The 300-hour credit that was available for a time during the COVID-19 pandemic does not apply.

[47] Section 153.17(1) of the EI Act says that a claimant who makes an initial claim for benefits (in other words, applies for benefits) on or after September 27, 2020 is deemed to have an additional 300 hours in their qualifying period. This was a temporary section that ended in September 2021, before the Claimant applied for benefits.¹⁷ This means it doesn't apply to the Claimant.

[48] I acknowledge the Claimant's arguments about the consecutive and cumulative nature of the amendments to the EI Act because of COVID-19. But the emergency measures do not apply to the Claimant's current circumstances.

Conclusion

[49] I don't have authority to decide whether the Claimant's January 2022 application can be antedated.

[50] The only reconsideration decision before me is whether the Claimant has enough hours to qualify based on her January 2022 application. This is a valid reconsideration decision under section 112 of the EI Act.

[51] The Claimant doesn't have enough hours to qualify for benefits.

[52] The appeal is dismissed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section

¹⁷ See section 153.196(1) of the EI Act.