



Citation: *IA v Canada Employment Insurance Commission*, 2023 SST 1920

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

# Decision

**Appellant:** I. A.  
**Representative:** Cynthia Iheanacho

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (568994) dated March 2, 2023  
(issued by Service Canada)

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**Tribunal member:** Marisa Victor

**Type of hearing:** Videoconference  
**Hearing date:** July 6, 2023  
**Hearing participants:** Appellant  
Appellant's representative

**Decision date:** July 19, 2023  
**File number:** GE-23-819

## Decision

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

[2] The Appellant hasn't shown that she has worked enough hours to qualify for Employment Insurance (EI) maternity and parental benefits (special benefits).

## Overview

[3] The Appellant applied for EI special benefits, but the Canada Employment Insurance Commission (Commission) decided that the Appellant hadn't worked enough hours to qualify.<sup>1</sup>

[4] I have to decide whether the Appellant has worked enough hours to qualify for EI special benefits.

[5] The Commission says that the Appellant doesn't have enough hours because she needs 600 hours, but only has 510 hours.

[6] The Appellant disagrees and says that she applied for EI maternity benefits on September 24, 2022 when only 420 hours was needed. The number of hours changed to 600 on September 25, 2022. The Appellant says that the 420-hour minimum should apply to her case. She also says her benefit period should begin on September 18, 2022 and not on September 25, 2022.

## Issue

[7] Has the Appellant worked enough hours to qualify for EI special benefits?

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<sup>1</sup> Section 7 of the *Employment Insurance Act* (EI Act) says 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."

## Analysis

### How to qualify for benefits

[8] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.<sup>2</sup> The Appellant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that she qualifies for benefits.

[9] To qualify, you need to have worked enough hours within a certain timeframe. This timeframe is called the “qualifying period.”<sup>3</sup>

[10] In general, the number of hours depends on the unemployment rate in your region.<sup>4</sup> But, the law provides another way to qualify for special benefits, including parental benefits. If you want special benefits, you can qualify if you have 600 or more hours.<sup>5</sup> But, this is only if you don’t qualify under the general rule.<sup>6</sup>

[11] In addition, in response to the Covid-19 pandemic, benefit periods established between September 26, 2021 and September 24, 2022, only needed 420 hours to qualify for regular or special benefits (Covid-19 temporary measure).<sup>7</sup>

### The Appellant’s benefit period

[12] As noted above, the hours counted are the ones the Appellant worked during her qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.<sup>8</sup>

[13] 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.

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<sup>2</sup> See section 48 of the EI Act.

<sup>3</sup> See section 7 of the EI Act.

<sup>4</sup> See section 7(2)(b) of the Act and section 17 of the *Employment Insurance Regulations* (EI Regulations).

<sup>5</sup> See section 93(1) of the EI Regulations. The hours need to be hours of insurable employment.

<sup>6</sup> Section 7 of the Act sets out the general rule.

<sup>7</sup> *Budget Implementation Act, 2021*, No. 1 S.C. 2021, c. 23. Repealed September 25, 2022.

<sup>8</sup> See section 8 of the EI Act.

[14] To qualify for benefits, an appellant must:

- a) Suffer an interruption earnings; and
- b) Have during their qualifying period at least the number of hours of insurable employment required.

[15] I accept as fact that the Appellant went on maternity leave on September 23, 2022. This is supported by the Appellant's testimony and the Commission's report of its conversations with the Appellant's employer. There is no evidence to dispute this date.

[16] I also accept as fact that the Appellant applied for EI special benefits on September 24, 2022. This is supported by the date shown on her application. There is no evidence to dispute this date.

[17] A benefit period begins on the later of:

- a) the Sunday in which the interruption of earnings occurs, and
- b) the Sunday of the week in which the initial claim for benefits is made.<sup>9</sup>

[18] I now have to determine when the Appellant's benefit period begins.

### **When did the Appellant suffer an interruption of earnings?**

[19] The Appellant did not suffer an interruption of earnings until the week of September 25, 2022.

