Citation: *AR v Canada Employment Insurance Commission*, 2023 SST 1113

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (412441) dated January 12, 2021 (issued by Service Canada)

Tribunal member:	Teresa M. Day
Type of hearing:	Videoconference
Hearing date:	July 4, 2023
Hearing participant:	Appellant
Decision date:	July 4, 2023
File number:	GE-22-1190

Decision

[1] The appeal is dismissed.

[2] The Appellant's appeal does not raise a Charter argument that meets the requirements of subsection 1(1) of the *Social Security Tribunal Regulations, 2022*[1]. This means her appeal cannot proceed as a Charter appeal.

[3] Since her appeal was returned to the General Division for a redetermination on the Charter issue only, it must now be dismissed.

Analysis

[4] The Appellant applied for employment insurance (EI) benefits on October 19, 2020. She needed 420 hours of insurable employment in her qualifying period[2], which was extended to the maximum 104 weeks allowed at law. She had zero hours. So, the Respondent (Commission) decided she did not qualify for EI benefits.

[5] She appealed that decision to the General Division of the Social Security Tribunal (Tribunal). The General Division dismissed her appeal because she did not work enough hours of insurable employment during her qualifying period to qualify for EI benefits.

[6] The Appellant appealed that decision to the Tribunal's Appeal Division (the AD). She argued that the *Employment Insurance Act* (EI Act) was discriminatory and violates her equality rights under the Charter. The AD did not disturb the findings of the General Division that the Appellant did not meet the qualifying requirements to be paid EI benefits on her claim. But it returned the appeal to the General Division for a redetermination on the Charter issue.

[7] The first step in the Tribunal's Charter process required the Appellant to file a Charter Challenge Notice setting out the specific sections of the EI Act (or related legislation) that are alleged to breach her constitutional rights and brief submissions

---

[1] See my interlocutory decision of May 4, 2023.
[2] Between October 21, 2018 and October 17, 2020.

setting out the facts that support the constitutional challenge and the legal argument being made[3].

[8] If the Tribunal is satisfied this foundation has been laid, the Appellant is permitted to move on to the next step in the Charter process (namely, the filing of a Charter Record).

[9] The Appellant filed her Charter Challenge Notice on March 31, 2023.

[10] On May 4, 2023, I issued an interlocutory decision that the Notice was not sufficient for her appeal to proceed as a Charter appeal because it did not satisfy the requirements for making a Charter argument before the Tribunal[4]. This her appeal had to be returned to the regular (non-Charter) appeal process.

[11] With my interlocutory decision, I have made a determination on the Charter issue, as directed by the AD.

[12] There is no other issue remaining to be decided on this appeal because the AD did not disturb the original finding of the General Division (namely, that the Appellant did not meet the qualifying requirements to be paid EI benefits on her claim).

[13] This means her appeal must now be dismissed.

[14] A final hearing was held to explain this outcome and give the Appellant a chance to make any final comments she wished to make.

[15] As a courtesy to the Appellant, I summarize her comments as follows:

- She wasn't provided with suitable advice at any point during the process.
- She should have been told she needed a constitutional lawyer to bring a Charter case before the Tribunal, because this is beyond what an average citizen can manage on their own.

---

[3] This requirement is set out in subsection 1(1) of the *Social Security Tribunal Regulations, 2022*.
[4] See footnote 3 above.

- But she can't afford to retain a lawyer for the small amount of EI benefits she'd get.

- She had more than enough hours of insurable employment to qualify for EI benefits when she stopped working. That's all that should matter.

- The fact that those hours do not fall within the legislated qualifying period should not be used by the Commission to deny her benefits. Especially after she has paid into the EI program for over 40 years.

- Both the Commission and Canada Revenue Agency (CRA) ruled against her on her claim for benefits. The Commission disregarded her hours and CRA said her long term disability benefits were not insurable earnings.

- She's been victimized because of rules that are meant to apply to employers, not employees.

- Her hours haven't disappeared. They're still there. But she was off work due to illness for more than 104 weeks. This is a special circumstance that should be considered in her case.

- Her employer couldn't lay her off because of the employment standards rules.

- She shouldn't be punished because the Commission is only willing to look at the previous 104 weeks. "Cancer takes longer than that!"

- The EI system is broken.

- It's not fair to deny her benefits when she has the hours necessary to qualify "right up until the last day worked".

- EI is an insurance policy and she met the requirements as of her last day of work.

- She deserves EI benefits and it's not fair that the EI Act was used against her.

[16] I acknowledge the Appellant's frustration and disappointment with the application of the law in her case. I was moved by her testimony about what she has been through, both with her illness and her claim for EI benefits. I wish I could help her.

[17] But the Supreme Court of Canada has said I do not have jurisdiction to grant the equitable relief she is asking for[5] (namely, to be paid EI benefits she does not qualify for). I cannot make an exception for her[6], no matter how compelling her circumstances may be.

Conclusion

[18] I have made a determination on the Charter issue, as directed by the AD. The Appellant's Charter Challenge Notice is not sufficient to raise a Charter argument before the Tribunal.

[19] There is no other issue to be decided on this appeal because the AD did not disturb the original finding of the General Division (namely, that the Appellant did not meet the qualifying requirements to be paid EI benefits on her claim).

[20] This means her appeal must now be dismissed.

Teresa M. Day
Member, General Division – Employment Insurance Section

---

[5] Namely, to grant him EI benefits even though he does not qualify for them. The Supreme Court of Canada said I am bound by the law and cannot refuse to apply it, even on grounds of equity: *Granger v. Canada (CEIC)*, [1989] 1 S.C.R. 141.

[6] See also *Pannu*, 2004 FCA 90.