Citation: *BL v Canada Employment Insurance Commission*, 2023 SST 1232

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (583508) dated April 5, 2023 (issued by Service Canada)

Tribunal member:	Marc St-Jules
Type of hearing:	**IN WRITING**
Decision date:	July 17, 2023
File number:	GE-23-1137

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant hasn't shown that he has worked enough hours to qualify for Employment Insurance (EI) family caregiver benefits.

Overview

[3] The Appellant applied for EI family caregiver 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 compassionate care benefits.

[5] The Commission says that the Appellant doesn't have enough hours because he needs at least 600 hours but has 0 available hours.[2]

[6] The Appellant disagrees. He argues the current EI program has major deficiencies and concerns.[3] He says that it is unfair that only the last year is considered when reviewing a person`s insurable hours. The Appellant is unable to work while helping his father who needs his support. The Appellant suggests the current legislation should be reviewed for Family Caregiver, Compassionate care and Sickness benefits as well.

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[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] See GD4 page 1.
[3] See GD2 page 5.

Matter I have to consider first

The hearing proceeded In Writing

[7] The Tribunal asks appellants to tell us their preferred method of hearing. In this case, the Appellant originally chose to have a hearing by phone. The section where the Appellant is asked a reason for his preference for a phone hearing mentions this option is more personable and convenient for him.

[8] The Appellant was sent a notice of hearing on June 15, 2023. This was for a July 18, 2023, hearing. The Appellant, however, sent in an email that very day on June 15, 2023. The Appellant requested to change his preference to In Writing. In this same email, the Appellant referenced an earlier email he had sent on May 9, 2023. This earlier email also requested a hearing in writing. I reviewed the file and this email was in fact in the Appellant`s file.

[9] The Appellant sent another email on the following day, on June 16, 2023, with a new Notice of Appeal. It now indicates his preference was In Writing. The section where the Appellant is asked a reason for his preference for an In Writing hearing mentions this option is more personable and convenient for him. This is the same reason as previously provided.

[10] I did consider if holding the hearing In Writing, meaning based only on the documents I have in the file would be fair. I believe a teleconference, videoconference or in-person hearing would allow for a more interactive method to exchange information. However, Appellants may have other reasons for their preference. For this reason, a letter was sent to the Appellant.[4]

[11] This letter explained that all decisions are in writing. It further explained that the Appellant can change their preference to phone or videoconference hearing.

[12] The letter, which was sent via email on June 20, 2023, also invited the Appellant to submit any additional submissions in response to the Commission`s Reconsideration

[4] See GD05.

File and the Commission`s Representations to the Tribunal.[5] The deadline to reply was July 7, 2023.

[13] No reply was received from the Appellant. No new request to change the hearing type was received either.

[14] As of the decision date, no communication has been received by the Appellant regarding the June 20, 2023, email to the Appellant. I believe the Appellant received the letter which included the offer to change the hearing format. This is because there is no indication that the email failed to send. In addition, the email was not returned as undeliverable.

[15] I read and understood all the Appellant`s submissions. I do not have any questions regarding his submissions. I find the Appellant is aware of the various hearing types. He made the conscious decision to first select a phone hearing. He then sent three separate requests to change the hearing type to In Writing.

[16] The Appellant has his reasons for making this request. The reasons are unknown to the Tribunal. However, the Appellant did provide some information on his current situation. He has to care for his ailing father who is in another town. He also has to care for the children while his spouse works. He has already expressed himself clearly in writing. I believe all the information the Appellant has given. I don’t believe I need to test his credibility. There is a full record of what he and the Commission discussed as well as documentary evidence.

[17] So, I believe I can decide fairly and quickly with the materials the parties have given me. I think having an oral hearing would not help his situation.

Issue

[18] Has the Appellant worked enough hours to qualify for EI family caregiver benefits?

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[5] See GD03 and GD04.

Analysis

How to qualify for benefits

[19] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.[6] 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.

[20] To qualify, you need to have worked enough hours within a certain time frame. This time frame is called the **qualifying period**.[7]

The Appellant's qualifying period

[21] 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. The **qualifying period** is the timeframe where insurable hours are worked to establish a claim.

[22] The law says that the **benefit period** starts the later of

- the Sunday of the week in which the interruption of earnings occurs, and,
- the Sunday of the week in which the initial claim for benefits is made.[8]

[23] The Appellant applied for benefits on January 15, 2023.[9] I therefore find the that the **benefit period** should start on January 15, 2023. This is the Sunday in which the initial claim for benefits was made. This is 1 week later than the Commission decided. However, in the absence of a reason or evidence to the contrary, I find that the EI Act is clear, the benefit period starts January 15, 2023.

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[6] See section 48 of the Act.
[7] See section 7 of the Act and section 93 of the Regulations.
[8] See Section 10(1) of the EI Act.
[9] See GD3 page 21.

[24] In deciding the **qualifying period**, I looked at the January 15, 2023, **benefit period**. In general, the **qualifying period** is the 52 weeks before your benefit period start date.[10]

[25] With this information, I find the Appellant`s **qualifying period** to be January 16, 2022, until January 14, 2023. This is the 52 weeks prior to his **benefit period**.

