



Citation: *BU v Canada Employment Insurance Commission*, 2024 SST 1586

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

## **Decision**

**Appellant:** B. U.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (692659) dated October 7, 2024  
(issued by Service Canada)

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**Tribunal member:** Gary Conrad

**Type of hearing:** In writing

**Decision date:** December 17, 2024

**File number:** GE-24-2656

## **Decision**

[1] The appeal is dismissed.

[2] The Appellant does not have enough hours of work to qualify for Employment Insurance (EI) benefits based on either his August 2023 application or his November 2023 application.

## **Overview**

[3] The Appellant applied for EI benefits and was denied. The Canada Employment Insurance Commission (Commission) says he does not have enough hours of insurable employment to start a benefit period.

[4] The Appellant argues he has more than enough hours of insurable employment; well beyond the 700 he needs.

[5] The Commission says this is not the case because his hours of work from a job he had at a grocery store cannot be used to qualify him for benefits since he voluntarily left his job at the grocery store without just cause.

## **Matters I have to consider first**

[6] This matter has already come before the General Division of the Social Security Tribunal (Tribunal), where it was dismissed. The original General Division member said that they did not have the jurisdiction to consider the issue the Appellant was appealing (whether he had enough hours to qualify for EI) as no reconsideration decision had been done on the issue.

[7] The Appellant appealed this decision to the Appeal Division of the Tribunal.

[8] The Appeal Division decided the original General Division decision had made errors of fact and law. These related to the form of hearing, and whether or not a reconsideration decision had actually been done. The Appeal Division returned the appeal to me for a new hearing, with some instructions.

## Form of hearing

[9] The Appeal Division decided the General Division had erred in law by having an “in writing” hearing when the Appellant had asked for a teleconference or videoconference hearing.<sup>1</sup>

[10] The Appeal Division says the General Division erroneously assumed the Appellant’s request to do a case conference “in writing” meant they could do the hearing in writing. They say the General Division failed to provide any analysis or reasons of why they were changing to a hearing “in writing”.<sup>2</sup>

[11] The Appeal Division says that, at a minimum, the General Division should have confirmed the Appellant intended to change his choice of hearing to in writing before proceeding.

[12] My review of the evidence shows that the General Division member did ask the Appellant about his chosen form of hearing, and he responded that he wanted it in writing.

[13] In the first appeal before the General Division (in other words, not this appeal) a case conference was scheduled by teleconference to take place on April 8, 2024.<sup>3</sup>

[14] On April 3, 2024, the Appellant emailed the Tribunal and requested to participate in this case conference through writing because of medical conditions he had.<sup>4</sup>

[15] The case conference was held by teleconference on April 8, 2024; only the Commission attended.

[16] The General Division then sent a letter to the Appellant on April 8, 2024, outlining what occurred at the case conference.<sup>5</sup>

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<sup>1</sup> *BU v Canada Employment Insurance Commission*, AD-24-355 (unpublished) at para 16.

<sup>2</sup> *BU v Canada Employment Insurance Commission*, AD-24-355 (unpublished) at para 14.

<sup>3</sup> GD05

<sup>4</sup> GD06

<sup>5</sup> GD07

[17] Also, on April 10, 2024, a letter was sent to the Appellant regarding the format of hearing for his appeal before the General Division.<sup>6</sup> This letter stated that because of the Appellant's medical conditions, which he outlined in GD06, the General Division would be changing the format of the hearing to "in writing".

[18] This letter also goes on to say that if the Appellant wants to talk to the member, **he can ask to have his hearing changed to teleconference or videoconference.** If that was his choice, he had to inform the General Division as such by April 19, 2024.<sup>7</sup> The letter says that if the Appellant does not request to change his format of hearing by April 19, 2024, it will go forward in writing. So, in fact, the General Division did provide a reason for changing the format of the hearing and an opportunity for the Appellant to say if he disagreed.

