Citation: *ML v Canada Employment Insurance Commission*, 2024 SST 1045

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	M. L.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (648977) dated March 5, 2024 (issued by Service Canada)

Tribunal member:	Susan Stapleton
Type of hearing:	Teleconference
Hearing date:	May 29, 2024
Hearing participant:	Appellant
Decision date:	July 2, 2024
File number:	GE-24-1343

Decision

[1] The appeal is dismissed.

[2] The Appellant hasn't shown that she meets the conditions to have her application for benefits antedated (in other words, backdated). This means that the Appellant's claim can't be treated as though it was made earlier, on March 19, 2023.

[3] The Appellant hasn't shown that she has worked enough hours to qualify for employment insurance (EI) sickness benefits.

Overview

[4] The Appellant stopped working on March 17, 2023. She applied for benefits in April 2023, but cancelled that claim because she wasn't in financial need at that time, and she thought she could re-apply later.[1]

[5] The Appellant applied for benefits again on September 5, 2023. The Appellant is now asking that the application be treated as though it was made earlier, on March 19, 2023.[2]

[6] The Commission refused her request.[3]

[7] The Commission says that the Appellant wouldn't qualify for EI sickness benefits if her claim was antedated to March 19, 2023. It says she would only have 584 hours, but she needs 600 hours to qualify for EI sickness benefits.[4]

[8] The Commission also says the Appellant didn't show that she had good cause for the delay in applying for benefits. It says she didn't act like a reasonable person in her situation would have done to verify her rights and obligations under the *Employment Insurance Act* (Act).[5]

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[1] See file GE-24-1343- page GD3-29.
[2] See file GE-24-1343- page GD3-27.
[3] See file GE-24-1343- page GD3-30.
[4] See file GE-24-1343- GDJ8.
[5] See file GE-24-1343- page GD4-2.

[9] The Appellant disagrees. She says she applied for benefits on April 11, 2023, and then withdrew her claim on May 2, 2023, because she didn't have an urgent financial need at that time. She spoke to various Commission officers, and she was told that she could re-apply for benefits at any time. She wasn't told that when she re-applied, her application would begin on the date when she re-applied, and not on the date of her original April 11, 2023 application. She was never told about antedating. The Commission gave her incorrect information about the Act and her rights, which she says has resulted in her claim being denied.[6]

[10] The Commission also says that the Appellant hasn't worked enough hours in her qualifying period from August 14, 2022, to September 2, 2023, to qualify for EI sickness benefits. It says she needs 600 hours to qualify for EI sickness benefits, but only has 490 hours.[7]

[11] The Appellant disagrees. She says she believes she worked at least 600 hours in the 52 weeks before the start of her claim.[8]

Matter I have to consider first

Two appeals were joined

[12] The Appellant appealed two reconsideration decisions of the Commission to the Tribunal. One decision concerned the Appellant's request to have her claim antedated. The other decision concerned whether the Appellant has enough insurable hours to establish her claim.

[13] The Tribunal numbered the appeal regarding antedate GE-24-1343. It numbered the appeal regarding insurable hours GE-24-1345.

[14] I can deal with two or more appeals together if they involve a common question, but I can only do that if it would not be unfair to the people involved in the appeals.

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[6] See file GE-24-1343- page GD3-33-37.
[7] See file GE-24-1343- page GD4-2.
[8] See file GE-24-1343- page GD2-6.

[15] I looked at the information in both appeals. I see nothing that makes me think that joining the two appeals would be unfair to any of the parties. I decided to join the two appeals, because the facts related to the issues of antedate and insurable hours are similar.

Issues

[16] Can the Appellant's application for benefits be treated as though it was made on March 19, 2023? This is called antedating (or, backdating) the application.

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

Issue 1 – Antedate

[18] To get your application for benefits antedated, you must prove these two things:[9]

a) You qualified for benefits on the earlier day (that is, the day you want your application antedated to), and
b) you had good cause for the delay during the entire period of the delay. In other words, you have an explanation that the law accepts.

