



[TRANSLATION]

Citation: *MB v Canada Employment Insurance Commission*, 2023 SST 98

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

Decision

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

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (478895) dated July 12, 2022
(issued by Service Canada)

Tribunal member: Normand Morin
Type of hearing: Teleconference
Hearing date: December 29, 2022
Hearing participant: Decision on the record
Decision date: February 3, 2022 [*sic*]
File number: GE-22-2673

Decision

[1] The appeal is dismissed. I find that the Canada Employment Insurance Commission (Commission) correctly determined the maximum number of weeks Employment Insurance (EI) benefits could be paid to the Appellant for his benefit period established from January 16, 2022.¹

Overview

[2] From April 12, 2021, to September 24, 2021, inclusive, the Appellant worked for the employer Loblaws Inc. – Provigo Québec (employer). He stopped working for it for medical reasons.²

[3] On January 17, 2022, he applied for EI regular benefits.³ A benefit period was established from January 16, 2022.⁴

[4] On March 31, 2022, the Appellant told the Commission that he disagreed with the number of weeks he could receive benefits after his benefit period was established from January 16, 2022.⁵

[5] On July 12, 2022, after a reconsideration request, the Commission told the Appellant that it was upholding the March 31, 2022, decision about the maximum number of weeks of benefits he was entitled to.⁶

[6] The Appellant argues that he should be entitled to receive benefits for more weeks than he received them for. He says he was unable to work for medical reasons before applying for benefits on January 17, 2022. The Appellant says he is being penalized for receiving wage-loss insurance because he was unable to work for health reasons. He says the Commission should consider his insurable hours in recent years

¹ See section 12(2) of the *Employment Insurance Act* (Act) and the table in Schedule I to the Act referring to that section – Table of Weeks of Benefits.

² See GD3-17 and 18.

³ See GD3-3 to 16.

⁴ See GD3-1 and GD4-1.

⁵ See GD3-22.

⁶ See GD3-33.

to determine the number of weeks he is entitled to benefits, since he hasn't used them. On August 10, 2022, the Appellant challenged the Commission's reconsideration decision before the Tribunal. This decision is being appealed to the Tribunal.

Preliminary Matters

[7] The Appellant wasn't at the teleconference hearing on December 29, 2022. The hearing can go ahead without the Claimant if the Tribunal finds that he got the notice of hearing.⁷

[8] On October 3, 2022, a notice of hearing was emailed to the Appellant to inform him of the hearing.⁸ In his notice of appeal dated August 10, 2022, the Appellant had given the Tribunal permission to contact him by email.⁹

[9] On December 28, 2022, in an email to the Appellant, the Tribunal reminded him about the December 29, 2022, hearing and how to participate.¹⁰

[10] At the start of the December 29, 2022, hearing, the Tribunal tried to contact the Appellant, but was unsuccessful.¹¹

[11] Convinced that the Appellant was notified of the December 29, 2022, hearing, I proceeded in his absence, as permitted in this situation by section 58 of the *Social Security Tribunal Rules of Procedure*.

[12] I waited more than 45 minutes after the December 29, 2022, hearing started to make sure the Appellant was present. Despite this wait, the Appellant didn't show up. Before the hearing, the Tribunal didn't receive any notice from the Appellant that he wasn't going to attend.

[13] In these circumstances, I am making a decision on the record.

⁷ Section 58 of the *Social Security Tribunal Rules of Procedure* sets out this rule.

⁸ See GD1-1 to 3.

⁹ See GD2-4.

¹⁰ See GD9-1.

¹¹ See GD10-1.

Issue

[14] I have to decide whether the Commission correctly determined the maximum number of weeks EI benefits could be paid to the Appellant during his benefit period starting January 16, 2022.¹²

Analysis

[15] Generally, the maximum number of weeks EI benefits can be paid during a benefit period is based on the regional rate of unemployment where a claimant lives and the number of hours they worked in insurable employment during their qualifying period.¹³

[16] In general, the qualifying period is the 52 weeks before a person's benefit period would start.¹⁴

[17] The Commission can extend this period under certain conditions, for example, if a person was unable to work for medical reasons.¹⁵

[18] However, no extension may result in a qualifying period of more than 104 weeks.¹⁶

[19] In this case, I find that the Commission has shown that it correctly established the number of weeks EI benefits can be paid to the Appellant at 14 weeks, for his benefit period starting January 16, 2022.¹⁷

¹² See section 12(2) of the *Employment Insurance Act* (Act) and the table in Schedule I to the Act referring to that section – Table of Weeks of Benefits.

