



Citation: *JP v Canada Employment Insurance Commission*, 2024 SST 320

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: J. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (55751) dated November 7, 2023
(issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Videoconference

Hearing date: January 11, 2024

Hearing participant: Appellant

Decision date: March 27, 2024

File number: GE-23-3164

Decision

[1] The appeal is allowed.

[2] The Appellant has shown, on a balance of probabilities, that she has worked enough hours to qualify for Employment Insurance (EI) benefits.

Overview

[3] The Appellant applied for EI benefits in August 2022, but the Canada Employment Insurance Commission (Commission) decided that the Appellant hadn't worked enough hours to qualify.¹

[4] The Appellant asked the Commission to reconsider their decision, but the Commission upheld their original decision the Appellant did not have enough hours to qualify for benefits.

[5] The Appellant appealed this reconsideration decision to the General Division of the Social Security Tribunal (Tribunal).

[6] The General Division of the Tribunal decided the Appellant was eligible for benefits and that she could have an extension to her qualifying period since she was sick for part of her qualifying period.

[7] The Commission appealed the decision of the General Division to the Appeal Division of the Tribunal.

[8] The Appeal Division decided the General Division made some mistakes and sent the issue back to the General Division to hold a new hearing.

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

¹ 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."

Issue

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

Analysis

Has the Appellant worked enough hours to qualify for EI?

[11] Not everyone who stops work can receive EI benefits. The Appellant has to prove that she qualifies for benefits.² 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.

[12] To qualify, the Appellant needs to have worked enough hours within a certain timeframe. This timeframe is called the “qualifying period.”³

[13] The number of hours the Appellant needs to have worked depends on the unemployment rate in her region.⁴

Benefit period start date.

[14] In order to determine the Appellant’s qualifying period, I first need to determine the start date of her benefit period.

[15] A benefit period begins on the later of the following two options:

[16] The Sunday of the week in which the interruption of earnings occurred, or

[17] The Sunday of the week in which the initial claim for benefits is made.

[18] The Commission says they made a mistake starting the Appellant’s benefit period on October 2, 2022. Instead, they say it should start on either July 10, 2022, or

² See section 48 of the EI Act.

³ See section 7 of the EI Act.

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

July 17, 2022, because the Appellant's last day of work was July 13, 2022, and she filed her claim on August 4, 2022.⁵

[19] The Appellant says that she caught COVID in July 2022. She tried to work through it, but by the last weeks of July 2022, she stopped work completely.

[20] She also argues that she filed an application for regular EI benefits in September 2022.⁶

[21] The Commission says the only application filed by the Appellant was her application on August 4, 2022.

[22] Since the Appellant's benefit period must start at the later date between when she stopped working and when she filed her application benefits, I find the Appellant's benefit period should start on July 31, 2022.

[23] I find that the only application for benefits filed by the Appellant was her application on August 4, 2022. I accept the Commission's submissions that she has not filed any other application. I find, that as the Commission runs the EI program, they would be aware of any applications filed by the Appellant. Further, there is insufficient evidence to prove, on a balance of probabilities, that the Appellant filed another application other than her August 2022 application.

[24] Since she filed her application on August 4, 2022,⁷ regardless of when she stopped working in July 2022, this is the later date. The Sunday of the week in which August 4, 2022, falls is July 31, 2022.

[25] Now that I know the start date of the Appellant's benefit period, I can determine her qualifying period.

⁵ GD04-3

⁶ GD03-37

⁷ GD03-16

Qualifying period

[26] The qualifying period is where the Commission looks to determine how many hours of work the Appellant has. This is important because the core issue is that the Commission has determined the Appellant does not have enough hours in her qualifying period to qualify for benefits.

[27] In general, the qualifying period is the 52 weeks before a benefit period would start,⁸ but there are some exceptions. For example, the qualifying period can be extended for every week in the qualifying period the Appellant was sick and unable to work.⁹

[28] The Appellant has stated multiples times that she was sick; however, she has not been consistent with the period of time she was ill.

[29] In her application for benefits she said she was sick starting from July 13, 2022.

