



Citation: *IA v Canada Employment Insurance Commission*, 2024 SST 107

## Social Security Tribunal of Canada Appeal Division

# Decision

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

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Kevin Goodwin

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**Decision under appeal:** General Division decision dated July 19, 2023  
(GE-23-819)

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**Tribunal member:** Melanie Petrunia

**Type of hearing:** Videoconference  
**Hearing date:** January 31, 2024  
**Hearing participants:** Appellant  
Appellant's representative  
Respondent's representative

**Decision date:** February 5, 2024  
**File number:** AD-23-793

## Decision

[1] The appeal is allowed. The Claimant worked enough hours to qualify for employment insurance (EI) maternity and parental benefits.

## Overview

[2] The Appellant, I. A. (Claimant), applied for employment insurance (EI) maternity and parental benefits on September 24, 2022. The Respondent, the Canada Employment Insurance Commission (Commission) decided that the Claimant did not have enough insurable hours to qualify for benefits.

[3] The Claimant appealed the Commission's decision to the General Division. The General Division dismissed the appeal. It found that the Claimant's benefit period started September 25, 2022, and that she did not have enough insurable hours to qualify for benefits.

[4] The Claimant says that the General Division made an error of law in its interpretation of the *Employment Insurance Regulations* (EI Regulations). She says that she had an interruption of earnings the week of September 18, 2022, when fewer hours were required to qualify for benefits.

[5] The Commission agrees that the General Division made an error of law, and that the Claimant had an interruption of earnings the week of September 18, 2022. The parties agree that the Claimant had worked enough hours to qualify for benefits.

## The parties agree on the outcome of the appeal

[6] The parties agree that the General Division made an error of law in its interpretation of section 14 of the EI Regulations. This section addresses when an interruption of earnings occurs.

[7] The parties agree that the appropriate remedy is for me to make the decision that the General Division should have made. The Claimant had an interruption of earnings

on September 22, 2022, and had sufficient insurable hours to establish a benefit period starting September 18, 2022.

## **I accept the proposed outcome**

[8] In its decision, the General Division found that the Claimant did not have an interruption of earnings in the week of September 18, 2022.<sup>1</sup> It considered subsection 14(2) of the EI Regulations which states:

An interruption of earnings from an employment occurs in respect of an insured person **at the beginning of a week in which a reduction in earnings that is more than 40% of the insured person's normal weekly earnings occurs** because the insured person ceases to work in that employment by reason of illness, injury or quarantine, pregnancy, the need to care for a child or children referred to in subsection 23(1) of the Act or the need to provide care or support to a family member referred to in subsection 23.1(2) of the Act, to a critically ill child or to a critically ill adult. (emphasis added)

[9] The General Division based its decision on its finding that the Claimant earned \$390.30 in paid sick leave from her employer in the week of September 18, 2022.<sup>2</sup> Based on her Record of Employment, the General Division found that the Claimant's normal weekly earnings were less than \$975.75.<sup>3</sup>

[10] The General Division concluded that the amount that the Claimant received was more than 40% of her normal weekly earnings. Because her earnings for that week were not below 40% of her normal weekly earnings, the General Division concluded that she did not have an interruption of earnings pursuant to subsection 14(2).<sup>4</sup>

[11] The General Division made an error of law in its interpretation of this subsection. This section provides that, when applying for special benefits, an interruption of

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<sup>1</sup> General Division decision at para 26.

<sup>2</sup> General Division decision at para 28.

<sup>3</sup> General Division decision at para 32.

<sup>4</sup> General Division decision at para 33.

earnings can take place when a claimant's weekly earnings **go down by** more than 40% (from their normal amount).<sup>5</sup>

[12] The General Division interpreted this section as meaning that the interruption occurs when a claimant's weekly earnings **are reduced to less than 40%** of the normal amount. This is a misinterpretation of the section, which is an error of law.

[13] The General Division also failed to consider section 14(1) of the EI Regulations. The section provides that an interruption of earnings occurs when a claimant stops working, and it is followed by a period of at least seven days where no work is performed, and no earnings arise.

[14] As the Commission stated in their submissions, the Record of Employment and correspondence from the employer clearly establish that an interruption of earnings occurred when the Claimant stopped working on September 22, 2022.<sup>6</sup> The General Division failed to consider whether there had been an interruption of earnings pursuant to this section.

[15] In response to the Covid-19 pandemic, for benefit periods established between September 26, 2021 and September 24, 2022, claimants only needed 420 hours to qualify for special benefits.<sup>7</sup> The Claimant had 510 hours, which was enough to qualify for benefits.

[16] I agree with the parties that the Claimant had an interruption of earnings on September 22, 2022. She had sufficient insurable hours to establish a benefit period starting September 18, 2022.

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<sup>5</sup> See *VM v Canada Employment Insurance Commission*, 2022 SST 1006 at para 35.

<sup>6</sup> See GD2-15 to GD2-16 and GD3-19, blocks 12 and 15c.

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

## **Conclusion**

[17] The appeal is allowed. The General Division made an error of law in its interpretation of the EI Regulations when it found that the Claimant did not have an interruption of earnings until the week of September 25, 2022.

[18] I have made the decision that the General Division should have made. The Claimant had an interruption of earnings and sufficient insurable hours to qualify for EI maternity and parental benefits commencing September 18, 2022.

Melanie Petrunia  
Member, Appeal Division