[19] I find that the Appellant didn't qualify for EI sickness benefits on the earlier date of March 19, 2023. This is because she would only have had 584 hours in her qualifying period if her claim started on March 19, 2023, but she needs 600 hours.

[20] To qualify for EI benefits, a claimant must have an interruption of earnings and a specific number of hours of insurable employment in their qualifying period.[10]

[21] I asked the Commission for submissions as to whether the Appellant would qualify for benefits if her claim was antedated to March 19, 2023.

[22] The Commission says that the Appellant wouldn't qualify for benefits as of the earlier date. More specifically, it says that if her benefit period started on March 19,

[9] See section 10(4) of the Act.
[10] See Section 7(2) of the Act.

2023, she would have 584 hours, but she needs 600 hours to qualify for EI sickness benefits.[11]

[23] I gave the Appellant an opportunity to respond to the Commission's submissions.[12] In response, she submitted a Record of Employment (ROE) for the period from August 17, 2015, to August 3, 2022,[13] and copies of her T4s from 2021 and 2022.[14]

[24] The Appellant testified that before her job with the employer, she worked part-time for a different employer. She confirmed that she had no additional insurable employment besides her jobs with these two employers.

[25] The Commission calculated the Appellant's hours from March 20, 2022, to March 19, 2023, and determined that she accumulated 584 hours during that period. It provided its calculation sheet in that regard.[15]

[26] I find that the evidence supports that the Appellant didn't qualify for EI sickness benefits on the earlier date of March 19, 2023. This is because she only had 584 hours. The ROE and T4s that the Appellant submitted do not show that she would have enough insurable hours to qualify for EI sickness benefits if her claim was antedated to March 19, 2023.

[27] As a result, I find that the Appellant wouldn't qualify for benefits on March 19, 2023. This means she hasn't met one of the two conditions for her application to be antedated. Because I have found that she doesn't meet this condition, I don't have to consider whether she had good cause for the delay. Since she needs to meet both conditions, her application can't be antedated to March 19, 2023.

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[11] See file GE-24-1343– GD8.
[12] See file GE-24-1343– GDJ9.
[13] See file GE-24-1343– GDJ10A.
[14] See file GE-24-1343– GDJ10B.
[15] See file GE-24-1343– GDJ8

Issue 2 – Hours

[28] The Appellant applied for benefits on September 5, 2023. Her claim was later converted to a claim for sickness benefits.[16]

How to qualify for benefits

[29] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.[17] 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.

[30] To qualify, you need to have worked enough hours within a certain time frame. This time frame is called the "qualifying period."[18]

[31] In general, the number of hours depends on the unemployment rate in your region.[19] The Commission says that under the general rule, the Appellant does not qualify for benefits, because she would need 665 hours to qualify for EI regular benefits, and she only had 490 hours.[20] The Appellant didn't dispute her economic region, or the number of hours required under the general rule, and there is no evidence that makes me doubt it. So, I accept this as fact.

[32] However, the law provides another way to qualify for special benefits, including sickness benefits. If you want special benefits, you can qualify if you have 600 or more hours.[21] But, this is only if you don't qualify under the general rule.[22]

[33] There is no evidence that tells me the Appellant qualifies under the general rule. I find that the Appellant needs to have accumulated 600 hours in her qualifying period, to qualify for sickness benefits.

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[16] See file GD-24-1345– page GD3-25.
[17] See section 48 of the Act.
[18] See section 7 of the Act and section 93 of the *Employment Insurance Regulations* (Regulations).
[19] See section 7(2)(b) of the Act and section 17 of the Regulations.
[20] See file GE-24-1345- page GD4-2.
[21] See section 93(1) of the Regulations. The hours need to be hours of insurable employment.
[22] Section 7 of the Act sets out the general rule.

The Appellant's qualifying period

[34] 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.

