



Citation: *HK v Canada Employment Insurance Commission*, 2023 SST 1674

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: H. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (591662) dated June 1, 2023 (issued by Service Canada)

Tribunal member: Catherine Shaw

Type of hearing: Teleconference

Hearing date: August 17, 2023

Hearing participant: Appellant

Decision date: September 1, 2023

File number: GE-23-1662

Decision

[1] The appeal is dismissed.

[2] The Appellant's appeal cannot be successful. The law sets out clearly how many weeks of EI benefits she is entitled to based on the unemployment rate in her region and the hours she worked in her qualifying period. Based on these facts, she is entitled to 19 weeks of EI benefits.

Overview

[3] The Appellant applied for EI benefits. The Canada Employment Insurance Commission (Commission) started her benefit period on December 4, 2022.

[4] The Commission looked at the rate of unemployment in the Appellant's region and the number of hours she worked in her qualifying period. It decided she was entitled to 19 weeks of benefits.

[5] The Appellant says she should be entitled to more weeks of benefits. She lives in a different region and it is much more difficult finding work at her age.

Issue

[6] How many weeks of benefits is the Appellant entitled to receive?

Analysis

[7] Once the Commission starts your benefit period, you can claim benefits for a week of unemployment in that time.¹ In general, benefit periods are one year.

[8] There is a maximum number of weeks of benefits that you can be paid within your benefit period. The law uses a table to set out how many weeks you can get.² The

¹ This is set out in section 12(1) of the *Employment Insurance Act* (EI Act).

² This table is located at Schedule I of the EI Act.

number of weeks you can be paid is determined by the rate of unemployment where you live and the number of hours you worked in your qualifying period.³

– **Hours of insurable employment**

[9] In general, the qualifying period is the 52 weeks before your benefit period would start.⁴

[10] 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.

[11] The Commission decided that the Appellant's qualifying period was the usual 52 weeks. It determined that the Appellant's qualifying period went from December 5, 2021, to December 3, 2022. And it said she had worked 1076 hours of insurable employment in this time.

[12] The Appellant disputes the hours the Commission said she had. She said she should have 1120 hours in her qualifying period.

[13] I don't have the authority to decide on the number of hours the Appellant has in her qualifying period. The law says this can only be determined by the Commission or the Canada Revenue Agency.

[14] After the hearing, I asked the Commission to provide the calculations it used to determine the Appellant's hours in her qualifying period. On August 24, 2023, it submitted detailed submissions on how it calculated the hours using the Appellant's Record of Employment.⁵ The result of its calculations showed the Appellant had 1076 hours in her qualifying period.

[15] I gave the Appellant an opportunity to respond to the Commission's calculations of her hours. I asked her to provide her response by August 31, 2023. She didn't file any additional submissions.

³ See section 12(2) of the EI Act.

⁴ See section 8 of the EI Act.

⁵ See GD6.

[16] As I said above, I don't have the authority to decide how many hours the Appellant has, so I must rely on the number of hours provided by the Commission. In other words, 1076 hours. If the Appellant disagrees with this number, she can ask the Canada Revenue Agency to make a ruling on the number of insurable hours she has in her qualifying period and provide this ruling to the Commission.

– **Regional rate of unemployment**

[17] When the Appellant applied for EI benefits, she stated that she lived in Guelph, Ontario.⁶ When she spoke to the Commission later, she said she actually lived in Collingwood, Ontario.⁷ She gave a different address as her residence and asked that this address be used to determine her weeks of entitlement.

[18] There is some conflicting information about where the Appellant resides.⁸ However, it is not an important distinction because both EI economic regions that correspond with Guelph and Collingwood have unemployment rates under 6% at the time she applied.⁹ So, using either region doesn't make a difference to determining the number of weeks the Appellant is entitled to receive.

– **So, how many weeks is the Appellant entitled to receive?**

[19] The Appellant is entitled to 19 weeks of benefits. This is based on the 1076 hours she had in her qualifying period and the unemployment rate of less than 6% in her EI economic region.

[20] The Appellant says that she should be given additional weeks of benefits. She has worked and paid into EI since she was 16 years old. She is now 68 years old and it

⁶ See GD3-5.

⁷ See GD3-24.

⁸ The Appellant told the Tribunal that her address in Guelph, Ontario was correct on June 29, 2023 (see GD2A-1). Then, at the hearing on August 17, 2023, the Appellant said she lived at the address in Collingwood, Ontario.

⁹ The unemployment rate for the EI economic region for South Central Ontario (Collingwood) was 5.1% at the time the Appellant applied. The unemployment rate for the EI economic region for Central Ontario (Guelph) was 3.8% at the time the Appellant applied.

is more difficult to find work at her age. For that reason, she should be paid the maximum number of weeks of EI benefits.

[21] I understand the Appellant's argument. But, the law is very specific. A claimant's hours and regional rate of unemployment determine the maximum weeks of benefits that can be paid. Based on these factors, the Appellant is entitled to a maximum 19 weeks of benefits.

[22] I recognize that the Appellant will be disappointed with this result. I don't doubt that she is a hard worker and could benefit from the added support of additional weeks of EI benefits. Unfortunately, I am bound to apply the law as it is written. In dealing with cases where the resulting decision may seem unfair on its face, the Federal Court of Appeal has said:

...rigid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme. However, tempting as it may be in such cases (and this may well be one), adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.¹⁰

Conclusion

[23] The appeal is dismissed.

Catherine Shaw
Member, General Division – Employment Insurance Section

¹⁰ See *Canada (Attorney General) v Knee*, 2011 FCA 301 at para 9.