¹³ See section 12(2) of the Act and the table in Schedule I to the Act referring to that section – Table of Weeks of Benefits.

¹⁴ See section 8 of the Act.

¹⁵ See section 8 of the Act.

¹⁶ See section 8(7) of the Act.

¹⁷ See section 12(2) of the Act and the table in Schedule I to the Act referring to that section – Table of Weeks of Benefits.

[20] The evidence on file shows that the Appellant had 578 insurable hours during his employment period from April 12, 2021, to September 24, 2021.¹⁸

[21] Excerpts from Canada.ca (EI Economic Regions) indicate that, in the EI economic region of Montréal, where the Appellant was living when his benefit period was established,¹⁹ the unemployment rate from January 9, 2022, to February 5, 2022—when he applied for benefits—was 5.7% and the number of insurable hours needed to qualify for EI regular benefits was 420 hours.²⁰

[22] The Appellant's statements indicate the following:

- a) He didn't have any other employment periods after working at Loblaws Inc. – Provigo Québec, from April 12, 2021, to September 24, 2021.²¹
- b) He was unable to work for health reasons at different times in 2017 and 2018, then from January 13, 2019, to April 10, 2021, and from September 24, 25, or 26, 2021, to January 14 or 15, 2022.²²
- c) He was supposed to go back to work for the employer on January 16, 2022, but it closed at the end of 2021.²³
- d) In his June 21, 2022, statement to the Commission, the Appellant said he didn't know whether he had worked between September 27, 2020, and April 10, 2021.²⁴
- e) He received wage-loss insurance during the periods when he was unable to work for health reasons. He stopped receiving it on January 15, 2022.²⁵

¹⁸ See the Record of Employment issued by the employer Loblaws Inc. – Provigo Québec, dated February 14, 2022—GD3-17 and GD3-18.

¹⁹ See GD3-19 and GD3-20.

²⁰ See GD3-20.

²¹ See GD3-17, GD3-18, and GD3-29 to GD3-32.

²² See GD3-25, GD3-26, GD3-29, GD3-31, GD3-32 and GD5-1 to GD5-66.

²³ See GD3-31 and 32.

²⁴ See GD3-27.

²⁵ See GD3-31 and 32.

- f) He says he suffered a 30-week cut in benefits, since he was unable to work for medical reasons.²⁶
- g) According to the Appellant, receiving wage-loss insurance penalizes him for receiving EI benefits.²⁷
- h) The Commission should consider the insurable hours accumulated in the last five years to establish the number of weeks he can receive benefits. He didn't use those hours to apply for benefits before.²⁸
- i) He paid EI premiums for several years.²⁹

[23] The Commission gives the following explanations:

- a) The Appellant had 578 hours of insurable employment in his qualifying period.³⁰
- b) Based on the periods the Appellant was unable to work, from January 13, 2019, to April 10, 2021, and from September 25, 2021, to January 15, 2022, his qualifying period was established from January 19, 2020, to January 15, 2022. The qualifying period can't be more than 104 weeks.³¹
- c) The regional rate of unemployment was 5.7% when the Appellant's benefit period was established.³²
- d) The Appellant is entitled to EI benefits for a maximum of 14 weeks.³³

²⁶ See GD3-23.

²⁷ See GD3-29 and 30.

²⁸ See GD3-29 and 30.

²⁹ See GD2-6 and 13.

³⁰ See GD4-4.

³¹ See GD3-31 and 32.

³² See also GD4-4.

³³ See section 12(2) of the Act, Schedule I. See also GD4-4.

