Citation: *CE v Canada Employment Insurance Commission*, 2023 SST 1101

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	C. E.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (546090) dated October 19, 2022 (issued by Service Canada)

Tribunal member:	Raelene R. Thomas
Type of hearing:	Teleconference
Hearing date:	June 8, 2023
Hearing participant:	Appellant
Decision date:	June 12, 2023
File number:	GE-22-3975

Decision

[1] The appeal is dismissed.

[2] The Appellant has not shown that he worked enough hours to qualify for Employment Insurance (EI) benefits on August 21, 2022.

Overview

[3] The Appellant applied for EI benefits, but the Canada Employment Insurance Commission (Commission) decided that the Appellant 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 the Appellant doesn't have enough hours because he needs 630 hours, but has 441.[2] The Commission said the Appellant needed 630 hours because he had a serious violation on his file from May 2019 that required him to work 50% more hours to qualify for EI benefits.

[6] The Appellant disagrees and says he was never told that he had a serious violation. He did not receive any letters about there being anything wrong with his EI claim reports or EI benefits. The Appellant asks that his appeal be allowed.

Matters I have considered first

My jurisdiction is limited

[7] Before I can decide on an issue, two things must happen.

[8] First, the Commission has to make a decision about a person's application for EI benefits. Second, if the person disagrees with the decision, they must ask the

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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."

[2] The Commission made this decision on August 29, 2022. The Appellant worked another 62 hours after this letter was issued.

Commission to reconsider it and the Commission has to have a chance to review its decision. The second decision by the Commission is called a "reconsideration decision."

[9] The Commission made an initial decision on May 3, 2019 that the Appellant made a false representation on his claim report for the weeks beginning September 16, 2018 and September 23, 2018 when he did not report earnings from X. This decision is on page GD3-26 of the Appeal file.

[10] The Commission made another initial decision on December 16, 2019 about an application the Appellant made for EI benefits on or about December 1, 2019. It said it because he had a serious violation on his file it could not pay him EI benefits because he needed 998 hours of employment but had 956 hours of employment. This decision is on page GD7A-1 of the Appeal file.[3]

[11] The Appellant did not ask the Commission to reconsider either of initial these decisions.

[12] I explained to the Appellant that my jurisdiction, in other words my ability to make a ruling on an appeal, comes only after the Commission makes a decision on reconsideration that the Appellant then chooses to appeal.[4] My jurisdiction is limited to reviewing the reconsideration decisions the Commission has actually made. In this case, the Commission has only reconsidered its decision to deny the Appellant EI benefits from August 21, 2022. So, I will issue a decision on that issue only.

The Appellant can ask the Commission to reconsider the other two decisions

[13] The Appellant testified he did not receive the decisions from the Commission that were made on May 3, 2019 and December 16, 2019. He said had he known about them he would have asked the Commission to reconsider the decisions.

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[3] This part of the appeal file was sent to the Appellant by the Tribunal on June 8, 2023.
[4] See section 113 of the EI Act.

[14] Nothing in my decision prevents the Appellant from asking the Commission to reconsider the May 3, 2019 and December 16, 2019 decisions.

[15] I explained to the Appellant the Commission must reconsider an initial decision if they are asked to do so within 30 days of the initial decision being made. In cases where a person asks for reconsideration more than 30 days after the initial decision, the Commission has discretion to decide if they will reconsider their initial decision.

[16] If the Commission refuses to reconsider the May 3, 2019 and December 16, 2019 decisions, the Appellant can appeal their refusal to the Tribunal.

Issue

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

Analysis

How to qualify for benefits

[18] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.[5] The Appellant has to prove this on a balance of probabilities. This means he has to show it is more likely than not that he qualifies for benefits.

[19] To qualify, you need to have worked enough hours within a certain timeframe. This timeframe is called the "qualifying period."[6]

[20] The number of hours you need depends on the unemployment rate in your region.[7]

[21] Appellants who have been served a notice of violation are required to work additional hours of insurable employment in the following two claims for benefits within five years of the violation being imposed.[8]

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[5] See section 48 of the EI Act.
[6] See section 7 of the EI Act.
[7] See section 7(2)(b) of the EI Act and section 17 of the *Employment Insurance Regulations*.
[8] See section 7.1 of the EI Act

[22] The Commission issued a notice of serious violation on May 3, 2019.

The Appellant's region and regional rate of unemployment

[23] In June 2021 the Government of Canada introduced a number of temporary measures to facilitate access to benefits.[9] These measures were in effect from September 26, 2021 to September 25, 2022.

[24] Among these measures was a provision that regardless of the unemployment rate in a region, the maximum number of hours required to qualify for EI benefits is 420 hours.[10] Those same measures say that a claimant who has a serious violation must work 630 hours in his qualifying period to qualify for EI benefits.[11]

[25] The Appellant applied for EI benefits on August 26, 2022. This means the temporary measures applied to him. He was required to have 630 hours to qualify for EI benefits.

The Appellant's qualifying period

[26] As noted above, the hours counted are the ones the Appellant worked during his qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.[12]

[27] 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.

[28] The Commission decided the Appellant's qualifying period was the usual 52 weeks. It determined that the Appellant's qualifying period went from August 22, 2021 to August 20, 2022.

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[9] Budget Implementation Act, 2021, No. 1 S.C. 2021, c. 23. These measures were repealed on September 25, 2022.
[10] See section 7(1) of the EI Act sets out a chart that tells us the minimum number of hours that you need depending on the different regional rates of unemployment.
[11] Section 7.1(1) of the EI Act sets out a chart that tells us the minimum number of hours that you need depending on the type of violation.
[12] See section 8 of the EI Act.

[29] The Appellant had no reason to dispute this period as being the qualifying period. There is no evidence that makes me doubt the Commission's decision. So, I accept as fact that the Appellant's qualifying period is from August 22, 2021 to August 20, 2022.

The hours the Appellant worked

[30] In its initial decision the Commission decided the Appellant had worked 441 hours during his qualifying period. That decision was made on August 29, 2022.

[31] The Appellant worked another 62 hours from August 29, 2022 to September 28, 2022.

[32] The Appellant doesn't dispute the hours he worked, and there is no evidence that makes me doubt it. So, I accept as fact the Appellant worked 441 hours in his qualifying period and another 62 hours.

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

[33] I find that the Appellant has not proven he has enough hours to qualify for benefits because he needs 630 hours, but has worked 503 hours.[13]

Conclusion

[34] The Appellant doesn't have enough hours to qualify for benefits.

[35] This means the appeal is dismissed.

Raelene R. Thomas
Member, General Division – Employment Insurance Section

[13] 441+ 62 = 503