



Citation: *JB v Canada Employment Insurance Commission*, 2023 SST 693

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

Decision

Appellant: J. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (562206) dated February 9, 2023 (issued by Service Canada)

Tribunal member: Lilian Klein

Type of hearing: Teleconference

Hearing date: May 1, 2023

Hearing participants: Appellant

Decision date: June 16, 2023

File number: GE-23-853

Decision

[1] The law requires me to dismiss the Claimant's appeal. This decision explains why.

[2] The Claimant hasn't shown that she worked enough insurable hours to establish a benefit period for Employment Insurance (EI) maternity and parental benefits.

Overview

[3] The Claimant in this appeal was working part-time when she left her job on September 29, 2022, to take maternity leave. On October 27, 2022, she applied for special benefits (maternity and parental). She'd worked 591 hours of insurable employment during her qualifying period, from October 3, 2021, to October 1, 2022.

[4] The Canada Employment Insurance Commission (Commission) decided that the Claimant didn't have enough hours of insurable employment (insurable hours) to establish a benefit period. It says she only had 591 hours where she needed 600 hours.

[5] The Claimant says there'd been days she couldn't work during her qualifying period because she was sick, or her daughter was sick. She also argues that she'd had to cut back to part-time hours due to high anxiety levels. She says it's unfair to refuse her benefits over nine hours when she's paid into EI for the past 21 years.

The issue I must decide

[6] Did the Claimant work enough hours to establish a benefit period for maternity and parental benefits?

Analysis

How to qualify for benefits

[7] Not everyone who stops work can get EI. **You must prove that you qualify.**¹

[8] To qualify, you need to have worked enough hours within a certain time frame. This is called your **qualifying period.**²

¹ See section 48 of the *Employment Insurance Act* (Act). You must prove this on a balance of probabilities,

² See section 7 of the Act and section 93 of the *Employment Insurance Regulations* (Regulations).

[9] The number of hours you need varies. It depends on the unemployment rate in your region.³ But that's for regular benefits. There's another way to get EI if you're applying for special benefits such as maternity and parental benefits, rather than regular benefits. You can get special benefits with at least 600 hours.⁴

[10] So, when the Claimant made her initial claim on October 27, 2022, she needed 600 insurable hours to qualify for her special benefits.⁵

The qualifying period

[11] The hours that count are the ones the Claimant worked during her **qualifying period**. Except in certain situations, the law says the qualifying period is the 52 weeks before a benefit period starts.⁶ This calculation is crucial.

[12] Your **benefit period** isn't the same as your **qualifying period**. It's a different time frame. If you qualify, your benefit period is when you receive your benefits,

[13] The Commission says the Claimant's qualifying period is the 52 weeks from **October 3, 2021, to October 1, 2022**. She hasn't disputed those dates.

The Claimant's qualifying period can't be extended

[14] I considered whether the Claimant might be eligible for an extension to her qualifying period. The law may permit an extension by the **number of weeks** that you couldn't be employed because of an illness, injury or quarantine.⁷

[15] If you meet the conditions for an extension, this might allow you to access additional insurable hours that you worked **before** your qualifying period started. Otherwise, **only the hours within the qualifying period count**.⁸

³ See section 7(2)(b) of the Act and section 17 of the Regulations.

⁴ See section 93(1) of the Regulations. The hours must be hours of insurable employment.

⁵ Temporary changes under Budget 2021 allowed claimants to get regular or special benefits with 420 hours starting on September 26, 2021, and ending with claims that began by September 18, 2022.

⁶ See section 8 of the Act. There are exceptions to this general rule, but they don't apply in this case.

⁷ See section 8(2)(a) of the Act.

⁸ See *Haile v Canada (Attorney General)*, 2008 FCA 193.

[16] I looked at the possibility of an extension because the Claimant says she lost hours when she missed some of the shifts in her qualifying period for health reasons. She says she could have worked enough hours if it hadn't been for those missed shifts.

[17] The Claimant's evidence shows that she had to miss work for health reasons on October 5, 2022, October 7, 2022, and August 2, 2022.⁹ The employer's evidence shows she also had to miss work due to illness on May 3, 2022, and May 5, 2022.¹⁰ Those were the two scheduled shifts that she missed during her five-day COVID-19 isolation. All the above five dates are within the Claimant's qualifying period.

[18] The Claimant says she missed other shifts too when her daughter was sick. But an extension can only be based on her illness, not that of her daughter.¹¹ So, I only considered the five shifts where she lost insurable hours due to her own health issues.

[19] Unfortunately, the law speaks only of whole weeks, not single shifts over the course of a qualifying period. The law says a week is "**a period of seven consecutive days.**"¹² Since the Claimant's missed shifts don't fall over any period of seven consecutive days, I can't apply the rules for an extension.

[20] The Claimant also says she could have worked the missing hours if her anxiety hadn't forced her to cut back to part-time hours. But there's no provision to extend a qualifying period for part-timers to cover the hours they miss due to working less hours.¹³

[21] So, the Claimant can't get an extension to her qualifying period. That's why I accept that **her qualifying period was from October 3, 2021, to October 1, 2022.**

The hours the Claimant worked

[22] The available evidence shows that the Claimant worked 591 hours during her qualifying period. The employer's records support this conclusion. The Claimant doesn't dispute this number, so that's the number I've relied on

⁹ See the Claimant's evidence in the GD06 file.

¹⁰ See the employer's records at GD03-39.

¹¹ See CUB 53350. I don't have to follow CUBs, but their logic guides me.

¹² See section 2(1) of the Act. See also *M.D. v C.E.I.C.*, 2017, SSTADEI 243.

¹³ See CUB 59644.

So, did the Claimant work enough hours to qualify for benefits?

[23] I find that the Claimant hasn't proved that she qualifies for EI special benefits since she doesn't have the 600 insurable hours that the law says she needs. So, she can't establish a benefit period for her maternity and parental benefits.

[24] I sympathize with the Claimant's difficult situation and her frustration at losing her benefits over just nine hours. But EI is an insurance plan. As with all insurance plans, you not only pay into a plan. You must also meet all its conditions.¹⁴

[25] The Claimant couldn't meet all the conditions in the EI plan since she hadn't worked enough insurable hours during her qualifying period. Unfortunately, I don't have the power to change the laws that set these conditions.¹⁵ That's even in cases of financial hardship and even where a claimant is only missing a few hours.¹⁶

[26] The Claimant hasn't disagreed with the total of 591 insurable hours that the available evidence supports. But if she has any doubts, she could ask the CRA for a ruling on her hours. The CRA is the final authority on the number of insurable hours you've worked in your qualifying period.

Conclusion

[27] The Claimant doesn't have enough insurable hours to establish a benefit period for maternity and parental benefits.

[28] This explains why I must dismiss the Claimant's appeal.

Lilian Klein

Member, General Division – Employment Insurance Section

¹⁴ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

¹⁵ *Canada (Attorney General) v Knee*, 2011 FCA 301, sets out this principle.

¹⁶ In *Canada (Attorney General) v Lévesque*, 2001 FCA 304, the claimant was short only one insurable hour.