



Citation: *GS v Canada Employment Insurance Commission*, 2024 SST 255

# **Social Security Tribunal of Canada**

## **General Division – Employment Insurance Section**

### **Decision**

**Appellant:** G. S.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (618099) dated October 24, 2023 (issued by Service Canada)

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**Tribunal member:** Bret Edwards

**Type of hearing:** Teleconference

**Hearing date:** January 3, 2024

**Hearing participant:** Appellant

**Decision date:** January 17, 2024

**File number:** GE-23-3238

## Decision

[1] The appeal is dismissed.

[2] The Appellant doesn't have enough hours of insurable employment during her qualifying period to establish a claim for Employment Insurance (EI) benefits.

[3] I don't have jurisdiction to override the EI qualifying requirements.

## Overview

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

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

[6] The Commission says the Appellant doesn't have enough hours because she needs 600 or more hours, but she has only 563.

[7] The Appellant says she wasn't able to work during her qualifying period due to anxiety and depression and her qualifying period should be extended for that reason.

## Matters I have to consider first

### I accepted the document that the Appellant submitted after the hearing

[8] The Appellant sent in a document after the hearing.<sup>2</sup> I accepted the document as it relates to her argument that her qualifying period should be extended because she couldn't work due to anxiety and depression, as discussed more below.

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<sup>1</sup> Section 7 of the *Employment Insurance Act* (EI Act) and section 93 of the *Employment Insurance Regulations* (EI Regulations) say 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."

<sup>2</sup> GD6-1 to GD6-2.

## **I didn't give the Appellant as much time as she asked for to submit evidence after the hearing**

[9] Towards the end of the hearing, the Appellant testified that she couldn't work during her qualifying period because of anxiety and depression related to her daughter's illness.

[10] I told the Appellant that she would need to submit evidence to support her testimony, specifically a doctor's note, after the hearing. I asked her how much time she thought she would need to submit this evidence. She said 3 to 4 weeks.

[11] I then told the Appellant that I would give her 9 days to submit this evidence. I explained that I wasn't going to give her as much time as she asked for and that I felt my decision was fair for two reasons. First, she had only raised this argument for the first time towards the end of the hearing even though she had the opportunity to do so earlier when we discussed that subject and when she spoke to the Commission. Second, I had to balance her request for more time with the Tribunal's objective to make the appeal process as simple and quick as fairness allows<sup>3</sup>, which led me to decide that 9 days (which was the end of the following week) was a fair and appropriate deadline.

[12] After the hearing, I sent the Appellant a letter.<sup>4</sup> More specifically, the letter said that the Appellant had 9 days (until January 12, 2024) to submit evidence to support her argument that she couldn't work during her qualifying period due to anxiety and depression. The letter also said that any evidence she submitted had to indicate specifically when she wasn't able to work during her qualifying period due to anxiety and depression.

[13] The Appellant submitted more evidence by the deadline I gave her.<sup>5</sup> As discussed more later in this decision, I'm not persuaded that this evidence shows she wasn't able to work during her qualifying period due to anxiety and depression.

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<sup>3</sup> See section 8(1) of the *Social Security Tribunal Rules of Procedure*.

<sup>4</sup> GD5-1 to GD5-3.

<sup>5</sup> GD6-1 to GD6-2.

[14] Also, even if I had given the Appellant the amount of time that she asked for to submit evidence, I find, on a balance of probabilities, that it's unlikely that she would have been able to submit sufficient evidence to persuade me that she wasn't able to work during her qualifying period due to anxiety and depression. I make this finding for two reasons.

[15] First, I find the available evidence before the hearing shows the Appellant was in fact working during her qualifying period, which the Commission says is from July 17, 2022 to July 15, 2023.<sup>6</sup>

[16] More specifically, I find the Appellant's Record of Employment (ROE) shows that she was working during her qualifying period. Her ROE indicates that her period of employment was April 29, 2021 to July 11, 2023 and that she worked 574 hours during that period.<sup>7</sup> The Commission says 563 of those hours were during her qualifying period specifically<sup>8</sup>, and the Appellant doesn't dispute this.<sup>9</sup>

[17] I acknowledge the Appellant's ROE shows two pay periods where she didn't have any insurable earnings.<sup>10</sup> But as discussed more in the next paragraph, based on the evidence already on record, I find it's likely that the reason she wasn't working during those pay periods was because she was taking care of her daughter, not because of anxiety and depression.

