



Citation: *MD v Canada Employment Insurance Commission*, 2023 SST 1248

**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 (573916) dated March 13, 2023 (issued by Service Canada)

Tribunal member: Bret Edwards

Type of hearing: Videoconference

Hearing date: July 4, 2023

Hearing participant: Appellant

Decision date: July 13, 2023

File number: GE-23-935

Decision

[1] The appeal is dismissed.

[2] The Appellant doesn't have enough hours of insurable employment during his qualifying period to establish a claim for Employment Insurance (EI) benefits.

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

Overview

[4] The Appellant applied for EI sickness benefits. To qualify for EI benefits on this claim, he needs 600 hours of insurable employment during his qualifying period.¹ He only has 119 hours, so the Canada Employment Insurance Commission (Commission) decided the Appellant hadn't worked enough hours to qualify for EI benefits on this claim.

[5] The Appellant agrees that he doesn't have enough hours to qualify for EI sickness or regular benefits. But he says his situation is unique and he should be exempt from the EI qualifying rules for this reason.

Matter I have to consider first

The Appellant agrees with part of the Commission's reconsideration decision

[6] The Commission also decided the Appellant couldn't be paid more sickness benefits in his previous benefit period because he was paid the maximum number of weeks available at the time.²

[7] At the hearing, the Appellant confirmed that he agrees with this part of the Commission's reconsideration decision. He agrees he was paid the maximum number

¹ Section 7 of the *Employment Insurance Act* (Act) and section 93 of the *Employment Insurance Regulations* (Regulations) say 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 GD3-46, GD4-5 to GD4-6.

of weeks of sickness benefits in his previous benefit period and that there were no more weeks available to him at the time.

[8] Since the Appellant agrees with this part of the Commission's reconsideration decision, the hearing went ahead without any more reference to it. Instead, the hearing focused only on the issue the Appellant does dispute, which is whether he qualifies for EI sickness benefits on his subsequent claim.

Issue

[9] I must decide if the Appellant has enough hours of insurable employment to qualify for EI benefits as of December 25, 2022.

Analysis

How to qualify for benefits

[10] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.³ The Appellant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that he qualifies for benefits.

[11] To qualify, you need to have worked enough hours within a certain time frame. This time frame is called the "qualifying period."⁴

[12] In general, the number of hours depends on the unemployment rate in your region.⁵ But, the law provides another way to qualify for special benefits, including sickness benefits.

[13] If you want special benefits, you can qualify if you have 600 or more hours.⁶ But, this is only if you don't qualify under the general rule.⁷

³ See section 48 of the Act.

⁴ See section 7 of the Act and section 93 of the Regulations.

⁵ See section 7(2)(b) of the Act and section 17 of the Regulations.

⁶ See section 93(1) of the Regulations. The hours need to be hours of insurable employment.

⁷ Section 7 of the Act sets out the general rule.

[14] The parties agree that the Appellant doesn't qualify under the general rule, and there is no evidence that makes me doubt it. He needs 665 hours, but only has 119 hours.⁸ So, I accept this as fact.

The Appellant's qualifying period

[15] 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.⁹

[16] 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.

[17] The Commission decided that the Appellant's qualifying period was shorter than the usual 52 weeks because the Appellant had an earlier benefit period that started on June 19, 2022.

[18] Your current qualifying period can't overlap with an earlier qualifying period. The Appellant's qualifying period would overlap with his earlier qualifying period if it went back to a time before June 19, 2022.

[19] So, the Commission decided that the Appellant's qualifying period was 25 weeks and went from June 19, 2022 to December 24, 2022.

– The Appellant agrees with the Commission

[20] The Appellant agrees with the Commission's decision about his qualifying period. At the hearing, he confirmed he had an earlier benefit period that started on June 19, 2022, during which he was paid 15 weeks of sickness benefits.¹⁰

⁸ The Commission decided the Appellant needs 665 hours to qualify for EI regular benefits based on the unemployment rate in his region at the time he applied for benefits. See GD3-36 to GD3-37. At the hearing, the Appellant confirmed he doesn't have enough hours to qualify for EI regular benefits.

⁹ See section 8 of the Act.

¹⁰ For other evidence that the Appellant was paid 15 weeks of sickness benefits during this period, see GD3-19 to GD3-20.

[21] 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 June 19, 2022 to December 24, 2022.

The hours the Appellant worked

– The Appellant agrees with the Commission

[22] The Commission decided the Appellant had worked 119 hours during his qualifying period.¹¹

[23] The Appellant doesn't dispute this¹², and there is no evidence that makes me doubt it. So, I accept it as fact.

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

[24] I find the Appellant doesn't qualify for EI sickness benefits on his claim. He needs 600 hours to qualify for these benefits, but he has only 119 hours.