[30] In a conversation with the Commission in October 2022, she said that her interruption of earnings occurred at the end of July 2022. The Appellant said that due to being sick with COVID her earnings fell under 60% of her normal weekly earnings since she was working reduced hours.¹⁰

[31] In her request for reconsideration the Appellant said that she was sick with COVID from the end of the third week of July 2022 to the end of August 2022.¹¹

[32] In her testimony she said that she caught COVID earlier in July 2022, and tried working with it, but had to stop as it was just “slamming” her. She says she did not work after the third week of July 2022 and was sick all of August 2022 with COVID.

⁸ See section 8 of the EI Act.

⁹ Section 8(2)(a) of the EI Act.

¹⁰ GD03-35

¹¹ GD03-37

[33] I find the Appellant's qualifying period can be extended by two weeks as I accept the Appellant was sick for the entirety of the week of July 17 and 24, 2022.¹²

[34] I accept as such because that is what she testified to.¹³ In her testimony she was able to go into more detail on when she was working, how her sickness effected her ability to work, and when she stopped working.

[35] I note that her testimony is also consistent with her request for reconsideration.

[36] Finally, even if I am wrong, and she actually stopped working on July 13, 2022, as she says in her application, that would not allow her to extend her qualifying period by another week as the law says that she needs to be unable to work due to sickness throughout the week in order to get an extension. Reading that section in a plain manner, I find the word "throughout" means that the illness must prevent working for the entire week for it to allow for an extension to the qualifying period.

[37] Also, while I am not bound by it, I find the decision from the Appeal Division *MD v Canada Employment Insurance Commission*, 2017 SSTADEI 243, which adopts the same interpretation, persuasive.

[38] This means that even if she had stopped working due to illness on July 13, 2022, that is the Wednesday of the week, so she was not unable to work throughout the entire week, so that week could not be used to extend her qualifying period.

[39] So, with a two-week extension the Appellant will have a 54-week qualifying period, which will run from July 18, 2021, to July 30, 2022.

¹² I also have no doubts that she was sick into August 2022 as well, (see paragraph 64) but any of those weeks are outside her qualifying period which runs backwards from July 30, 2022, so they would not allow her to get an extension on her qualifying period. See section 8(2) of the *Employment Insurance Act* which says that for an extension to occur that which allows for an extension has to happen during the qualifying period.

¹³ For clarity she says she did not work after the third week of July 2022, and the third week of July 2022 ends on July 16, 2022.

The Appellant's region and regional rate of unemployment

[40] The Commission decided that the Appellant resided in the EI Economic region of Southern Alberta and the unemployment rate applicable to her is 6.3%

[41] The regional rate of unemployment applicable to the Appellant is the average of the seasonally adjusted monthly rates of unemployment for the last three-month period for which statistics were produced by Statistics Canada that precedes the week her benefit period starts.¹⁴

[42] In other words, since the Appellant's benefit period starts on July 31, 2022, I need the unemployment rate for the week preceding that week, so the week of July 24, 2022.

[43] According to the information complied by Statistics Canada, the unemployment rate for the week of July 24, 2022, in the EI Economic Region of Southern Alberta is 6.3%.¹⁵

[44] According to the law, the Appellant would need to have 420 hours of work in her qualifying period in order to get benefits.¹⁶

The hours the Appellant worked in her qualifying period

[45] The Appellant has disputed the hours displayed on her Records of Employment (ROE).

[46] Since I am unable to determine the number of hours of insurable employment the Appellant has, I asked the Commission to get a ruling from the Canada Revenue Agency (CRA).

¹⁴ See Section 17(1) of the *Employment Insurance Regulations* and [Canada \(Attorney General\) v. Jewett, 2013 FCA 243](#)

¹⁵ GD03-29

¹⁶ See section 7(2)(b) of the EI Act in force at the time of the Appellant's application.

[47] The CRA ruled that between July 10, 2021, to September 17, 2022, the Appellant has 562 hours of insurable employment.¹⁷

[48] Unfortunately, this ruling is not very helpful to me, as not all of these hours will fall into the Appellant's qualifying period of July 18, 2021, to July 30, 2022.