[18] Second, I find the available evidence before the hearing shows the Appellant never indicated that she couldn't work during her qualifying period because of anxiety and depression. Instead, the evidence shows she repeatedly indicated that she was working during her qualifying period, but not as much as normal because she was taking care of her sick daughter.

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<sup>6</sup> GD4-2.

<sup>7</sup> GD3-16.

<sup>8</sup> GD4-3.

<sup>9</sup> See hearing recording.

<sup>10</sup> GD3-16.

[19] I note that when the Appellant applied for benefits, she answered “NO” to the question, “during the last 2 years, were you at any time unable to work for medical reasons.”<sup>11</sup>

[20] I also note that the Appellant told the Commission multiple times that she could only work part-time during her qualifying period because she was taking care of her daughter who has cancer, which is why she doesn’t have enough hours.<sup>12</sup>

[21] And I note the Appellant’s Notice of Appeal to the Tribunal says that she doesn’t have enough hours because she had to work part-time to be able to care for her daughter, so she’s asking for her qualifying period to be extended to the maximum 104 weeks for this reason.<sup>13</sup>

[22] Additionally, I note the Appellant initially confirmed during her testimony that her response to the above question on her application for benefits was correct. It was only towards the end of the hearing that the Appellant said she couldn’t work during her qualifying period due to anxiety and depression, so it should be extended for this reason.<sup>14</sup>

[23] The Appellant testified that she didn’t tell the Commission or write in her Notice of Appeal that she couldn’t work due to anxiety and depression because she didn’t realize that this was something she could say.<sup>15</sup>

[24] I’m not persuaded by the Appellant’s explanation, unfortunately.

[25] The Appellant specifically responded “NO” to the question on her application for benefits asking if she was unable to work for medical reasons during the last 2 years. In my view, it’s reasonable to believe that the Appellant should and would have understood that anxiety and depression can be considered a medical reason for not

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<sup>11</sup> GD3-8.

<sup>12</sup> GD3-23, GD3-25, GD3-26.

<sup>13</sup> GD2-5.

<sup>14</sup> See hearing recording.

<sup>15</sup> See hearing recording.

being able to work and therefore should and would have responded “YES” to that question instead if she couldn’t work for that reason.

[26] Even if I accept that the Appellant made a mistake on her application for benefits, I still find that she had an opportunity to tell the Commission on multiple occasions that she couldn’t work during her qualifying period due to anxiety and depression and wanted her qualifying period extended for that reason.

[27] But I note the Appellant didn’t mention anxiety and depression in her reconsideration request<sup>16</sup> and didn’t mention it when she spoke to the Commission about her reconsideration request<sup>17</sup> either. In my view, it’s reasonable to believe that the Appellant would have mentioned anxiety and depression to the Commission if those were things that prevented her from working the hours she needed to qualify for benefits. But instead, as discussed above, she only said that she couldn’t work as much as she normally would because she was taking care of her sick daughter.

[28] Additionally, I find the Appellant also had the opportunity to say in her Notice of Appeal to the Tribunal that she couldn’t work during her qualifying period due to anxiety and depression and wanted it extended for that reason. But she didn’t mention it there either and again only said that she didn’t have enough hours because she was working part-time to take care of her daughter.<sup>18</sup>

[29] I therefore give significant weight to the available evidence before the hearing because it is consistent in showing one thing, which is that the Appellant was working during her qualifying period and had to work less than planned (meaning part-time) to take care of her sick daughter.

[30] As a result, for the reasons above, I find, on a balance of probabilities, that even if I had given the Appellant as much time as she asked for to submit evidence after the hearing, she wouldn’t have been able to submit sufficient evidence to counter the available evidence and persuade me that she couldn’t work during her qualifying period

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<sup>16</sup> GD3-23, GD3-25.

<sup>17</sup> GD3-26.