[20] The Commission initially decided that the Appellant suffered an interruption of earnings the week beginning September 25, 2022.

[21] The Appellant asked for a reconsideration and the Commission then changed its mind. It said that because the Appellant had applied for benefits on September 24,

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<sup>9</sup> See section 10 of the EI Act.

2022, her claim would be recalculated with the benefit period beginning September 18, 2022 instead of September 25, 2022.

[22] The Commission then rescinded its own reconsideration and issued a new reconsideration decision which maintained the original position. The Commission said that an appellant's interruption of earnings only occurred when the Appellant's earnings fell below 40% of her normal weekly earnings.<sup>10</sup> The Commission calculated that 40% of her normal weekly earnings was \$315.<sup>11</sup> The Commission said it contacted the employer and determined the Appellant had received \$390.30 for 15 hours of regular earnings for the week of September 18, 2022 and \$390.30 for 15 hours of maternity pay. Therefore, it concluded that the Appellant did not suffer an interruption of earnings of more than 40% in the week beginning September 18, 2022.

[23] The Commission maintains that the Appellant did not suffer an interruption of earnings until the week beginning September 25, 2022.

[24] The Appellant disagrees with the Commission's decision.

[25] The Appellant says that her first day of maternity leave was Friday, September 23, 2022. She says that she did not work the week of September 18, 2022. She says she was sick on Monday, September 19 and Tuesday, September 20, 2022. She provided timesheets showing she received 15 hours of paid sick leave for those two days. She says she did not work Wednesday, September 21 or Thursday, September 22 and was not paid for those two days. She said that September 23 onward she was on maternity leave. She says this means that her interruption of earnings occurred in the week beginning September 18, 2022 because she did not work that week.

## **Analysis**

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<sup>10</sup> See section 14(1) of the EI Regulations.

<sup>11</sup> The Commission did not show how it calculated this amount.

[26] I find that the Appellant did not suffer an interruption of earnings that was more than 40% of her normal weekly earnings the week of September 18, 2022. She did suffer an interruption of earnings the week of September 25, 2022.

[27] The Commission said that the employer confirmed that the Appellant was paid \$390.30 for 15 hours of regular pay and \$390.30 for 15 hours of maternity pay during the week of Sept 18, 2022, for a total of \$675.33 in her last week of pay. These numbers do not add up:  $\$390.30 + \$390.30 = \$780.60$  not \$675.33. I cannot rely on these calculations.

[28] However, the Appellant agreed that she earned 15 hours of paid sick leave for September 19 and September 20, 2022. Her pay stubs support this. I accept the Appellant's testimony on this matter, and it is supported by her documents. I find that the Appellant earned \$390.30 in paid sick leave from her employer the week of September 18, 2022.

[29] Section 35(2) of the *Employment Insurance Regulations* (EI Regulations) defines earnings for benefit purposes and the earnings for the purposes of determining an interruption of earnings under section 14 of the EI Act. It includes under section (35)(2)(d) of the EI Regulations any payments for paid sick leave or maternity leave plans.

[30] This means that the \$390.30 the Appellant earned from her employer for sick leave pay counts as earnings and must be allocated to the week of September 18, 2022.<sup>12</sup>

[31] When I only consider the \$390.30 in earnings for two paid sick leave days on September 19 and 20, 2022, this amount exceeds 40% of the Appellant's normal weekly earnings.<sup>13</sup> The Appellant's ROE supports this finding. The ROE shows that she was paid bi-weekly. Her final pay period shows earnings in the amount of \$675.33 for

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<sup>12</sup> See Section 36 of the EI Regulations.

<sup>13</sup> See Section 14 of the EI Act.

the pay period September 18, 2022 to October 2, 2022, with her last day of for which she was paid being September 22, 2022.

[32] The ROE also shows that the previous bi-weekly pay period, the Appellant earned \$1876.47. That amount exceeded what she normally earned on a bi-weekly basis. She regularly earned between \$1363.51 and \$1546.52 on a bi-weekly basis.<sup>14</sup> For \$390.30 to equal 40% of the Appellant's normal weekly earnings, she would have had to have normal weekly earnings of \$975.75. There is no evidence before me that shows that the Appellant had normal weekly earnings equal to \$975.75. The ROE shows that her normal weekly earnings were below that amount.

