Citation: *ZT v Canada Employment Insurance Commission*, 2023 SST 906

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	Z. T.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (528914) dated January 20, 2023 (issued by Service Canada)

Tribunal member:	Paul Dusome
Type of hearing:	Teleconference
Hearing date:	April 17, 2023
Hearing participant:	Appellant
Decision date:	April 28, 2023
File number:	GE-23-675

Decision

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

[2] The Appellant hasn't shown that he was entitled to more than the 50 weeks of Employment Insurance (EI) regular benefits that he received.

Overview

[3] The Appellant applied for regular EI benefits on March 24, 2020. He received the EI Emergency Response Benefit (ERB) from March 22, 2020, until October 3, 2020. Effective October 4, 2020, the Canada Employment Insurance Commission (Commission) automatically converted the ERB benefit to regular EI benefits. The Commission decided that the Appellant had only worked enough hours to receive 45 weeks of regular EI benefits.[1] In addition, the Appellant received an additional five weeks of regular benefits under COVID-19 temporary measures. The Commission paid the Appellant EI regular benefits from October 4, 2020, to September 18, 2021.

[4] I have to decide whether the Commission was correct in setting 50 as the number of weeks of EI regular benefits payable to the Appellant.

[5] The Commission says that the Appellant is only entitled to 50 weeks of benefits. That is based on 45 weeks because he has 1820 hours in his qualifying period, plus five additional weeks for COVID temporary measures. The Appellant received 50 weeks of benefits.

[6] The Appellant disagrees and says that for a number of reasons, he should receive EI benefits until he finds a new job. Few of the reasons he gives deal directly with the EI program, or the reasons the Commission gave in support of its position

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[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." Section 12 of the EI Act sets the number of weeks of benefits payable by reference to the number of hours and the rate of unemployment in the claimant's region in the period when he qualified for benefits. Schedule 1 to the EA Act has a chart that shows hours in rows across the chart, and the rates of unemployment in columns vertically on the chart. The number of weeks is determined by matching the applicable row with the applicable column in the chart.

(GD4, Representations). I will set out and deal with those reasons at the end of this decision.

Matter I have to consider first

The Appellant wanted to send in documents after the hearing

[7] Shortly after I ended the hearing, the Appellant called the Tribunal staff. He said he had been disconnected and wanted to send in further material. Staff consulted with me about this. Staff then spoke to the Appellant and gave him the following information. The hearing had ended. He could send in further material. There was no commitment that I would use the material in reaching my decision.

[8] The Appellant has sent in no additional material up to the date of this decision. I made this decision on the material already in the file, and his testimony at the hearing.

Issue

[9] Was the Appellant entitled to receive more than 50 weeks of regular EI benefits? In order to decide this question, I will have to work through the process from the beginning that the Commission (and the Tribunal) must follow for deciding the number of weeks of benefits. That will require looking at how to qualify for EI benefits, determining the regional rate of unemployment, determining the proper qualifying period, looking at the number of hours the Appellant worked during his qualifying period, and determining the number of weeks of benefits the Appellant is entitled to receive.

Analysis

How to qualify for benefits

[10] 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 he has to show that it is more likely than not that he qualifies for benefits.

[2] See section 48 of the EI Act.

[11] To qualify, you need to have worked enough hours within a certain timeframe. This timeframe is called the "qualifying period."[3]

[12] The number of hours normally depends on the unemployment rate in your region.[4] From March 15, 2020, to September 24, 2022, the government reduced the number of hours needed to qualify to 420 for all claimants. This was in response to the COVID-19 pandemic.

The Appellant's region and regional rate of unemployment

[13] The Commission decided that the Appellant's region was Toronto, Ontario and that the regional rate of unemployment at the time was 13.7%. This is not relevant in this appeal to determining the number of hours the Appellant needed to qualify for benefits. That is because the COVID-19 measures reduced the hours needed to 420 for everyone. But the rate of unemployment is relevant later to determining the number of weeks of benefits payable.

