



Citation: *HR v Canada Employment Insurance Commission*, 2023 SST 998

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

## **Decision**

**Appellant:** H. R.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (548370) dated December 22, 2022 (issued by Service Canada)

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**Tribunal member:** Teresa M. Day

**Type of hearing:** Teleconference

**Hearing date:** May 16, 2023

**Hearing participant:** Appellant

**Decision date:** May 19, 2023

**File number:** GE-23-51

## Decision

[1] The appeal is dismissed.

[2] The Appellant does not have enough hours of insurable employment during his qualifying period to establish a claim for employment insurance (EI) benefits.

[3] I do not have jurisdiction to override the qualifying requirements in the *Employment Insurance Act* (EI Act).

## Overview

[4] The Appellant applied for regular EI benefits on August 22, 2022. To qualify for EI benefits on his claim, he needs 420 hours of insurable employment<sup>1</sup> during his qualifying period<sup>2</sup>. He only had 379 hours, so the Respondent (Commission) decided he did not qualify for EI benefits<sup>3</sup>.

[5] The Appellant asked the Commission to reconsider its decision. He said his Record of Employment (ROE) was wrong. He also said that, according to his pay stubs, he had worked 436 hours – which was enough to qualify for EI benefits<sup>4</sup>.

[6] The Commission asked Canada Revenue Agency (CRA) for a ruling on the insurable hours and earnings the Appellant had. It provided CRA with the information that had been supplied by both the Appellant and the employer. According to CRA's

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<sup>1</sup> See analysis at 4-1 of the Commission's representations.

<sup>2</sup> The Appellant's qualifying period is from August 15, 2021 to August 13, 2022, as prescribed by paragraph 8(1)(a) of the *Employment Insurance Act* (EI Act). This section says that, unless a claimant has had an immediately preceding benefit period, the qualifying period is the 52-weeks immediately before the beginning of a benefit period. In the Appellant's case, there is no evidence of an immediately preceding benefit period. The law at the time of the Appellant's application provided that the Appellant's benefit period (if he'd had enough hours of insurable employment) could have started as of August 15, 2022. So his qualifying period is the 52 weeks immediately prior to that.

<sup>3</sup> See the September 20, 2022 decision letter at GD3-25.

<sup>4</sup> See Request for Reconsideration at GD3-27.

insurability ruling, the Appellant had 338 hours of insurable employment<sup>5</sup>. So the Commission maintained its decision that he did not qualify for EI benefits.

[7] The Appellant appealed to the Social Security Tribunal (Tribunal).

## Issue

[8] I must decide if the Appellant has enough hours of insurable employment to qualify for EI benefits on the application he filed on August 22, 2022.

## Analysis

[9] The Government of Canada enacted various temporary emergency measures that amended the EI Act to address some of the challenges Canadians faced during the global Covid-19 pandemic.

[10] One of those challenges was working enough hours of insurable employment to meet the qualifying requirements to receive EI benefits. To address this particular problem, the Government of Canada temporarily modified the qualifying requirements.

[11] For initial claims for EI benefits that started between September 26, 2021 and September 18, 2022, claimants only needed 420 hours of insurable employment in their qualifying period to establish a claim for regular EI benefits<sup>6</sup>.

[12] Since the Appellant's new claim would have started as of August 15, 2022<sup>7</sup>, this temporary emergency measure applied to his claim.

[13] The Appellant needs 420 hours to qualify for EI benefits, but he only has 338 hours. This means he does not qualify for EI benefits on his claim.

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<sup>5</sup> A copy of the insurability ruling is at GD2-10.

<sup>6</sup>This is according to the temporary emergency measures that came into force on September 26, 2021. Normally, the number of hours of insurable employment required in a qualifying period ranges from 420 to 700 hours, depending on the regional rate of unemployment where a claimant lives (subsection 7(2) of the EI Act) and the type of EI benefit being applied for.

<sup>7</sup> According to the qualifying period identified by the Commission. See footnote 2 above.

[14] The Appellant testified that:

- He worked at the restaurant between April and August 2022.
- The employer has not accurately reported his hours.
- There are issues around his termination, and he has filed a human rights complaint against the employer (set out in his Notice of Appeal). These issues have “muddled” the hours he actually worked.
- He believes he worked approximately 100 additional hours that were not reported and have not been accounted for.
- His pay stubs show he worked 436 hours.
- He had no other employment during his qualifying period.
- He wants me to disregard CRA’s insurability ruling and go by his calculations, which show he has enough hours to qualify for EI benefits.

[15] I asked the Appellant if he appealed CRA’s insurability ruling. He wasn’t sure whether he had done that or simply appealed to the Tribunal. I gave him until the end of the day on the day of the hearing (May 16, 2022) to file proof with the Tribunal that he had appealed the insurability ruling according to the directions set out in the ruling itself<sup>8</sup>.

[16] Nothing further has been received from the Appellant.

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<sup>8</sup> See GD2-10 to GD2-11. If the Appellant disagreed with CRA’s insurability ruling, he had 90 days from the date of the December 15, 2022 ruling to appeal – either by registering a formal dispute online or filing out Form CPT100 and sending it to CRA at the address provided.

[17] CRA's insurability ruling is binding on me<sup>9</sup>. I cannot decide that the number of hours is different. In the absence of any evidence the Appellant took steps to appeal the insurability ruling, it is final and applies to his claim.

[18] I do not have discretion to disregard or override the qualifying requirements in the EI Act.

[19] The Federal Court of Appeal confirmed this principle when it considered a case like the Appellant's, but where the claimant was short only one (1) hour of meeting the qualifying requirements<sup>10</sup>. In that case, the court said the requirements set out in the EI Act are not within the discretion of the decision maker to vary – even if a claimant is short only one (1) hour of meeting the qualifying conditions.

[20] The Supreme Court of Canada has said I do not have jurisdiction to grant the equitable relief the Appellant is asking for<sup>11</sup>. This means I cannot make an exception for him, no matter how difficult or compelling his circumstances may be<sup>12</sup>.

[21] The Appellant requires 420 hours of insurable employment in his qualifying period to establish a new initial claim for EI benefits on the application he filed on August 22, 2022. I cannot alter or waive this requirement.

[22] He only has 338 hours.

[23] This means he has not satisfied the requirements to qualify for EI benefits and, therefore, cannot establish his claim.

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<sup>9</sup> The Federal Court of Appeal has consistently held that questions about a claimant's hours of insurable employment must be determined by CRA and that adjudicators do not have any jurisdiction to determine this question: see for example the case of *Canada (Attorney General) v. Didiadata*, 2022 FCA 345. If the Appellant disagreed with CRA's insurability ruling, he should have exercised his right to appeal the ruling to the Minister of National Revenue (see section 91 of the EI Act).

<sup>10</sup> *Attorney General (Canada) v. Lévesque*, 2001 FCA 304

<sup>11</sup> 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.

<sup>12</sup> See also *Pannu*, 2004 FCA 90.

## **Conclusion**

[24] The appeal is dismissed.

[25] The Appellant does not have enough hours of insurable employment to qualify for EI benefits. This means he cannot establish a claim or be paid the EI benefits he asked for.

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