- e) The issues the Appellant raised are unrelated to the number of weeks he is entitled to receive benefits.³⁴
- f) Contributing to the EI fund doesn't entitle a claimant to benefits. They must meet all the requirements to receive them.³⁵

[24] I find that the Appellant hasn't shown that he can receive benefits for more weeks than he is entitled to.³⁶

[25] In this case, the Commission says that it established the Appellant's qualifying period from January 19, 2020, to January 15, 2022, given the periods he was unable to work for health reasons—from January 13, 2019, to April 10, 2021, and from September 25, 2021, to January 15, 2022.³⁷

[26] I note that, as a result, the Commission extended the Appellant's qualifying period to 104 weeks, the maximum number of weeks set out in the Act.³⁸

[27] The evidence on file indicates that, for the benefit period starting January 16, 2022, the Appellant's number of hours of insurable employment in his qualifying period—578 hours³⁹—falls within the range of "560–594 hours" in the table in Schedule I to the Act,⁴⁰ and that the regional rate of unemployment that applies is in the column indicating "6% and under" of that table.⁴¹

[28] The combination of these two factors therefore shows that the maximum number of weeks EI benefits can be paid to the Appellant is 14 weeks.⁴² I note that this number was determined by considering the insurable hours the Appellant accumulated during

³⁴ See GD4-4.

³⁵ See GD4-4 and GD4-5.

³⁶ See section 12(2) of the Act and the table in Schedule I to the Act referring to that section – Table of Weeks of Benefits.

³⁷ See GD3-31 and 32.

³⁸ See section 8(7) of the Act.

³⁹ See GD3-17 and 18.

⁴⁰ Table of weeks of benefits.

⁴¹ See the table in Schedule I to section 12(2) of the Act – Table of Weeks of Benefits, whose data was applicable from September 26, 2021, to June 8, 2022.

⁴² See section 12(2) of the Act and the table in Schedule I to the Act referring to that section – Table of Weeks of Benefits.

his qualifying period, the duration of which the Commission established at 104 weeks. This qualifying period can't be more than 104 weeks, as set out in the Act.⁴³

[29] So, I don't accept the Appellant's argument that the insurable hours accumulated over the last five years should be considered, since he didn't use them to make claims for benefits related to that period. This situation can't entitle him to benefits for more weeks than he received them for.

[30] I also don't accept the Appellant's argument that receiving wage-loss insurance, given the periods he was unable to work for medical reasons, would have penalized him in terms of the number of weeks of benefits he can receive. The fact that the Appellant received wage-loss insurance didn't reduce the number of weeks of benefits he is entitled to.

[31] Although the Appellant also argues that he paid EI premiums for several years, that doesn't entitle him to benefits for more weeks than those set out in the Act.

[32] The Act says that the number of weeks for which a claimant can receive benefits is based on the insurable hours they have in their qualifying period and the regional rate of unemployment that applies when their benefit period is established.⁴⁴

[33] The Act says that, if a benefit period has been established for a claimant, benefits can be paid to the claimant for each week of unemployment that falls in this period, subject to the established maximums.⁴⁵

[34] The Act sets out exceptions concerning the maximum number of weeks benefits can be paid to a claimant (for example, the exception for seasonal workers). But the Act doesn't set out an exception for situations like those described by the Appellant, whether it be the insurable hours he has earned in the last five years, the fact that he

⁴³ See section 8(7) of the Act.

⁴⁴ See section 12(2) of the Act and the table in Schedule I to the Act referring to that section – Table of Weeks of Benefits.

⁴⁵ See section 12(1) of the Act.

received wage-loss insurance because of his health problems during that period, or even because he paid EI premiums for several years.

[35] I find that the Commission correctly determined that the Appellant could receive benefits for a maximum of 14 weeks.⁴⁶

[36] While I sympathize with the Appellant, the Federal Court of Appeal tells us that decision-makers, including the Tribunal, aren't permitted to rewrite the law or interpret it contrary to its plain meaning.⁴⁷

Conclusion

[37] I find that the Commission correctly determined the maximum number of weeks the Appellant could be paid EI benefits for his benefit period starting January 16, 2022, at 14 weeks.

[38] This means that the appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section

⁴⁶ See section 12(2) of the Act and the table in Schedule I to the Act referring to that section – Table of Weeks of Benefits.

⁴⁷ The Court established this principle in *Knee*, 2011 FCA 301.