



Citation: *SW v Canada Employment Insurance Commission*, 2024 SST 530

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

Decision

Appellant: S. W.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (618115) dated October 27, 2023 (issued by Service Canada)

Tribunal member: Catherine Shaw

Type of hearing: Videoconference

Hearing date: January 16, 2024

Hearing participant: Appellant

Decision date: March 8, 2024

File number: GE-23-3373

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) benefits.

Overview

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

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

[5] The Commission says that the Appellant doesn't have enough hours because she needs 700 hours, but has zero.

[6] The Appellant disagrees and says that she was unable to work for medical reasons for over a year. When she was set to return to work, her employer went bankrupt. She should qualify for benefits given her unique circumstances.

Matter I have to consider first

Post hearing documents

[7] In its submissions to the Tribunal, the Commission stated that a ruling from the Canada Revenue Agency (CRA) would be needed to determine if the Appellant's loss insurance could be considered insurable hours. I asked the Commission to obtain that ruling on December 18, 2023.

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."

[8] The CRA had not made its ruling before the hearing on January 16, 2023. I told the Appellant that the decision would have to wait until we received the ruling.

[9] The CRA made its ruling on February 8, 2024. The Commission provided this ruling to the Tribunal on February 23, 2024. It was sent to the Appellant and I gave her an opportunity to respond to the ruling. I asked her to send her response by March 27, 2024. No further communication was received by the Appellant by the date of this decision.

Issue

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

Analysis

How to qualify for benefits

[11] 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 she has to show that it is more likely than not that she qualifies for benefits.

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

[13] The number of hours depends on the unemployment rate in your region.⁴

The Appellant’s region and regional rate of unemployment

[14] The Commission decided that the Appellant’s region was Montreal and that the regional rate of unemployment at the time was 4.7%.

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*.

[15] This means that the Appellant would need to have worked at least 700 hours in her qualifying period to qualify for EI benefits.⁵

[16] The Appellant doesn't dispute the Commission's decisions about which region and regional rate of unemployment apply to her.

[17] There is no evidence that makes me doubt the Commission's decision. So, I accept as fact that the Appellant needs to have worked 700 hours to qualify for benefits.

The Appellant's qualifying period

[18] As noted above, the hours counted are the ones that the Appellant worked during her qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.⁶

[19] 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.

[20] The Commission decided that the Appellant's qualifying period should be extended by 77 weeks beyond the usual 52 weeks because she was unable to work for health reasons for a time.⁷ So, the Appellant's qualifying period started earlier and went from March 6, 2022, to August 26, 2023.

[21] The Appellant doesn't dispute the Commission's decision about her qualifying period.

[22] There is no evidence that makes me doubt the Commission's decision. So, I accept as fact that the Appellant's qualifying period is from March 6, 2022, to August 26, 2023.

⁵ 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.

⁶ See section 8 of the EI Act.

⁷ Your qualifying period is extended by the number of weeks during the qualifying period that you were unable to work because of illness, injury, quarantine, or pregnancy. This is set out at section 8(2)(a) of the EI Act.

The hours the Appellant worked

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

[24] The Commission decided that the Appellant had worked zero hours during her qualifying period. The Appellant disputed this, saying that she had been unable to work but had received wage loss insurance during this time, which should count as insurable hours of employment.

[25] I asked the Commission to get a ruling from the Canada Revenue Agency (CRA) on the number of hours because I don't have the power to decide that particular question.⁸ The CRA said that the Appellant's wage loss replacement earnings were non-insurable. As the CRA ruled the Appellant had no further hours from the wage loss replacement earnings, this means she still only has zero hours in her qualifying period.

[26] I don't have the power to change that number. So, this is the number that I will use to decide the Appellant's appeal.

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

[27] Unfortunately, she doesn't have any hours between March 6, 2022, to August 26, 2023. So, she doesn't qualify for EI benefits.

[28] The Appellant acknowledges that she didn't have any hours during this time but is asking the Tribunal to consider her unique circumstances and allow her appeal.

[29] She unexpectedly lost her employment after an extended medical leave from work. She doesn't know how she was supposed to get enough hours to qualify when she was on medical leave and didn't know she would be put in a position of unemployment.

[30] I understand the Appellant's frustration with the application of the law in her case. And I sympathize with her about the impact the decision has had on her financial

⁸ See section 90 of the EI Act.

situation. But I don't have discretion to disregard or override the qualifying requirements for EI benefits set out in the law.

[31] The Federal Court of Appeal confirmed this principle when it considered a case where the claimant was short only 1 hour of meeting the qualifying requirements.⁹

[32] Furthermore, the Supreme Court of Canada has said that I don't have jurisdiction to grant equitable relief.¹⁰ This means I can't make an exception for her, no matter how difficult or compelling her circumstances may be.¹¹

[33] The Appellant needs 700 hours in her qualifying period of March 6, 2022, to August 26, 2023, to qualify for EI benefits. She has zero hours. This means she doesn't meet the requirements to qualify for EI benefits.

Conclusion

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

[35] This means that the appeal is dismissed.

Catherine Shaw

Member, General Division – Employment Insurance Section

⁹ See *Attorney General (Canada) v Levesque*, 2001 FCA 304.

¹⁰ See *Granger v Canada (Canada Employment Insurance Commission)*, [1989] 1 SCR 141.

¹¹ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.