



Citation: *YH v Canada Employment Insurance Commission*, 2024 SST 567

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

Decision

Appellant: Y. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (552826) dated December 2, 2022 (issued by Service Canada)

Tribunal member: Stuart O'Connell

Type of hearing: Teleconference

Hearing date: August 23, 2023

Hearing participant: Appellant

Decision date: January 14, 2024

File number: GE-22-4196

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant hasn't shown that he 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 he needs 420 hours, but he has only 322 within the qualifying period.

[6] The Appellant does not dispute that he accumulated only 322 hours in the 52 weeks before the date he applied for EI benefits (June 21, 2022). He argues that the qualifying period should be calculated from a different date, that is, as though he had applied for EI benefits on December 15, 2021, not June 21, 2022. The Appellant requested to have his application antedated (or backdated) on the basis that he had good cause for the delay in applying for EI benefits. If his EI application were antedated, he would have a different and earlier 52-week qualifying period and (it appears) sufficient hours to qualify for EI benefits, as he accumulated 608 hours of insurable employment from December 20, 2020, to December 19, 2021.²

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."

² GD3-17.

Matter I have to consider first

GE-22-4193 and the Appellant's qualifying period

[7] In GE-22-4193 (a decision of this Tribunal, January 13, 2024), the Appellant appealed the Commission's reconsideration decision not to antedate his application for benefits. I dismissed that appeal, finding that the Appellant had not established good cause for the delay throughout the entire period of delay. The Appellant applied for EI benefits on June 21, 2022. As a result, the Appellant's qualifying period runs from June 20, 2021, to June 18, 2022.³

Issue

[8] Has the Appellant worked enough hours to qualify for EI 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.⁴ The Appellant has to prove this on a balance of probabilities. This means that he has to show that 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".⁵

[11] The number of hours depends on the unemployment rate in your region.⁶

³ GD3-24 to GD3-25. See paragraph 8(1)(a) of the EI Act.

⁴ See section 48 of the EI Act.

⁵ See section 7 of the EI Act.

⁶ See section 7(2)(b) of the EI Act and section 17 of the *Employment Insurance Regulations*.

The Appellant's region and regional rate of unemployment

[12] The Commission decided that the Appellant's region was Toronto and that the regional rate of unemployment at the time was 6.3%.⁷

[13] However, at the time the Appellant filed his application for benefits, the Commission was operating under special measures implemented as part of the federal government's 2021 budget as a means of assisting Canadians in qualifying for, and receiving, benefits as part of the government's response to COVID-19. The interim order applied to benefit periods between September 26, 2021, and September 24, 2022. One of these special measures set a common entrance requirement of 420 hours, regardless of the regional rate of unemployment. As such, the Appellant only required 420 hours to qualify for benefits, as opposed to the 665 hours normally required based on the regional rate of unemployment at the time of the Appellant's application for benefits. However, based on the Appellant's Record of Employment, he had accumulated only 322 hours in his qualifying period.

The Appellant's qualifying period

[14] 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

[15] 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.

[16] The Commission decided that the Appellant's qualifying period was the usual 52 weeks. It determined that the Appellant's qualifying period went from June 20, 2021, to June 18, 2022.⁹

⁷ GD3-19 to GD3-23.

⁸ See section 8 of the EI Act.

⁹ GD3-24 to GD3-25.

[17] 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 June 20, 2021, to June 18, 2022.

The hours the Appellant worked

[18] The Commission decided that the Appellant had worked 420 hours during his qualifying period.

[19] The Appellant stated that during the qualifying period, he worked part-time at another college. Those hours are not reflected in the calculation of 420 hours. However, this employment amounted to only three hours per week. The Appellant told the Commission that he was not interested in establishing a benefit period beginning from June 2022 and would not be requesting a record of employment to establish these additional hours of insurable employment.¹⁰ He took the same position at the appeal hearing and provided no evidence on this issue.¹¹

[20] On the evidence before me, I accept the Commission's calculation of 420 hours as correct.

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

[21] I find that the Appellant hasn't proven that he has enough hours to qualify for benefits because he needs 420 hours but has worked 322 hours.

[22] In this case, the Appellant doesn't meet the requirements, so he doesn't qualify for benefits. While I sympathize with the Appellant's situation, I can't change the law.¹²

Conclusion

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

¹⁰ GD3-28.

¹¹ Likely because even with the additional hours, he would not have sufficient hours to qualify for benefits.

¹² See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

[24] This means that the appeal is dismissed.

Stuart O'Connell
Member, General Division – Employment Insurance Section