– The Appellant agrees with the Commission

[14] The Appellant agrees with the Commission's decisions about which region and regional rate of unemployment apply to him.

[15] There is no evidence that makes me doubt the Commission's decision. So, I accept as fact that the Appellant lived in a region with a 13.7% unemployment rate and needs to have worked 420 hours to qualify for benefits.

The Appellant's qualifying period

[16] As noted above, the hours counted are the ones that the Appellant worked during his qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.[5]

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[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] See section 8 of the EI Act.

[17] 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. You may only qualify to receive EI benefits for a shorter time than the full benefit period.

[18] The Commission decided that the Appellant's qualifying period was the usual 52 weeks prior to March 15, 2020, plus the weeks from March 15 to October 3, 2020. The March to October 2020 period was added because no benefit period could start during those months under the COVID-19 emergency measures. The Commission determined that the Appellant's qualifying period went from March 24, 2019, to October 3, 2020.

– **The Appellant agrees with the Commission**

[19] There is no evidence that makes me doubt the Commission's decision. It correctly determined that the qualifying period was from March 24, 2019, to October 3, 2020.[6]

The hours the Appellant worked

– **The Appellant agrees with the Commission**

[20] The Commission decided that the Appellant had worked 1820 hours during his qualifying period.

[21] The Appellant doesn't dispute this, and there is no evidence that makes me doubt it.

How many weeks of benefit is the Appellant entitled to receive?

[22] Based on the above findings, and the table in Schedule 1 of the *Employment Insurance Act*, the Appellant was entitled to receive 45 weeks of EI benefits. The last row in the table is for 1820 hours and up. The intersection of that row with the column for the regional rate of unemployment of more than 13% but not more than 14% gives 45 weeks. The addition of the extra five hours under the COVID-19 emergency

[6] See *Employment Insurance Act*, sections 8(1)(a) and 10(1)(b).

measures brings the total number of weeks of regular benefits to 50. Under the EI law, that is the maximum number of weeks of regular benefits the Appellant was entitled to receive, and which he did receive.

The Appellant's reasons in support of more weeks of benefits

[23] The Appellant put forward a number of reasons in support of receiving regular EI benefits until he finds a new job. I will review these reasons, and why they do not impact this decision.

[24] The reasons the Appellant puts forward all lie outside the jurisdiction of the Tribunal. The jurisdiction of the Tribunal is limited, so that it does not have the legal authority to make orders to remedy all the matters raised by the Appellant. The Tribunal's jurisdiction is limited to reviewing most (but not all) decisions that the Commission may make in administering the *Employment Insurance Act* and the Regulations made under that Act. The Tribunal can only deal with appeals that involve a Commission decision under the Act and Regulations, followed by the Commission's reconsideration decision of the initial decision[7], followed by an appeal to the Tribunal. The authority of the Tribunal to grant a remedy is limited. It can dismiss the appeal. Or it can grant one of the following: confirm, rescind or vary in whole or in part the Commission's decision, or give the decision the Commission should have given.[8] This authority must be exercised within the confines of the EI legislation and case law. The Tribunal does not have authority to grant orders or to give remedies that are outside of its limited jurisdiction and the requirements of the EI law.

[25] One reason related to the Appellant's financial circumstances and hardship on his family. He is seeking fairness and social justice. He says that the decision makers focused on procedure, not on justice. While the outcome of this appeal is disappointing to the Appellant, I cannot decide an appeal on the basis of sympathetic circumstances or broad considerations of fairness or justice, as commonly understood. I must decide

[7] *Employment Insurance Act*, sections 112 and 113.
[8] *Department of Employment and Social Development Act*, section 54(1).

the appeal on the basis of the proven facts and the EI legal rules that apply.[9] The Commission decision makers are also required to make decisions based on the facts and the rules. That is what the Commission did in making its decision. That is what I have done in the preceding paragraphs of this decision.

