



Citation: *SM v Canada Employment Insurance Commission*, 2023 SST 1014

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

# **Decision**

**Appellant:** S. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (554782) dated November 23, 2022 (issued by Service Canada)

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**Tribunal member:** John Noonan

**Type of hearing:** In person

**Hearing date:** April 13, 2023

**Hearing participants:** Appellant

**Decision date:** April 17, 2023

**File number:** GE-22-4232

## Decision

[1] The appeal is dismissed.

## Overview

[2] The Appellant, S. M., a worker in NS, was, upon reconsideration by the Commission, notified that it was unable to pay him the Employment Insurance benefits he requested. Specifically, he needed 700 hours of insurable employment between September 26, 2021 and September 24, 2022 to qualify, but he had only 432 hours of insurable employment. The Appellant asserts that he had contacted the Commission in August 2022, and was told that he would only need 420 hours to establish a claim if his last day worked was September 23, 2022. The Tribunal must decide if, during his qualifying period, the Appellant had accumulated the number of hours of insurable employment required by section 7 or 7.1 in order to establish a claim and receive employment insurance benefits.

## Issue

[3] Issue # 1: Did the Appellant, during his qualifying period, accumulate the number of hours of insurable employment required by section 7 or 7.2 in order to establish a claim and receive employment insurance benefits.

## Analysis

[4] The relevant legislative provisions are reproduced at GD4.

[5] Beginning of benefit period:

10 (1) A benefit period begins on the later of

a. (a) the Sunday of the week in which the interruption of earnings occurs, and

(b) the Sunday of the week in which the initial claim for benefits is made.

**Issue 1: Did the Appellant, during his qualifying period, accumulate the number of hours of insurable employment required by section 7 or 7.2 in order to establish a claim and receive employment insurance benefits.**

[6] No.

[7] The Appellant finished his employment on September 23, 2022 having been led to believe he would be eligible for benefits under the provisions of the Act relating to the Covid 19 Pandemic, specifically, being able to establish a claim with 420 hours of insurable employment.

[8] The Appellant referred to and relied on the information on the website. It clearly states that a claimant required 420 hours before September 24<sup>th</sup> to qualify and that the temporary measures ended September 25.

[9] He had been advised by a representative of Service Canada that ending his employment on September 23<sup>rd</sup> would enable him to qualify for benefits under the temporary measures.

[10] However he was not advised of the implications of application date and the start of a benefit period.

[11] He testified that he was back working under contract and could have finished earlier and applied but it was explained that leaving his job earlier would have resulted in less insurable hours.

[12] The Commission correctly determined that his benefit period would commence September 25, 2022 the Sunday of the week in which the claim was made as per Section 10 of the Act.

[13] September 25, 2022 is outside the September 24, 2022 deadline to establish a claim with 420 hours under the Temporary Covid Measures.

[14] The case before me seems unfair but it must also be recognized that had the Appellant's benefit period commenced on the previous Sunday, September 18, 2022 his

last week of earnings would have fallen outside his qualifying period leaving him short of the then required 420 hours necessary at that time to establish a claim.

[15] Pursuant to the Table in subsection 7(2) of the Act and the rate of unemployment of 5.3 % in the economic region where the Appellant resided at the time of application, he required 700 hours of insurable employment to qualify for benefits.

[16] He accumulated only 432 hours during his correctly determined qualifying period therefore a benefit period cannot be established.

[17] I find the Commission correctly applied the provisions of the Act (Section 7) when it determined the Appellant required 700 hours to qualify.

[18] While I sympathize with the Appellant's situation I must consider the facts and apply the statutory requirements and cannot ignore, refashion, circumvent or rewrite the Act, even in the interest of compassion (**Canada Attorney General v. Knee, 2011 FCA 301**).

[19] Neither the Commission nor the Tribunal has any discretion regarding the conditions imposed by the Act and the Regulations even on the basis of fairness.

[20] I must note that in similar cases decided upon by other Tribunal Members the Appellant's appeal was allowed. However, these decisions were appeal by the Commission to the Appeal Division of the Social Security Tribunal where they were overturned in favour of the Commission. **AD-70 / 71 / 72 / 73 / 74 / 75 / 76 and 77**

[21] Quoting that decision by the Appeal Division "*Service Canada's messaging could certainly have been clearer, but it wasn't wrong. The excerpt given to the General Division said that you had to "establish an initial claim" by September 25, 2021. Unfortunately, the Claimants didn't know that this meant that the last possible benefit period for getting the extra hours would be the week starting September 19, 2021. In any case, website messaging doesn't change the meaning of the law.*"

[22] The Appellant opined that the information on the website regarding dates by which one could avail of the temporary measures were misleading and would not survive a court challenge. I must note that the courts have consistently ruled that a claimant cannot rely on information on a website that would allow in any way for benefits to be paid where they shouldn't by law.

## **Conclusion**

[23] The Member finds that, having given due consideration to all of the circumstances, the Appellant accumulated only 432 hours of insurable employment during his qualifying period whereas he needed 700 hours in order to establish a claim for benefits and also had the claim commenced one week earlier there would have been no gain for the Appellant therefore the appeal is dismissed.

John Noonan

Member, General Division – Employment Insurance Section