[25] The Appellant understands this. But he asks me to allow his appeal because he feels his situation is unique and he should be exempt from the EI qualifying rules for this reason.

[26] Unfortunately, I can't allow the Appellant's appeal. But I will set out his testimony in detail to acknowledge the frustration he feels about the situation.

[27] The Appellant testified¹³:

- He had open heart surgery in July 2022, which had a 3 month recovery time.
- He collected 15 weeks of EI sickness benefits from June 19, 2022 to October 4, 2022.

¹¹ GD3-39.

¹² At the hearing, the Appellant confirmed his Record of Employment (ROE) is correct. For the ROE, see GD3-34.

¹³ Also see GD2-4, GD2-10 to GD2-20, GD3-41 to GD3-44.

- He returned to work on October 17, 2022. But he was only able to work short shifts as his body wasn't used to working at that point.
- He worked whatever hours he could from October 17, 2022 to December 19, 2022.
- On December 19, 2022, he was sent to hospital by ambulance.
- On December 20, 2022, he was diagnosed with a thoracoabdominal aortic aneurysm and had surgery that day. The surgery wasn't initially supposed to happen until spring 2023, but it was moved up.
- On December 22, 2022, he had a second, emergency surgery to repair something that wasn't properly fixed during the first surgery.
- From the surgeries, he received 126 staples from his shoulder across his upper back, and along his ribcage, stomach, and groin.
- He reapplied for EI sickness benefits on January 10, 2023.
- He spoke to multiple Commission agents prior to reapplying for benefits. They told him that there were certain conditions where the hours normally needed to establish a claim wouldn't be required. But nobody was able or willing to tell him what exactly those conditions were, just that it shouldn't be a problem and he should reapply.
- The surgeries he had in December 2022 require at least 6 months to heal and he's not able to work in the meantime.
- Between his July 2022 and December 2022 surgeries, it would have been impossible for him to work 600 hours to qualify for more sickness benefits. There was no way he could have done that since he couldn't work for several months and couldn't work full-time when he was able to finally work again.
- His situation is very unusual, so the normal EI qualifying rules shouldn't apply to him.

- He's paid into EI for years, and now he desperately needs it but can't get it. He hasn't made any money since he stopped working in December 2022 and his financial situation has gotten worse.

[28] I acknowledge the Appellant is frustrated and confused that multiple Commission agents couldn't clarify whether he was eligible for more EI sickness benefits and just told him to reapply.

[29] But even if I agree that a Commission agent misled the Appellant in some way, this doesn't mean he can collect benefits, unfortunately. The Appellant can only collect benefits if the law allows for it. Individual Commission agents can't promise to pay benefits in a way that goes against the law.¹⁴ And the law doesn't give me the power to award the Appellant any compensation even if a Commission agent made a mistake, unfortunately.

[30] In other words, this means the Appellant can't get benefits because of Commission errors. He can only get benefits if the law allows for it.

[31] I also acknowledge the Appellant is frustrated with how the law has been applied in his case. And I sympathize greatly with him about the financial challenges he now faces.

[32] But, unfortunately, I'm not able to disregard or override the qualifying requirements in the EI Act.¹⁵ I'm bound by the law and can't refuse to apply it, even on grounds of equity.¹⁶

¹⁴ In *Canada (Attorney General) v Shaw*, 2002 FCA 325, the Federal Court of Appeal explains that misinformation from the Commission does not give an appellant relief from the provisions of the *Employment Insurance Act*. Similarly, in *Granger v Canada Employment Insurance Commission*, A-684-85, the Federal Court of Appeal explains that Commission agents don't have the power to amend the law. An individual Commission agent cannot promise to pay benefits in a way that is contrary to the law.

¹⁵ See *Attorney General (Canada) v Lévesque*, 2001 FCA 304

¹⁶ The Supreme Court says this. See *Granger v Canada (CEIC)*, [1989] 1 S.C.R. 141.

[33] In other words, I can't grant the Appellant sickness benefits even though he doesn't qualify for them. I can't make an exception for him, no matter how difficult or compelling his circumstances may be, unfortunately.¹⁷

[34] The Appellant needs 600 hours of insurable employment in his qualifying period to receive sickness benefits. He needs 665 hours of insurable employment to receive regular benefits.

[35] Unfortunately, the Appellant only has 119 hours.

[36] This means he hasn't satisfied the requirements to qualify for EI benefits.

Conclusion

[37] The appeal is dismissed.

[38] The Appellant doesn't have the hours of insurable employment necessary to qualify for EI benefits as of December 25, 2022. This means he can't establish a new claim or be paid the sickness benefits he asked for.

Bret Edwards

Member, General Division – Employment Insurance Section

¹⁷ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.