Extension of the qualifying period

[26] There is the possibility to extend a **qualifying period**.[11] However, section 8 of the EI Act also says that the qualifying period can be extended **but only** until the previous claim. The Commission says the Appellant had a previous claim starting on November 14, 2021.[12] The Appellant did not provide any evidence to the contrary. I have nothing to refute this so I find the Appellant did have a previous claim starting November 14, 2021.

[27] This means that the Appellant`s qualifying period can only be extended to November 14, 2021. However, there are two important things to consider. The **first** is that an extension can only be granted if certain conditions are met.[13] There is no information available to me to grant an extension. The **second** is that an extension only helps if there are additional hours to add. The Appellant agreed that there were no insurable hours after November 14, 2021.[14] This means that an extension of the qualifying period would not result in any additional hours.

[28] This means that an extension of the qualifying period does not help the Appellant. There are no additional hours to add.

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[10] See section 8 of the EI Act.
[11] See section 8(2) of the EI Act.
[12] See GD4 page 2.
[13] See Section 8(2) of the EI Act.
[14] See GD3 page 32.

The hours the Appellant worked

[29] The Appellant did not dispute the number of hours accumulated since November 14, 2021. He agrees he has none. He argues the law needs to be changed.

[30] There is no evidence that makes me doubt the hours since November 14, 2021.

[31] Therefore, based on the evidence before me, I find the Appellant had 0 hours since November 14, 2021.

The number of hours required for benefits

[32] When it comes to hours, there are two ways to qualify for special benefits. Under the **general rule**, the number of hours required depends on the unemployment rate in your region.[15] Under the **general rule**, the Commission says the Appellant needed 630 hours.[16]

[33] The Appellant did not dispute his economic region, the unemployment in his economic region or the number of hours required under the **general rule**. His arguments are regarding the fairness of the law. His argues that the law should be changed to perhaps include hours in the last 5 years.[17]

[34] There is no evidence that makes me doubt the need for 630 hours under the **general rule**. This is because the Appellant did not provide anything to refute the economic region or the unemployment rate. I therefore find that the Appellant does not qualify under the **general rule**.[18] He has 0 hours in his qualifying period and needed 630.

[35] The law, however, provides another way to qualify for **special benefits.** This includes family caregiver benefits. For special benefits, a person can qualify with 600 hours.[19]

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[15] See section 7(2)(b) of the Act and section 17 of the Regulations.
[16] See GD03 pages 26-28.
[17] See GD2 page 5.
[18] Section 7 of the Act sets out the general rule.
[19] See section 93(1) of the Regulations.

[36] I find the Appellant does not qualify under the **general rule.** For this reason, I find that the Appellant needs to have accumulated 600 hours in his qualifying period for special benefits.

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

[37] No. The Appellant has accumulated 0 hours in his qualifying period while needing 600.

[38] The Appellant argues that the law should be changed to consider a longer history of insurable hours. The Appellant says he paid into the EI fund since the year 2000, if not earlier.[20]

[39] The Appellant says the situation is not fair. The law should be changed. He argues that he has worked for many years and paid into the EI fund and now that he needs help, he was denied.

[40] The Appellant also raises the fact that he had paid into the fund for years and should be entitled to benefits. While I accept the Appellant paid for over 20 years into the EI fund, he must still meet the entitlement conditions. The Appellant did in fact meet the entitlement conditions at least once in the past.[21]

[41] Unfortunately, I must apply the EI Act. Although the Appellant may perceive this as an unjust result, my decision is not based on fairness. Instead, my decision is based on the facts before me and the application of the law. There are no exceptions and no room for discretion. I can't interpret or rewrite the EI Act in a manner that is contrary to its plain meaning, even in the interest of compassion. The Tribunal does not make the laws.

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[20] See GD3 page 30.
[21] See GD4 page 2. As per the Commission, the Appellant did in fact collect a mix of benefits starting November 14, 2021, totalling 46 weeks of benefits. The Appellant has not provided any information to refute this so I accept it as fact.

[42] The Federal Court of Appeal says I can only follow the plain written meaning of the law. I can't rewrite the law or add new things to the law to make an outcome that seems fairer for the Appellant.[22]

[43] Courts have said that claimants need the required hours. There is no discretion. The Federal Court of Appeal decided that a person short by one hour does not qualify for benefits.[23]

[44] In this case, the Appellant doesn't meet the requirements, so he doesn't qualify for benefits. While I sympathize with the Appellant's situation, I can't change the law.[24]

Conclusion

[45] The Appellant doesn't have enough hours to qualify for EI compassionate care benefits.

[46] This means that the appeal is dismissed.

Marc St-Jules
Member, General Division – Employment Insurance Section

[22] *Canada (Attorney General) v Knee*, 2011 FCA 301, at paragraph 9.
[23] In *Canada (Attorney General) v Lévesque*, 2001 FCA 304, the claimant in this case was **short only one insurable hour**.
[24] See *Pannu v Canada (Attorney General)*, 2004 FCA 90.