[35] In general, the qualifying period is the 52 weeks before your benefit period would start.[23]

[36] The law says that a qualifying period can be extended where a claimant proves that they were not employed in insurable employment in a week during their qualifying period where they were:

- incapable of work because of a prescribed illness, injury, quarantine or pregnancy;
- confined in a jail, penitentiary or other similar institution and not found guilty of the offence for which the person was being held or any other offence arising out of the same transaction;
- receiving assistance under an employment support measure other than one referred to in paragraph 59(c); or
- receiving payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the person, her unborn child or a child whom she was breast-feeding.[24]

[37] The Commission extended the Appellant's qualifying period by 3 weeks, due to illness, to begin on August 14, 2022.[25]

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[23] See section 8 of the Act, which says that the qualifying period is the **shorter of** (a) the 52-week period immediately before the beginning of a benefit period, and (b) the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period.
[24] See section 8(2) of the Act.
[25] See file GE-24-1345– page GD4-1.

[38] I accept that the Appellant's qualifying period is from August 14, 2022, to September 2, 2023.

The hours the Appellant worked

The Appellant disagrees with the Commission

[39] The Commission decided that the Appellant worked 490 hours during her qualifying period from August 14, 2022, to September 2, 2023.

[40] The Appellant disagrees. She says she believes that she worked at least 600 hours in the 52 weeks before her claim.[26]

[41] The Appellant worked for the employer from September 28, 2022, to March 17, 2023. The Commission obtained a ruling from the Canada Revenue Agency (CRA) that confirms she accumulated 490 hours of insurable employment during that period.[27]

[42] The Appellant submitted copies of her T4s from 2021 and 2022.[28] However, T4s don't identify how many insurable hours a claimant worked. The Appellant also submitted a ROE for the period from August 17, 2015, to August 3, 2022.[29] However, her qualifying period doesn't start until August 14, 2022, so the hours from this ROE cannot be used in establishing her claim.

[43] As is indicated in the Commission's calculation sheet, the Appellant didn't accumulate any hours for the period from August 14, 2022, to September 24, 2022.[30]

[44] The Appellant confirmed at the hearing that she had no additional insurable employment.

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[26] See See file GE-24-1345– page GD2-6.
[27] See file GE-24-1345– page GD7-3.
[28] See file GE-24-1345- GDJ10B.
[29] See file GE-24-1345- page GDJ10A-2.
[30] See file GE-24-1345– page GD3-28-29.

[45] Therefore, I find that the hours that can be used in establishing the Appellant's claim are the 490 hours that the CRA ruled she worked from September 28, 2022, to March 17, 2023.

[46] CRA's insurability ruling is binding on me.[31] I can't decide that the number of hours is different from the CRA's ruling. In the absence of any evidence that the Appellant took steps to appeal the insurability ruling, it is final and applies to her claim.

[47] I therefore find that the Appellant has 490 hours of insurable employment in her qualifying period.

[48] The Appellant requires 600 hours of insurable employment in her qualifying period to establish a claim for EI sickness benefits. I cannot alter or waive this requirement. I do not have discretion to disregard or override the qualifying requirements in the Act.

[49] The Appellant only has 490 hours. This means she has not satisfied the requirements to qualify for EI sickness benefits and, therefore, cannot establish her claim.

Conclusion

[50] The Appellant's claim can't be treated as if it was made on March 19, 2023, because she doesn't qualify for benefits on that date.

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[31] The Federal Court of Appeal has consistently held that questions about a claimant's hours of insurable employment must be determined by CRA and that adjudicators do not have any jurisdiction to determine this question: see for example the case of *Canada (Attorney General)* v *Didiodata*, 2022 FCA 345. If the Appellant disagreed with CRA's insurability ruling, she should have exercised her right to appeal the ruling to the Minister of National Revenue (see section 91 of the Act).

[51] The Appellant doesn’t have enough hours to establish a claim for EI sickness benefits.

[52] This means the appeal, on both issues, is dismissed.

Susan Stapleton
Member, General Division – Employment Insurance Section