[19] This is laid out in paragraph 12 of the original General Division decision, which says that a letter was sent to the Appellant informing him how to change his form of hearing if he preferred a teleconference or videoconference and setting a deadline for him to do so.

[20] The Appellant replied to the April 10, 2024, letter and stated that he appreciated the General Division's understanding and **would reply to all further communication in a written format.**<sup>8</sup>

[21] All of this evidence clearly shows that the General Division did confirm with the Appellant whether he wanted a teleconference and videoconference. They explained to the Appellant that the hearing would be in writing, why it would be in writing, and that he could tell them if he wanted to change it and they would. The Appellant then responded to this letter saying he would do all further communication in a written format, confirming the choice to do "in writing".

[22] So, despite the Appellant having confirmed previously to the General Division that he wanted a hearing "in writing" for medical reasons, when it came time to schedule

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<sup>6</sup> GD08

<sup>7</sup> GD08-2

<sup>8</sup> GD09

a hearing before me, I scheduled a hearing in one of his chosen formats in his notice of appeal (teleconference) as the Appeal Division said I should.

[23] However, once I did, the Appellant immediately replied that he wanted a hearing “in writing”.<sup>9</sup>

[24] To respect the Appellant’s wishes, I changed the format to in writing,<sup>10</sup> and the Appellant replied and thanked me for doing so.<sup>11</sup>

[25] So, to be clear, it is my view that there was no error the first time the General Division chose “in writing”, as they confirmed with the Appellant that is what he wanted. To ensure that there is no error found this time, I am showing that I chose in writing as the Appellant has again confirmed that is what he wants.

## **Jurisdiction (What I have the power to decide)**

### **I do have jurisdiction to decide if the Appellant had enough hours**

[26] The Appeal Division says that the December 4, 2023, decision letter<sup>12</sup> by the Commission is a decision on whether the Appellant voluntarily left his employment, and whether he had enough hours of work to qualify for benefits. They say the Appellant requested a reconsideration of this decision, so it shows that he did request a reconsideration of the decision on whether he had sufficient hours to qualify for benefits.

[27] Unfortunately, I believe this conclusion is not entirely accurate.

[28] From my reading, the December 4, 2023, decision letter which references insufficient hours to qualify, is actually a decision on an antedate request the Appellant made on November 24, 2023.

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<sup>9</sup> See Appellant Correspondence dated October 25, 2024.

<sup>10</sup> RGD08

<sup>11</sup> See Appellant Correspondence dated October 30, 2024.

<sup>12</sup> RGD03-48

[29] On November 24, 2023, the Appellant requested his November 2023 application for benefits be antedated to August 1, 2023.<sup>13</sup>

[30] One of the requirements to get a claim antedated is that the Appellant qualify on the date he is requesting an antedate to, which in this case is August 1, 2023.

[31] The December 4, 2023, decision says that the Appellant's claim cannot start on August 1, 2023, because he did not qualify on that date.<sup>14</sup> This shows that it is a decision on the start date of the Appellant's benefit period, not whether he can qualify. In other words, a decision on his antedate request, not a decision on whether he has sufficient hours to start a benefit period.

[32] I also note the stark contrast in wording between the December 4, 2023, letter, which I believe is about an antedate request, and the August 9, 2023, letter, which is clearly about whether the Appellant has enough hours to qualify for benefits.<sup>15</sup>

[33] In the August 9, 2023, letter it states the Appellant does not have enough hours to start a claim for benefits. It explains the hours he has and the hours he needs. All wording which is not present in the December 4, 2023, letter.

[34] Despite this, I have still determined that the Appellant did request a reconsideration of whether he had enough hours to qualify for benefits but that the Commission never completed it. So, I followed the Appeal Division's instructions to request the Commission to complete the reconsideration request.