[33] The evidence is clear that the Appellant had \$390.30 in earnings the week of September 18, 2022 that must be taken into account in determining an interruption of earnings. This amount must be allocated to the week of September 18, 2022. As a result, the Appellant's earnings for that week are not below 40% of her normal weekly earnings. I therefore find that the Appellant did not suffer an interruption of earnings for the purpose of starting her benefit claim, the week of September 18, 2022.

[34] The Appellant did suffer an interruption of earnings the week of September 25, 2022. She had stopped work and went on maternity leave on September 23, 2022 and her ROE shows no further earnings after that September 22, 2022.

**So, when did the Appellant's benefit period begin?**

[35] I find that the Appellant's benefit period began September 25, 2022. This is because it is the later of the Sunday in which the interruption of earnings occurs, and the Sunday of the week in which the initial claim for benefits is made.<sup>15</sup>

[36] I also find that the Appellant does not qualify under the Covid-10 temporary measure. This is because the Covid-19 temporary measure says that it only applies to an appellant "whose benefit period begins during the period beginning on September 21, 2021 and ending on September 24, 2022." This means that the Covid-19 temporary

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<sup>14</sup> See ROE at GD3-19

<sup>15</sup> See section 10 of the EI Act.

measure does not apply to a claim where the benefit period begins on September 25, 2022.

### **How many hours does the Appellant need to qualify?**

[37] The Appellant needs to have worked at least 600 hours to qualify for EI special benefits.

[38] The Commission decided that the Appellant's region was the economic region of Kitchener and that the regional rate of unemployment at the time was 5.5%. This means that the Appellant would need to have worked at least 700 hours in her qualifying period to qualify for EI benefits under the general rule.<sup>16</sup> The parties agree that the Appellant doesn't qualify under the general rule which would require 700 hours.

[39] The Commission also determined that the Appellant would need to have worked at least 600 hours in her qualifying period to establish a claim for special benefits, including maternity benefits.<sup>17</sup>

[40] The Appellant disagrees with the Commission's decision about the number of hours the Appellant needed to have worked to qualify for special benefits. This disagreement is based on the arguments already discussed: that the Appellant applied before September 25, 2022, and the law that applies to her is the law that was in effect on September 24, 2022; and that she did not work the week of September 18, 2022 and so her interruption of earnings occurred that week.

[41] Both of these arguments have already been discussed above in the determination of the Appellant's benefit period.

[42] In accordance with Section 93 of the EI Regulations, I find that the Appellant needed at least 600 hours to qualify for special benefits.

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<sup>16</sup> Section 7 of the EI Act sets out a chart that tells us the minimum number of hours that you need depending on the different regional rates of unemployment.

<sup>17</sup> Section 93 of the EI Regulations.



## **The hours the Appellant worked**

[43] The Commission decided that the Appellant had worked 510 hours during her qualifying period.

[44] The Appellant doesn't dispute this, and there is no evidence that makes me doubt it. So, I accept it as fact.

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

[45] I find that the Appellant hasn't proven that she has enough hours to qualify for benefits because she needs 600 hours but has worked 510 hours.

[46] EI is an insurance plan, and, like other insurance plans, you have to meet certain requirements to receive benefits.

[47] In this case, the Appellant doesn't meet the requirements, so she doesn't qualify for benefits. I sympathize with the Appellant's situation. Had the Appellant gone on maternity leave one week earlier she would have qualified under the Covid-19 temporary measure. Unfortunately, I can't change the law, even for compassionate reasons.<sup>18</sup>

## **Conclusion**

[48] The Appellant doesn't have enough hours to qualify for benefits.

[49] This means that the appeal is dismissed.

Marisa Victor

Member, General Division – Employment Insurance Section

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<sup>18</sup> See *Pannu v Canada (Attorney General)*, 2004 FCA 90.