[49] The Commission did ask the CRA to provide the hours broken down day-by-day in that period of time, but the CRA said they do not do this. I note the Commission reached out to the CRA to try and obtain more clarification on exactly when the Appellant worked those 562 hours, and I appreciate the Commission's diligent efforts to acquire more information from the CRA, but the CRA was again, not forthcoming with useful information.¹⁸

[50] The Commission argues that the CRA ruling is wrong on its face as the CRA determined there were 9 bi-weekly pay periods between July 7, 2021, and September 15, 2021, which is impossible, and that the information in the CRA ruling does not match the information the Appellant put in her application.¹⁹

[51] I agree with the Commission that the determination of 9 bi-weekly pay periods in a 10-week period is obviously incorrect, but I am bound by the CRA ruling.²⁰

[52] While the CRA ruling is unhelpful, it is not useless, as it does contain information that helps me to see how the Appellant's hours are distributed throughout the period that the CRA ruled on.

[53] I would note that the law says that only the CRA can rule on the number of insurable hours, which they have done.²¹ It does not say that I cannot look at the allocation, or distribution, of the number of hours the CRA has ruled on within the period of time they have ruled on.

¹⁷ RGD5-3

¹⁸ RGD05

¹⁹ RGD05-2

²⁰ Section 104(2) of the EI Act

²¹ Section 90(1)(d) of the EI Act

[54] To be clear, I am not making a determination of how many hours of insurable employment the Appellant has. I cannot do that and the CRA has already done that. They have determined that within the period of July 10, 2021, to September 17, 2022, the Appellant has 562. At no point do I dispute that, nor am I trying to alter it.

[55] All I am doing is seeing, based on the information provided by the CRA and Appellant, how those hours are distributed within the period of July 10, 2021, to September 17, 2022. Such an action does not change the totality of the hours determined by the CRA, nor the period in which the CRA determined these hours were accumulated.

[56] I would further note that the CRA itself has said it does not allocate the hours on a day-by-day basis.²² This means my determination of the distribution of the hours decided by the CRA is not usurping a power properly exercised by the CRA.

- The distribution

[57] The CRA officer said that the Appellant worked 16.5 hours in September 2022, starting September 1, 2022. This means that out of the 562 hours the CRA ruled the Appellant had between July 10, 2021, to September 17, 2022, 16.5 of those hours are in September and outside the Appellant's qualifying period.²³

[58] This leaves the Appellant with 545.5 hours that may be within her qualifying period.

[59] Now, the ruling goes back to July 10, 2021, and her qualifying period stops at July 18, 2021, this means the hours the Appellant would have worked from July 10-17, 2021, are outside her qualifying period.

[60] According to the CRA investigation the Appellant worked Monday to Saturday, averaging 8 hours a day, sometimes up to 12 hours a day.²⁴

²² RGD05-1

²³ RGD05-5

²⁴ RGD05-9

[61] From July 10-17 there is one Sunday, July 11, which the CRA said the Appellant did not work. So, if I take the average of 8 hours a day for all the days of Monday to Saturday the Appellant worked,²⁵ then 56 hours would be outside her qualifying period. Leaving a total of 489.5 hours that could be in her qualifying period.

[62] If I take the worst case scenario presented by the CRA, of the Appellant working 12 hours a day over all those days, that would be 84 hours which fall outside her qualifying period. Leaving a total of 461.5 hours that could be in her qualifying period.

[63] However, this still leaves the possibility of hours worked in August 2022, hours which would also be outside her qualifying period.

[64] I find that the Appellant did not work in August 2022, due to her illness. I find her testimony credible that she did not work in August and returned to work at the start of September. She has been consistent about this in her statements to date,²⁶ and is supported by the information from the CRA that her timesheet starts on September 1, 2022.²⁷

[65] So, since she did not work in August 2022, none of the 461.5 hours would be allocated to August.

[66] This means the Appellant has enough hours to qualify for benefits since she would only need 420 hours in her qualifying period and, worst case, she has 461.5.

Conclusion

[67] The Appellant has enough hours to qualify for benefits.

[68] This means that the appeal is allowed.

Gary Conrad

Member, General Division – Employment Insurance Section

²⁵ July 10,12,13,14,15,16,17, 2021

²⁶ See GD03-36 and GD02-5

²⁷ RGD05-5