[35] The Commission acted on my request and on October 7, 2024, they issued a reconsideration decision on the issue of whether the Appellant had sufficient hours to qualify for a benefit period based on his applications in August 2023 or November 2023.<sup>16</sup>

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<sup>13</sup> RGD03-34

<sup>14</sup> RGD03-48

<sup>15</sup> RGD03-27

<sup>16</sup> RGD05-1 and 5

[36] My jurisdiction flows from a reconsideration decision.<sup>17</sup> Since the Commission has now done a reconsideration decision on whether the Appellant has enough hours to start a benefit period based on his applications in August or November 2023, I find I have the jurisdiction to consider those issues.

**I do not have jurisdiction to consider voluntary leaving**

[37] However, something I do not have the jurisdiction to consider, is the decision on whether the Appellant had just cause for voluntarily leaving his employment at the grocery store, or the actions of Tribunal members on a different appeal.

[38] The Appellant goes on at length about his leaving his employment at the grocery store, and the actions of other Tribunal members,<sup>18</sup> but these are not issues that are before me.

[39] A decision has already been made on the issue of voluntarily leaving his job at the grocery store at the General Division, and the Appellant has exhausted his appeal options at the Tribunal.

[40] As the Appeal Division pointed out, the voluntarily leaving issue was not before the General Division in the first decision and was not before the Appeal Division, which means it is not before me. The Appeal Division has said that the voluntary leaving decision was denied leave to appeal at the Appeal Division, so the Appellant's only recourse would be to the Federal Court.<sup>19</sup>

[41] I also have no control over the actions of Tribunal members in other appeals.

[42] So, my decision will be focused on the issue that was in the reconsideration decision issued October 7, 2024, on whether the Appellant can qualify for a benefit period based on his applications in August 2023 or November 2023.<sup>20</sup>

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<sup>17</sup> See section 113 of the *Employment Insurance Act* (Act), which says I can only review a decision made under section 112 of the Act, which is a reconsideration decision.

<sup>18</sup> RGD12

<sup>19</sup> *BU v Canada Employment Insurance Commission*, AD-24-355 (unpublished) at paras 23 to 25.

<sup>20</sup> RGD05-1 and 5

## Issue

[43] Does the Appellant have enough hours to qualify for benefits?

## Analysis

### Background

[44] The Appellant was working at a grocery store until January 20, 2023.<sup>21</sup>

[45] The Commission made a decision that the Appellant had voluntarily left his employment at the grocery store without just cause. This decision will become important in a moment.

[46] The Appellant filed a claim for EI benefits on August 2, 2023.<sup>22</sup>

[47] This is where the Commission's decision the Appellant voluntarily left his employment without just cause comes into play.

[48] When a person is found to have voluntarily left their job without just cause, they are disqualified from benefits. In other words, they cannot be paid benefits.<sup>23</sup> Also, no hours earned from any employment prior to the day the Appellant quit without just cause can be used to qualify for benefits.<sup>24</sup>

[49] The Commission told the Appellant on August 9, 2023, that because he had been disqualified, they could not pay him any regular benefits.<sup>25</sup>

[50] They said that they had considered starting a new benefit period for the Appellant based on his August 2, 2023, application, but said he did not have enough hours of work to start a benefit period since they could not use his hours from the grocery store.

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<sup>21</sup> RGD12-16 see his last day for which paid of January 20, 2023, on his Record of Employment.

<sup>22</sup> RGD03-19

<sup>23</sup> Section 30(1) of the Act

<sup>24</sup> Section 30(5) of the Act.

<sup>25</sup> RGD03-27



[51] The Appellant then filed a subsequent application on November 23, 2023, but the Commission says the result is the same, the Appellant does not have enough hours of work to start a benefit period because they cannot use his hours from the grocery store.

## **Qualifying for EI**

[52] Not everyone who stops work can receive EI benefits; a person needs to qualify for benefits.

[53] In order to qualify, one of the things a person needs, is to have worked enough hours within a certain timeframe. This timeframe is called the “qualifying period.”<sup>26</sup>

[54] The number of hours a person needs in their qualifying period is determined by the unemployment rate in the economic region where they reside at the time of the application.

## **The August 2023 application**

[55] The Commission says that the start date for the Appellant's benefit period based on his application in August 2023 application would be July 30, 2023.<sup>27</sup>

[56] I find I agree with the Commission's submission.

