



Citation: *Jl v Canada Employment Insurance Commission*, 2023 SST 120

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

Decision

Appellant: J. I.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (552541) dated October 24, 2022 (issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Teleconference

Hearing date: February 3, 2023

Hearing participant: Appellant

Decision date: February 6, 2023

File number: GE-22-3557

Decision

[1] The appeal is dismissed.

[2] The Claimant cannot receive parental benefits because he does not have enough hours of insurable employment to qualify.

[3] While the Claimant did stop working when only 420 hours were needed to qualify for employment insurance (EI) benefits, what matters is when his benefit period starts, and that starts after the rules were changed, so he needs more than 420 hours to qualify.

Overview

[4] The Claimant applied for employment insurance (EI) parental benefits on October 6, 2022.

[5] The Canada Employment Insurance Commission (Commission) determined that his benefit period would start on September 25, 2022, and he would need, at a minimum, 600 hours of insurable employment in his qualifying period, which he did not have, so he could not qualify for benefits.

[6] The Claimant says that he stopped working on September 24, 2022, when the COVID rule change on how many hours of work were needed to qualify was still in place, (the COVID rule change went away on September 25, 2022)

[7] The Claimant says according to the COVID changes he only needs 420 hours to qualify for benefits, which he has.

[8] I need to determine whether the Claimant can get the parental benefits he is asking for.

Issues

[9] The Claimant's request for parental benefits

Analysis

The Claimant's request for parental benefits.

[10] Due to the COVID-19 pandemic the Government of Canada made changes to the requirements to get EI benefits. One of those changes was that the hours of insurable employment required to get EI were no longer based on the unemployment rate in the region where the claimant lived. Instead, a person only needed 420 hours of insurable employment in their qualifying period to qualify.

[11] These changes ended on September 25, 2022. Starting that day, in order to qualify for EI benefits, the number of insurable hours of employment a person needs are based on the unemployment rate where they lived at the time of the application.

[12] The Claimant says he stopped working on September 24, 2022, when the COVID rules were still around, so he can qualify for benefits with only 420 hours, and he has 428 hours, so he should qualify.

[13] The Commission says they started the Claimant's benefit period on September 25, 2022, which is after the COVID rules went away, so the Claimant needs more than 420 hours to qualify for benefits.

[14] So, the first thing I need to determine is whether the Claimant falls under the COVID rules for how many hours of employment he needs to get benefits.

The COVID rules

[15] The Commission says that they started the Claimant's benefit period on September 25, 2022, which is after the COVID rules went away.

[16] The Claimant says that determining whether the COVID rules apply to him should be based on when he stopped working, and he stopped working on September 24, 2022.

[17] I find I disagree with both the Commission and the Claimant.

[18] The Claimant's benefits period starts on one of two dates, either, the Sunday of the week in which the Claimant stopped working, or the Sunday of the week in which the Claimant filed his initial claim, **whichever date is the latest one is the start date of the Claimant's benefit period.**

[19] The Claimant's last day of work was September 24, 2022.¹ The Sunday of that week is September 18, 2022.

[20] The Claimant filed his initial claim on October 6, 2022.² The Sunday of that week is October 2, 2022.

[21] October 2, 2022, is the later of those two dates, so that means the Claimant's benefit period should begin on that date.

[22] October 2, 2022, is after the COVID rules went away on September 25, 2022, so this means they do not apply to the Claimant, and the hours he needs will not be 420, and instead will be based on the unemployment rate of the region in which the Claimant resides.

The hours the Claimant needs to qualify

[23] Since the COVID rules do not apply to the Claimant's claim, the law says that the hours of insurable employment the Claimant needs to qualify are based on the unemployment rate in his region.³

[24] The law says that the regional rate of unemployment is the rate from the week preceding the week the Claimant's benefit period starts;⁴ the preceding week would be the week of September 25, 2022. The Commission submits the unemployment rate in that week is 5.8%,⁵ so the Claimant would need 700 hours of insurable employment.

¹ GD03-18

² GD03-14

³ Section 7(2) of the *Employment Insurance Act*

⁴ Section 17(1)(a) of the *Employment Insurance Regulations*

⁵ GD03-21

[25] I find I accept the Commission's submission on the unemployment rate as the Claimant did not dispute it, and I see nothing that would suggest the information from the Commission is incorrect.

[26] According to the law, with an unemployment rate of 5.8%, the Claimant would need 700 hours of insurable employment to qualify for benefits.⁶

The hours the Claimant has

[27] The qualifying period is where the law says I need to look to see how many hours of insurable employment the Claimant has.