<sup>18</sup> GD2-5.

due to anxiety and depression and that her qualifying period should be extended for this reason.

## Issue

[31] Has the Appellant worked enough hours to qualify for EI compassionate care benefits?

## Analysis

### How to qualify for benefits

[32] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.<sup>19</sup> The Appellant has to prove this on a balance of probabilities. This means she has to show that it is more likely than not that she qualifies for benefits.

[33] To qualify, you need to have worked enough hours within a certain time frame. This time frame is called the “qualifying period.”<sup>20</sup>

[34] In general, the number of hours depends on the unemployment rate in your region.<sup>21</sup> But, the law provides another way to qualify for special benefits, including compassionate care benefits.

[35] If you want special benefits, you can qualify if you have 600 or more hours.<sup>22</sup> But, this is only if you don’t qualify under the general rule.<sup>23</sup>

[36] The parties agree that the Appellant doesn’t qualify under the general rule. And there’s no evidence that makes me doubt it. She needs 665 hours, but she only has 563 hours.<sup>24</sup> So, I accept this as fact.

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<sup>19</sup> See section 48 of the EI Act.

<sup>20</sup> See section 7 of the EI Act and section 93 of the EI Regulations.

<sup>21</sup> See section 7(2)(b) of the EI Act and section 17 of the EI Regulations.

<sup>22</sup> See section 93(1) of the EI Regulations. The hours need to be hours of insurable employment.

<sup>23</sup> Section 7 of the EI Act sets out the general rule.

<sup>24</sup> The Commission decided the Appellant needs 665 hours to qualify for EI regular benefits based on the unemployment rate in her region at the time she applied for benefits. See GD3-18 to GD3-20, GD4-3. At the hearing, the Appellant confirmed that she doesn’t have enough hours to qualify for EI regular benefits.

## The Appellant's qualifying period

[37] 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>25</sup>

[38] 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.

[39] The Commission decided the Appellant's qualifying period was the usual 52 weeks. It determined that the Appellant's qualifying period went from July 17, 2022 to July 15, 2023.<sup>26</sup>

### – The Appellant doesn't agree with the Commission

[40] The Appellant disagrees with the Commission about her qualifying period. The Appellant testified that her qualifying period should be longer because she wasn't able to work during her qualifying period due to anxiety and depression.

[41] The law says an appellant's qualifying period can be extended if they meet one of several conditions, including being incapable of work because of a prescribed illness, injury, quarantine, or pregnancy.<sup>27</sup>

[42] As discussed above, the Appellant submitted evidence after the hearing, specifically a doctor's note<sup>28</sup>, that she says shows she couldn't work during her qualifying period due to anxiety and depression.

[43] I note that the doctor's note, dated January 4, 2024, specifically says that the Appellant "was under stress and unable to work for the period regularly from October 2022 to now (January 4, 2024) due to critical illness of a family member."<sup>29</sup>

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<sup>25</sup> See section 8 of the EI Act.

<sup>26</sup> GD4-2.

<sup>27</sup> See subsection 8(2)(a) of the EI Act.

<sup>28</sup> GD6-1 to GD6-2.

<sup>29</sup> GD6-2. I note that the Appellant also submitted a duplicate, clearer version of the same document that was not formally coded. See Appellant's correspondence, January 9, 2024.



[44] Based on this evidence, I find the Appellant hasn't persuaded me that she wasn't able to work during her qualifying period due to anxiety and depression. This is because the doctor's note doesn't say **specifically when** she wasn't able to work for this reason during her qualifying period. It just says she couldn't work regularly during a timespan over one year long, **without clarifying exactly when (meaning specific days, weeks, or months) she was off work for this reason.**

[45] I find the lack of detail on the doctor's note can't be overlooked here because the Appellant's ROE does show that she was working during her qualifying period and she herself also told the Commission and testified that she was working part time during her qualifying period, as discussed above.

[46] In other words, without clearer and more convincing evidence, I can't conclude that the Appellant couldn't work during her qualifying period due to a prescribed illness, specifically anxiety and depression. There is other evidence on record that shows she was in fact working during her qualifying period and I have already given significant weight to this evidence, as discussed above. And the doctor's note the Appellant submitted doesn't sufficiently counter this other evidence because it doesn't indicate specifically when she couldn't work during her qualifying period due to anxiety and depression.