[26] Another reason was that he had contributed to EI for 30 years. That makes EI benefits his private asset. The purpose of EI is to have it when he needs it. The government has stolen the EI benefits he is entitled to receive. He did not give consent to the government to take those benefits away. That is not a correct statement of the law. The EI scheme does not provide an automatic, indefinite, entitlement to EI benefits to a person who has contributed to the scheme and who has become unemployed. Nor does the EI program make EI benefits a private asset. EI benefits are not property belonging to a person who has paid EI premiums. A claimant must prove that he meets a number of qualification criteria, including the number of weeks of benefit he will receive. If he does not prove the criteria, he is not entitled to receive benefits despite having paid premiums. In this appeal, the Appellant has not proven entitlement to more than the 50 weeks of EI regular benefits he did receive. He did receive 27 weeks of ERB benefits as part of the COVID-19 emergency measures. Those weeks were in addition to the 50 weeks of regular EI benefits. So in the context of the COVID-19 pandemic, he has received 27 more weeks of benefits than he would have normally received.

[27] Another reason is that it is the government's fault that he is unemployed because of the COVID pandemic restrictions it imposed. The government restrictions ignore justice, and the suffering resulting from those restrictions. Even if the COVID-19 restrictions caused the Appellant's unemployment, that is not a relevant factor in making the decision in this appeal. If a claimant is unemployed through no fault of his own, and meets the qualifying criteria, he will receive EI benefits. The fault of a government or an employer does not play a role in deciding entitlement to EI benefits. The Tribunal has no jurisdiction over that matter. If the Appellant wants compensation from the

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[9] See *Canada (Attorney General) v Shaw*, 2002 FCA 325; *Canada (Attorney General) v Knee*, 2011 FCA 301; and *Nadji v Canada (Attorney General)*, 2016 FC 885.

government for causing his unemployment, he will have to pursue that claim in a lawsuit in court.

[28] Another reason the Appellant gives is that the government's COVID-19 restrictions gave employers the green light to release "unwanted" employees in violation of employment standards and human rights law. The employer targeted the Appellant. The employer put the Appellant on a temporary leave of absence, then did not allow him to return to work. The Appellant's remedy is with the courts, or with tribunals dealing with employment standards or human rights. The Appellant did have a lawyer represent him to deal with the employer respecting workplace injury and harassment claims, wrongful termination of his employment, and a human rights claim. The Appellant had filed a human rights claim against the employer. The claim said that the employer had discriminated against the Appellant based on his disability (spinal stenosis of the lower back). The Tribunal has no authority to deal with those issues in this appeal. If the Appellant wants to claim against the government for these matters, his remedy is with the courts.

[29] The principles set out in the preceding paragraphs also apply to other reasons the Appellant advances in support of his appeal. They all deal with matters that the Tribunal has no jurisdiction to deal with. For example, the government wastes money to fight crime, but crime increases. The government wastes money supporting the wealthy and big business but ignores families like his who may be forced to sell their house. The Appellant pays more municipal property taxes on his house on one-half acre than a neighbouring hobby farm property pays on 10 acres. The government is responsible for lack of mental health services leading to increased suicides amount young persons. The government has been too lax in controlling addictive or illegal drugs. The government has not handled health care properly. The government mishandled the COVID-19 issue. The vaccines do not work. They can cause deaths. The mandated shutdowns and vaccinations caused more harm than good. The mandates suspended human rights until the mandates ended. The whole system is discriminatory. The Appellant says that all these issues are interconnected, so where is the justice? I can deal with none of these matters in this appeal.

Conclusion

[30] The Appellant had enough hours to receive 50 weeks of EI regular benefits. He did not have enough hours to receive more weeks of regular benefits.

[31] This means that the appeal is dismissed.

Paul Dusome
Member, General Division – Employment Insurance Section