[28] The Commission says the Claimant only has 428 hours in his qualifying period of September 26, 2021, to September 24, 2022.

[29] I find, that while the Commission incorrectly calculated the Claimant's qualifying period, that would not impact their determination of his hours.

[30] The qualifying period is, generally, the 52 weeks prior to the start of the Claimant's benefit period. Since I have found his benefit period starts on October 2, 2022, it will be the 52 weeks prior to this date, so from October 3, 2021, to October 1, 2022.

[31] The Claimant says that the two Records of Employment (ROE) on the file are the only work he did that would fall in his qualifying period.⁷

[32] The Commission has determined that the Claimant only has 428 hours of employment based on his two ROEs. The Claimant also agrees he has 428 hours of employment.⁸ So, as both parties are in agreement that there is no other work, other than the 428 hours, that is insurable and would fall in the qualifying period of October 3,

⁶ Section 7(2) of the *Employment Insurance Act*

⁷ GD03-27, and in his testimony he confirmed as such as well.

⁸ The Claimant did say he had other work, but said it was self-employment and not insurable, so he said it would not count towards his insurable employment hours and he did not dispute that he had 428 insurable hours.

2021, to October 1, 2022, I accept the submission from the Commission that the Claimant only has 428 hours of insurable employment.

Qualifying for benefits

[33] So, at this point I have determined the Claimant's benefit period starts on October 2, 2022, which means the COVID rules do not apply to him.

[34] This means, that based on the unemployment rate in his region at the time he applied, he needs 700 hours of insurable employment to qualify for benefits.

[35] I have further accepted that the Claimant only has 428 hours of insurable employment in his qualifying period.

[36] I find he cannot qualify for benefits as he does not have enough hours of insurable employment, since he needs 700 hours and only has 428.

[37] However, the Claimant applied for parental benefits, and these are considered special benefits;⁹ and there is another way to access special benefits.

[38] The law says, that if a person does not qualify to receive benefits the regular way¹⁰ and they applied for special benefits, if they stopped working, and had 600 hours of insurable employment in their qualifying period, they can get special benefits.¹¹

[39] Unfortunately, this does not help the Claimant, as he does not have 600 hours of insurable employment in his qualifying period, he only has 428.

⁹ See as an example section 12(3) of the *Employment Insurance Act* which states parental benefits are special benefits.

¹⁰ The regular way being to look at the rate of unemployment in a person's region, and, based on the table in Section 7(2) of the *Employment Insurance Act*, which says how many hours they need based on the unemployment rate, checking to see if they have enough hours of insurable employment in their qualifying period

¹¹ Section 93 of the *Employment Insurance Regulations*

Summary

[40] So, in summary. The Claimant's benefit period should start on October 2, 2022, which is after the COVID rules ended.

[41] This means the Claimant needs, at a minimum, 600 hours to qualify for his parental benefits, but he does not have that many hours, so he cannot qualify for benefits.

[42] I would note that even if I determined the Commission's date of September 25, 2022, was correct, that would still not help the Claimant, as the COVID rules had ended by that date as well.

[43] Finally, I would like to address the Claimant's statement that if he had been able to apply on the exact day he stopped working (September 24, 2022) which he could not due to life circumstances, that would have allowed him to qualify.

[44] As I have noted above, the benefit period has to start on a Sunday. So, if the Claimant had applied on September 24, 2022, the benefit period would start on September 18, 2022, the Sunday of that week.

[45] This means the Claimant would have lost all the hours of work he had on the 19, 20, 21, 22, 23 and 24 of September, since only hours worked prior to September 18, 2022, would have been counted.

[46] Since the Claimant only had 428 hours, and worked right up to September 24, 2022, while I make no finding on this issue, it is very possible that losing all the hours he worked on September 19, 20, 21, 22, 23 and 24, would have meant he had less than 420.

[47] I understand the Claimant could really use the money he would get from parental benefits.

[48] I also understand that it is very frustrating for the Claimant that based on when his claim was filed, he missed out on taking advantage of the COVID rules, but there is nothing I can do to help him, I must follow the law.

[49] The law says that at a minimum, the Claimant needs 600 hours of insurable employment and he does not have it, he only has 428, so he cannot qualify for benefits.

Conclusion

[50] The appeal is dismissed.

[51] The Claimant's benefit period starts after the COVID rules ended. This means he will need more than 420 hours of insurable employment to qualify for benefits.

[52] Unfortunately, he does not have enough hours of insurable employment, so he cannot qualify for benefits.

Gary Conrad
Member, General Division – Employment Insurance Section