



[TRANSLATION]

Citation: *FA v Canada Employment Insurance Commission*, 2022 SST 1774

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

**Decision**

**Appellant:** F. A.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (581106) dated March 20, 2022 (issued by Service Canada)

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**Tribunal member:** Leanne Bourassa  
**Type of hearing:** Teleconference  
**Hearing date:** April 21, 2022  
**Hearing participant:** Appellant  
**Decision date:** April 25, 2022  
**File number:** GE-23-973

## Decision

[1] The appeal is dismissed.

[2] I find that the Commission calculated the weekly benefit rate correctly.

## Overview

[3] The Appellant applied for benefits on August 28, 2022. Two different employers sent the Commission Records of Employment for this application.

[4] When he applied, the Appellant already had an active benefit period. But he had already received the full amount of benefits he was entitled to.

[5] A new benefit period was established for the Appellant, effective September 4, 2022.

[6] The Commission calculated the Appellant's weekly benefit rate at \$231. The Appellant disagreed with this calculation and asked [the Commission] to reconsider this rate. He says that his weekly benefit rate was higher in the benefit period ending September 3, 2022.

[7] On March 20, 2023, the Commission told the Appellant that it hadn't changed the weekly benefit rate that had been established.

[8] The Appellant says that the Commission should have calculated from the week he earned \$592 and that it should not have averaged from the best 22 weeks. He says that the calculation of the 22 weeks is due to a dispute between him and his former employer.

[9] I have to decide whether the Commission calculated the weekly benefit rate correctly.

## Issue

[10] Was the weekly benefit rate calculated correctly?

## Analysis

### Was the weekly benefit rate calculated correctly?

[11] The weekly benefit rate is the maximum amount a claimant can receive for each week in the benefit period. The basic benefit rate is 55% of the average weekly insurable earnings.<sup>1</sup>

[12] Generally, the benefit rate is calculated using a variable number of the best weeks of insurable earnings received in the qualifying period.<sup>2</sup> The number of best weeks required for the calculation period—between 14 and 22 weeks as set out in section 14(4) of the *Employment Insurance Act* (Act)—is determined by considering the unemployment rate in the region where the claimant was ordinarily resident when they applied for benefits. The amount of average weekly insurable earnings is then determined using the total insurable earnings in the best weeks divided by the number of weeks specified in section 14(2) of the Act.

[13] The Appellant seems to think that the 22-week divisor was applied in his case because of an investigation or penalty issue after a disagreement with his former employer. This isn't the case. The decision to calculate based on his best 22 weeks wasn't made at the Commission's discretion, but was the direct application of the calculation set out in the law.

[14] The Appellant applied on August 28, 2022. Because of a benefit period that was still in effect, his benefit period could not start until September 4, 2022.

[15] As the Commission has shown, the Appellant's qualifying period was established from September 19, 2021, to September 3, 2022. Between August 7, 2022, and September 10, 2022, the unemployment rate was 4.7% in Vancouver (where the Appellant lived). According to the table in section 14(2) of the Act, the number of best

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<sup>1</sup> Section 14 of the *Employment Insurance Act* (Act).

<sup>2</sup> Section 8(1) of the Act.

weeks used to calculate the Appellant's benefit rate was 22 because the unemployment rate was less than 6% in Vancouver in that period.<sup>3</sup>

[16] The record shows that, to establish the weekly benefit rate, the Commission considered the 22 weeks in the qualifying period with the highest insurable earnings. A total of \$9,230.64 in insurable earnings was used. The Commission says that it divided this amount by 22 weeks to get average weekly insurable earnings of \$419.57.

[17] Based on this calculation, the weekly benefit rate is \$230.77:<sup>4</sup>

$$\begin{aligned} & \$9,230.64 \text{ (insurable earnings in the base period) divided by 22} \\ & \text{(divisor)} = \$419.57 \text{ (average weekly insurable earnings)} \\ & \text{X 55\%} = \$230.77 \text{ (benefit rate)} \end{aligned}$$

[18] The Appellant says that his benefit rate was higher during his last benefit period. That is true.

[19] However, I note that, during his last benefit period, temporary measures were in place to facilitate the transition from COVID-19 benefits to the regular EI program. These transitional measures were in effect for benefit periods established between September 27, 2020, and September 25, 2021. So, his September 19, 2021, claim benefited from these transitional measures. During this period, every claimant was entitled to \$500 per week of benefits regardless of their average weekly insurable earnings.

[20] When he applied on August 28, 2022, these exceptional measures were no longer in effect. So, the Commission was required to follow the provisions of the law.

[21] As shown in section 14(1) of the Act, the weekly benefit rate is calculated based on weekly insurable earnings. Section 14(2) of the Act sets out how many weeks must be considered to establish average earnings and therefore the weekly benefit rate (a

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<sup>3</sup> GD3-19.

<sup>4</sup> GD4-2 and GD4-3.

table in this section clearly indicates, using the regional unemployment rate, the number of weeks to consider).

[22] The calculation period corresponds to the number of weeks, consecutive or otherwise, shown in the table in section 14(2) of the Act. The highest-earning weeks in the qualifying period are used to calculate the weekly benefit rate. This method is the same for all claimants.<sup>5</sup>

[23] The Commission correctly calculated the Appellant's insurable earnings at \$9,230.64 for 22 weeks. So, the weekly benefit rate of \$230.77 is correct.

[24] I find that the Commission calculated the weekly benefit rate correctly.

## **Conclusion**

[25] The appeal is dismissed.

Leanne Bourassa  
Member, General Division – Employment Insurance Section

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<sup>5</sup> Section 14(4) of the Act and *Manoli v Canada*, 2005 FCA 178. This decision dealt with sections 12(2) and 14(4) of the Act, and the Court found that this provision didn't create inequalities.