[57] A benefit period starts on later of the following two options:

- the Sunday of the week in which the interruption of earnings occurred, or
- the Sunday of the week in which the Appellant filed his application for benefits.<sup>28</sup>

[58] The Appellant's interruption of earnings occurred on July 31, 2023, since that was his last day of work.<sup>29</sup> The Sunday of that week is July 30, 2023.

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<sup>26</sup> See section 7 of the Act.

<sup>27</sup> RGD03-1

<sup>28</sup> Section 10(1) of the Act.

<sup>29</sup> See his ROE on RGD03-22 and the section Last Day for Which Paid.

[59] The Appellant filed his application for benefits on August 2, 2023. The Sunday of the week is July 30, 2023.

[60] So, since both actions happened in the same week, the start date of his benefit period would be July 30, 2023.

[61] At the time of his application the Appellant's address<sup>30</sup> puts him in the EI economic region of Vancouver.<sup>31</sup>

[62] The regional rate of unemployment applicable to the Appellant is the average of the seasonally adjusted monthly rates of unemployment for the last three-month period for which statistics were produced by Statistics Canada that precedes the week his benefit period starts.<sup>32</sup>

[63] To put the above into plain English, the Appellant's benefit period starts July 30, 2023, so the applicable unemployment rate is the rate for the week of July 23, 2023.

[64] According to the information from Statistics Canada provided by the Commission, the unemployment rate for the week of July 23, 2023, in the Appellant's economic region is 5.4%.<sup>33</sup>

[65] The law states that with an unemployment rate below 6%, the Appellant requires 700 hours of insurable employment in his qualifying period to qualify for benefits.<sup>34</sup>

[66] So, in theory, if the Appellant has 700 or more hours in his qualifying period, which runs backwards from July 23, 2023, (generally for 52 weeks but there are some exceptions) he could qualify for benefits.

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<sup>30</sup> RGD03-7

<sup>31</sup> RGD03-25

<sup>32</sup> See Section 17(1) of the *Employment Insurance Regulations* and [Canada \(Attorney General\) v. Jewett, 2013 FCA 243](#)

<sup>33</sup> RGD03-26. See the unemployment rate for the region of Vancouver for the period July 9 to August 5, 2023, which includes the week of July 23, 2023.

<sup>34</sup> Section 7(2) of the Act.

[67] This is where the decision made by the Commission that the Appellant voluntarily left his job at the grocery store becomes a problem for the Appellant.

[68] The law says that if the Appellant left a job without just cause, any hours of insurable employment he earned prior to the date he left his job without just cause, cannot be used to qualify for benefits.<sup>35</sup>

[69] This means that all the hours of work from his job at the grocery store he earned prior to the date he left (January 20, 2023)<sup>36</sup> cannot be used to start a benefit period. It is only the hours he earned after January 20, 2023, that can be used to qualify him for benefits.

[70] Unfortunately for the Appellant, the only employment in evidence that he has worked since the date he left his job at the grocery store shows a total of 304 insurable hours at a greenhouse.<sup>37</sup>

[71] 304 hours is well short of the 700 he needs, so I find he does not qualify to start a benefit on July 30, 2023.

### **The November 2023 application**

[72] The Commission says that the start date for the Appellant's benefit period based on his November 2023 application would be November 19, 2023.<sup>38</sup>

[73] I find I agree with the Commission's submission.

[74] A benefit period starts on later of the following two options:

- the Sunday of the week in which the interruption of earnings occurred, or

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<sup>35</sup> Section 30(5) of the Act.

<sup>36</sup> RGD12-16

<sup>37</sup> RGD03-22. The Appellant also said in his application that his only work in the last year was at the grocery store and the greenhouse. See RGD03-19

<sup>38</sup> RGD03-1

- the Sunday of the week in which the Appellant filed his application for benefits.<sup>39</sup>

[75] The Appellant's interruption of earnings occurred on July 31, 2023, since that was his last day of work.<sup>40</sup> The Sunday of that week is July 30, 2023.