[47] So, for these reasons, I find the Appellant's doctor note doesn't show that she wasn't able to work during her qualifying period due to anxiety and depression and give it little weight here.

[48] And, as discussed above, I find, on a balance of probabilities, that even if I had given the Appellant the amount of time that she asked for to submit evidence after the hearing, she wouldn't have been able to provide sufficient evidence to persuade me that she couldn't work during her qualifying period due to anxiety and depression. This is because of the significant evidence already on record that indicates she was working during her qualifying period and that her sole reason for not being able to work more hours during her qualifying period was that her daughter was sick and she was taking care of her.

[49] I therefore find the Appellant hasn't shown that she couldn't work during her qualifying period due to a prescribed illness, specifically anxiety and depression. Since she hasn't shown this was the case, her qualifying period can't be longer. This means her qualifying period is what the Commission initially calculated.

## **The hours the Appellant worked**

### **– The Appellant agrees with the Commission**

[50] The Commission decided the Appellant had worked 563 hours during her qualifying period.<sup>30</sup>

[51] The Appellant doesn't dispute this.<sup>31</sup> And there is no evidence that makes me doubt the Commission's calculation. So, I accept it as fact.

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

[52] I find the Appellant hasn't worked enough hours to qualify for EI compassionate care benefits. She needs 600 or more hours to qualify for these benefits, but she has 563 hours.

[53] The Appellant testified that if her qualifying period can't be extended, her appeal should be allowed on compassionate grounds because she faced a unique and challenging situation in trying to work the hours she needs to qualify for benefits.

[54] Unfortunately, I can't allow the Appellant's appeal. But I will set out her testimony in detail to acknowledge the frustration she feels about the situation.

[55] The Appellant says<sup>32</sup>:

- In October 2020, her doctor was diagnosed and treated for cancer.
- She was able to be her daughter's primary caregiver during this time.

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<sup>30</sup> GD4-2.

<sup>31</sup> At the hearing, the Appellant confirmed that her ROE is correct and that she isn't disputing what it says.

<sup>32</sup> GD2-5, GD3-23, GD3-25, GD3-26, hearing recording.

- Her daughter is now paraplegic due to treatment and surgery that she underwent, and she needs help daily.
- She was eventually able to go back to part time work while continuing to care for her daughter. But she wasn't able to work full time because her daughter is still dependent on her.
- She was unable to work 600 hours because of the continued care that her daughter requires.
- Her daughter was also recently diagnosed with leptomenigeal disease with a prognosis of 4-8 weeks, so she had to apply for compassionate care benefits.
- Her daughter's medical records show that she is very sick.
- She's unable to get welfare and doesn't have any other sources for benefits.
- She feels like she has been left behind because she didn't get the financial support she needed during this important time.

[56] I acknowledge the Appellant is frustrated with how the law has been applied in her case. And I sympathize greatly with her about the financial challenges she now faces.

[57] But, unfortunately, I'm not able to disregard or override the qualifying requirements for EI benefits.<sup>33</sup> I'm bound by the law and can't refuse to apply it, even on grounds of equity.<sup>34</sup>

[58] In other words, I can't grant the Appellant compassionate care benefits because she doesn't qualify for them. I can't make an exception for her, no matter how difficult or compelling her circumstances may be, unfortunately.<sup>35</sup>

[59] The Appellant needs 600 hours of insurable employment in her qualifying period to receive EI compassionate care benefits.

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<sup>33</sup> See *Attorney General (Canada) v Lévesque*, 2001 FCA 304

<sup>34</sup> The Supreme Court says this. See *Granger v Canada (CEIC)*, [1989] 1 S.C.R. 141.

<sup>35</sup> See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

[60] Unfortunately, the Appellant has 563 hours.

[61] This means she hasn't satisfied the requirements to qualify for EI benefits.

## **Conclusion**

[62] The appeal is dismissed.

[63] The Appellant doesn't have enough hours to qualify for EI compassionate care benefits.

Bret Edwards

Member, General Division – Employment Insurance Section