Citation: *RN v Canada Employment Insurance Commission*, 2023 SST 1959

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	R. N.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (617973) dated September 8, 2023 (issued by Service Canada)

Tribunal member:	Suzanne Graves
Type of hearing:	Videoconference
Hearing date:	December 5, 2023
Hearing participant:	Appellant
Decision date:	December 31, 2023
File number:	GE-23-2717

Decision

[1] The appeal is dismissed.

[2] The Appellant hasn't shown that he has worked enough hours to qualify for Employment Insurance (EI) sickness benefits.

Overview

[3] The Appellant applied for EI special benefits on February 23, 2023. The Canada Employment Insurance Commission (Commission) decided that the Appellant hadn't worked enough hours to qualify for benefits.[1]

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

[5] The Commission argues that the Appellant needs 1400 hours to qualify for benefits because he received a notice of subsequent violation on October 14, 2022. It says he doesn't have enough hours because he needs 1400 hours but has only 870 hours in his qualifying period.

[6] The Appellant admits his past mistakes by not reporting his income. He asks the Tribunal to take his personal situation into account. He is responsible for a disabled child and has several serious health issues, including addictions. He requests the Tribunal to allow him to claim benefits based on the 870 hours he has worked since his last EI claim.

The Appellant made two appeals to the Tribunal

[7] In addition to this appeal, the Appellant also appealed another reconsideration decision of the Commission. My decision in that appeal is set out in a separate written decision of the Tribunal (GE-23-2718).

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[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

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

Analysis

How to qualify for benefits

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

[10] To qualify, you need to have worked enough hours within a certain timeframe. This timeframe is called the "qualifying period."[3] The number of hours depends on the unemployment rate in your region.[4]

The Appellant's region and regional rate of unemployment

[11] The Commission decided that the Appellant's region was Toronto, and that the regional rate of unemployment at the time was 5.9%. The Appellant doesn't dispute the Commission's decisions about which region and regional rate of unemployment apply to him. There is no evidence that makes me doubt the Commission's decision.

[12] In this case, the Appellant has applied for EI special benefits. He would generally need to have worked at least 600 hours in his qualifying period.[5]

The Appellant has two previous notices of subsequent violation

[13] The Commission has issued two previous notices of subsequent violation to the Appellant on February 14, 2020, and October 14, 2022.[6] This isn't in dispute.

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[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* (Regulations).
[5] Section 93(1) of the Regulations.
[6] The two notices of subsequent violation are at GD3-59 to 61, and GD3-62 to 64.

[14] Since the Appellant received a notice of subsequent violation within the previous 260 weeks, he needs 1400 insurable hours in order to qualify for benefits.[7]

The Appellant's qualifying period

[15] As noted above, the hours counted are the ones that the Appellant worked during his qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.[8]

[16] Your **benefit period** isn't the same thing as your **qualifying period**. It is a different timeframe. Your benefit period is the time when you can receive EI benefits.

[17] The Commission decided that the Appellant's qualifying period was shorter than the usual 52 weeks because he had an earlier benefit period that started on March 20, 2022.

[18] Your current qualifying period can't overlap with an earlier qualifying period. The Appellant's qualifying period would overlap with his earlier qualifying period if it went back to a time before March 20, 2022.

[19] So, the Commission decided that the Appellant's qualifying period went from March 20, 2022, to March 4, 2023.

[20] The Appellant doesn't dispute the Commission's decision about his qualifying period. There is no evidence that makes me doubt its decision. So, I accept as fact that the Appellant's qualifying period is from March 20, 2022, to March 4, 2023.

The hours the Appellant worked

[21] The Commission decided that the Appellant had worked 870 hours during his qualifying period.[9]

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[7] According to section 7.1 of the EI Act, if the unemployment rate is 6% or less, and a claimant has a subsequent violation within the previous 260 weeks, they need 1400 hours to qualify for benefits.
[8] See section 8 of the EI Act.
[9] The Commission filed copies of the Appellant's records of employment showing a total of 870 hours, at GD3-38 to 46.

[22] The Appellant doesn't dispute the number of hours he worked, and there is no evidence that makes me doubt it. So, I accept it as fact.

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

[23] I find that the Appellant hasn't proved that he has enough hours to qualify for EI benefits because he needs 1400 hours but has worked 870 hours.

[24] I accept the Appellant's evidence that he has several medical issues and family obligations. I have sympathy for his situation, but I can't change the law.[10]

[25] EI is an insurance plan and, like other insurance plans, you have to meet its requirements to receive benefits. The Appellant unfortunately doesn't meet the requirements to qualify for benefits so he cannot establish a benefit period.

Conclusion

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

[27] This means that the appeal is dismissed.

Suzanne Graves

Member, General Division – Employment Insurance Section

[10] In *Canada (Attorney General) v Knee*, 2011 FCA 301, the Federal Court of Appeal said that "rigid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme. However, tempting as it may be in such cases … adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning." See also *Pannu v Canada (Attorney General)*, 2004 FCA 90.