Citation: *JB v Canada Employment Insurance Commission*, 2023 SST 1430

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	J. B.
Respondent:	Canada Employment Insurance Commission
Representative:	Josée Lachance

Decision under appeal:	General Division decision dated June 16, 2023 (GE-23-853)

Tribunal member:	Stephen Bergen
Type of hearing:	Teleconference
Hearing date:	October 31, 2023
Hearing participants:	Appellant : Respondent Respondent's representative
Decision date:	October 31, 2023
File number:	AD-23-748

Decision

[1] I am allowing the appeal. The General Division made an important error of fact in how it evaluated the evidence of the Claimant's insurable employment hours.[1]

[2] I have made the decision the General Division should have made, and I confirm that the Claimant had 602 hours in her qualifying period, sufficient to qualify for special (maternity and parental) benefits.

Overview

[3] J. B. is the Appellant. I will call her the Claimant because she claimed special benefits.

[4] The Canada Employment Insurance Commission (Commission) decided that the Claimant did not qualify for special benefits because she required 600 hours to qualify. It originally found that she had only 591 hours between October 3, 2021, and October 1, 2022 (the qualifying period). When it reconsidered, it maintained its decision that she did not have sufficient hours to qualify (after recalculating that she had 582.91 hours).

[5] The Claimant appealed to the General Division of the Social Security Tribunal (Tribunal), but the General Division dismissed her appeal.

[6] She next appealed to the Appeal Division, where I granted her leave to appeal.

[7] Before the Tribunal could schedule a full Appeal Division hearing, the Commission provided submissions in which it acknowledged a mistake in its reconsideration decision. The Commission conceded that the General Division made an error in relying on its reconsideration calculations.

[8] The Appeal Division scheduled a settlement conference. This decision is the result of an agreement reached at the settlement conference.

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[1] I will refer to hours of insurable employment as "hours."

The parties agree on the outcome of the appeal

[9] The parties agree that the General Division made an error of fact when it found that the Claimant had insufficient hours to qualify for special benefits. They agree that the Claimant had 602 hours of insurable employment in her qualifying period.

[10] They propose that I confirm their agreement through a decision of the Appeal Division.

I accept the proposed outcome

[11] I accept that the agreement of the parties is consistent with the law and the evidence.

[12] I agree that the General Division made an important error of fact. It accepted the Commission's calculations without considering the evidence on which the calculations depended. It did not evaluate how the Commission derived the total hours of insurable employment from that evidence.

Issue

[13] The issue in this appeal is:

a) Did the General Division make an important error of fact when it confirmed that the Claimant had 591 hours of insurable employment?

Analysis

Important error of fact

[14] The General Division made an important error of fact by ignoring or misunderstanding the evidence of the Claimant's insurable hours. It stated that the employer's records support a conclusion that the Claimant only worked 591 hours.

[15] In fact, the **employer's records** do not support such a conclusion. It was the Commission's system that calculated that the Claimant had 591 hours, which it later recalculated and adjusted to 582.9 hours. The employer had completed a Record of

Employment (ROE) that indicated 602 hours of insurable employment in a period that included 27 pay periods.[2] It had also provided a weekly breakdown of the Claimant's work hours and her vacation hours.[3] These total just over 602 hours over the qualifying period.

[16] As the Commission now concedes, both its original calculations and its reconsideration calculations were in error.

[17] The Commission explains that the system originally failed to account for the fact that her first pay period included a week that was outside of her qualifying period. That week had zero earnings and it affected the Commission's determination of the hours of insurable employment. The Commission obtained the total number of hours through a process that used the hours worked over the entire period of the ROE to find the weekly average number of hours worked, – and (presumably) multiplying that average by 52 weeks.

[18] It is not clear whether the Commission rectified its original error when it reconsidered, but its reconsideration calculation omitted to include any insurable hours from statutory holidays. This represented an additional 19.5 hours.

[19] The method by which the Commission manipulated the insurable hour information was not particularly transparent. Regardless, the essential information was before the General Division. The General Division made an error by ignoring or misunderstanding this evidence.

Remedy

[20] The record is complete. I will make the decision the General Division should have made. [4]

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[2] See GD3-18.
[3] See GD3-33-35.
[4] See sections 59(1) and 64 of the DESDA.

[21] I accept that the Claimant actually had 602 hours of insurable employment in her qualifying period, sufficient to qualify for special benefits.

Conclusion

[22] I am allowing the appeal. In accordance with the agreement of the parties, I have decided that the Claimant had 602 hours of insurable employment in her qualifying period. This was sufficient hours that she should have qualified for special benefits.

Stephen Bergen
Member, Appeal Division