[76] The Appellant filed his application for benefits on November 23, 2023.<sup>41</sup> The Sunday of the week is November 19, 2023.

[77] So, since the Sunday of the week he filed his application is the later date, the start date of his benefit period would be November 19, 2023.

[78] At the time of his application the Appellant's address<sup>42</sup> puts him in the EI economic region of Vancouver.<sup>43</sup>

[79] The regional rate of unemployment applicable to the Appellant is the average of the seasonally adjusted monthly rates of unemployment for the last three-month period for which statistics were produced by Statistics Canada that precedes the week his benefit period starts.<sup>44</sup>

[80] To put the above into plain English, the Appellant's benefit period starts November 19, 2023, so the applicable unemployment rate is the rate for the week of November 12, 2023.

[81] According to the information from Statistics Canada provided by the Commission, the unemployment rate for the week of November 12, 2023, in the Appellant's economic region is 5.8%.<sup>45</sup>

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<sup>39</sup> Section 10(1) of the Act.

<sup>40</sup> See his ROE on RGD03-22 and the section Last Day for Which Paid.

<sup>41</sup> RGD03-45

<sup>42</sup> RGD03-36

<sup>43</sup> RGD03-25

<sup>44</sup> See Section 17(1) of the *Employment Insurance Regulations* and [Canada \(Attorney General\) v. Jewett, 2013 FCA 243](#)

<sup>45</sup> RGD03-26. See the unemployment rate for the region of Vancouver for the period November 5 to December 2, 2023, which includes the week of November 19, 2023.

[82] The law states that with an unemployment rate below 6%, the Appellant requires 700 hours of insurable employment in his qualifying period to qualify for benefits.<sup>46</sup>

[83] So, in theory, if the Appellant has 700 or more hours in his qualifying period, which runs backwards from November 19, 2023, (generally for 52 weeks but there are some exceptions) he could qualify for benefits.

[84] Once again though, the decision made by the Commission that the Appellant voluntarily left his job at the grocery store becomes a problem for the Appellant.

[85] The law says that if the Appellant left a job without just cause, any hours of insurable employment he earned prior to the date he left his job without just cause cannot be used to qualify for benefits.<sup>47</sup>

[86] This means that all the hours of work from his job at the grocery store he earned prior to the date he left (January 20, 2023)<sup>48</sup> cannot be used to start a benefit period. It is only the hours he earned after January 20, 2023, that can be used.

[87] Unfortunately for the Appellant, the only employment in evidence that he has worked since the date he left his job at the grocery store shows a total of 304 insurable hours at a greenhouse.<sup>49</sup>

[88] 304 hours is well short of the 700 he needs, so I find he does not qualify to start a benefit on November 19, 2023, either.

## Summary

[89] So, in summary, the Appellant does not have enough hours of insurable employment to qualify for a benefit period with either his August 2023 or November 2023 application.

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<sup>46</sup> Section 7(2) of the Act.

<sup>47</sup> Section 30(5) of the Act.

<sup>48</sup> RGD12-16

<sup>49</sup> RGD03-22. The Appellant also said in his application that his last job was at the greenhouse. See RGD03-38

[90] This is because all his hours of work that he earned at the grocery store cannot be used to try and qualify him for benefits since the Commission determined he left his job at the grocery store without just cause.<sup>50</sup>

[91] The only hours of work that can be taken into consideration are ones he earned after the date he left his job at the grocery store. The only hours of work in evidence that were earned after he left the grocery store are the hours he worked at the greenhouse (304), which are far less than the 700 he needs to qualify for benefits.

## **Conclusion**

[92] The appeal is dismissed.

[93] The Appellant does not have enough hours of insurable employment to start a benefit period based on either the August 2023 application or the November 2023 application.

Gary Conrad  
Member, General Division – Employment Insurance Section

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<sup>50</sup> Section 30(5) of the Act.