



[TRANSLATION]

Citation: *MD v Canada Employment Insurance Commission*, 2023 SST 1261

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

Decision

Appellant: M. D.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (569909) dated March 7, 2023
(issued by Service Canada)

Tribunal member: Marc St-Jules
Type of hearing: Videoconference
Hearing date: July 4, 2023
Hearing participant: Appellant
Decision date: July 11, 2023
File number: GE-23-797

Decision

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

[2] The Appellant hasn't shown that he has worked enough hours to qualify for Employment Insurance (EI) benefits.

Overview

[3] The Appellant applied for EI benefits, but the Canada Employment Insurance Commission (Commission) decided that he hadn't worked enough hours to qualify.¹

[4] I have to decide whether the Appellant has worked enough hours to qualify for EI benefits.

[5] The Commission says that the Appellant doesn't have enough hours because he needs 665 hours, but has only 432.

[6] The Appellant disagrees and says that the situation is beyond his control. He can't work more hours because retired teachers have to stay within the 50-day limit per school year. Otherwise, the teachers' pension service stops paying for retirement if a person works (or volunteers) more than 50 days in teaching.

Issue

[7] Has the Appellant worked enough hours to qualify for EI benefits?

Analysis

How to qualify for benefits

[8] Not everyone who stops working 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.

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 say "hours," I am referring to "hours of insurable employment."

² See section 48 of the EI Act.

This means that he has to prove that it is more likely than not that he qualifies for benefits.

[9] To qualify, you need to have worked enough hours within a certain time frame. This time frame is called the “qualifying period.”³

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

The number of hours required to apply for regular benefits

[11] I have found that the Appellant needs 665 hours to establish his claim.

[12] The Commission established that the Appellant’s region was Toronto and that the regional rate of unemployment at the time was 6.2%.

[13] This means that the Appellant would need to have worked at least 665 hours in his qualifying period to qualify for EI benefits.⁵

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

[15] However, the Appellant points out that 420 hours were required the previous year. It isn’t fair that it is now 665.

[16] The government made temporary changes to the *Employment Insurance Act* (EI Act). From September 27, 2020, to September 24, 2022, temporary measures existed to help claimants qualify for EI benefits. One of these measures was to establish a Canada-wide unemployment rate of 13.1%.⁶ When this rate was applied to the table in section 7(2), it meant that all claimants needed a minimum of 420 hours of insurable employment in their qualifying period to qualify for EI benefits.

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 sets out a chart that tells us the minimum number of hours you need depending on the different regional rates of unemployment.

⁶ See section 153.16 of the Act.

[17] The application of these measures ended on September 24, 2022.⁷ For all claims effective from September 25, 2022, the hours required to qualify are calculated using the unemployment rate that applies in the Appellant's economic region or the alternative access provisions. In other words, the unemployment rate is no longer set at 13.1% for the entire country. As of September 25, 2022, the unemployment rate for the economic region applies. For this reason, I am looking at the hours required under section 7(2) of the EI Act.

[18] With an unemployment rate of 6.2%, the law requires 665 hours to establish a claim.

[19] As a result, I accept that the Appellant needs to have worked 665 hours to qualify for benefits.

The Appellant's qualifying period

[20] As I noted above, the hours that count 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.⁸

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

[22] The Commission decided that the Appellant's qualifying period was the usual 52 weeks. It determined that the qualifying period went from December 26, 2021, to December 24, 2022.

[23] The Appellant agrees with the Commission's decision about his qualifying period. He agrees that the qualifying period can't be extended. He agrees that he doesn't meet the criteria for an extension of the qualifying period.

⁷ See section 335 of the *Budget Implementation Act*, 2021, SC 2021, c 23.

⁸ See section 8 of the EI Act.

[24] There is no evidence that makes me doubt the Commission's decision. So, I accept as fact that the Appellant's qualifying period was from December 26, 2021, to December 24, 2022.

The hours the Appellant worked

[25] The Commission decided that the Appellant had worked 432 hours during his qualifying period.

[26] The Appellant doesn't dispute this, and there is no evidence that makes me doubt it. So, I accept that he worked 432 hours during his qualifying period.

The Appellant is asking for a permanent exemption

[27] The Appellant is asking for a permanent exemption so that he can get EI.

[28] He disagrees that he isn't entitled to benefits. He testified that his teacher's pension is much lower than the norm, since he started his teaching career at the age of 55. This means that he has to work. The Ontario government, however, has limited retired teachers to 50 days of work per school year, including the summer months. This is beyond his control.

[29] The Appellant also testified that the first day he was scheduled to work was March 3, 2022. However, he had to wait for his criminal record check. Delays with the pandemic delayed the process. So, he didn't start working until May 11, 2022. This was another situation beyond his control.

[30] The Appellant testified that he is also unable to find work outside of teaching. He is a doctor and psychiatrist, so employers regularly tell him that he is overqualified.

[31] The Appellant asks that the EI Act consider the unique situation of retired teachers in Ontario. The Appellant says that he is caught between conflicting laws.

[32] The purpose of EI is to provide financial assistance to those who prove they have met the qualification requirements. Not everyone who stops working is entitled to benefits. You have to meet the qualification requirements. The fact that teachers can

potentially lose retirement benefits if they work more than 50 days in a school year isn't something I can address or discuss.

[33] The Tribunal's jurisdiction is limited to the EI Act, the *Employment Insurance Regulations*, and case law. I can't interpret the law or change the law to allow the Appellant to qualify. It is his choice. If he wants to receive benefits, then he must work the required hours. If this means that he could lose his pension, then he has a choice to make.

[34] While sympathetic to the Appellant's situation, the Court tells us that adjudicators, including the Tribunal, can't rewrite the law or interpret it in a way that is contrary to its plain meaning.⁹ Although I sympathize with the Appellant's situation, the Tribunal can't change the law.

So, has the Appellant worked enough hours to qualify for benefits?

[35] I find that the Appellant hasn't proven that he has enough hours to qualify for benefits because he needs 665 hours, but has worked 432 hours.

[36] EI is an insurance plan and, like other insurance plans, you have to meet certain requirements to receive benefits.

[37] In this case, the Appellant doesn't meet the requirements. So, he isn't entitled to benefits.

Conclusion

[38] I find that the Appellant doesn't have enough hours to qualify for benefits.

[39] This means that the appeal is dismissed.

Marc St-Jules
Member, General Division – Employment Insurance Section

⁹ The Court established this principle in *Knee*, 2011 FCA 301.