Citation: *KK v Canada Employment Insurance Commission*, 2024 SST 1620

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	K. K.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (675971) dated September 25, 2024 (issued by Service Canada)

Tribunal member:	Kristen Thompson
Type of hearing:	Teleconference
Hearing date:	November 19, 2024
Hearing participant:	Appellant
Decision date:	November 22, 2024
File number:	GE-24-3491

Decision

[1] The appeal is dismissed. The Tribunal's General Division disagrees with the Appellant.

[2] The Appellant hasn't shown that he worked enough hours to qualify at the earlier date. This means that the Appellant's application can't be treated as though it was made earlier.[1]

Overview

[3] The Appellant applied for Employment Insurance (EI) benefits on May 15, 2024.[2] He is now asking that the application be treated as though it was made earlier, on April 14, 2024.[3] The Canada Employment Insurance Commission (Commission) has already refused this request.

[4] The Commission decided that the Appellant hadn't worked enough hours to qualify at the earlier date.[4] It says that the Appellant needs 630 hours, but has only 595 hours.

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

[6] The Appellant disagrees. He says that, as he was let go on April 10, 2024, his qualifying period should include one more week of earnings. He says that, although he was a salaried employee, he worked additional hours. He says that these hours should be included in his qualifying period.

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[1] Section 10(4) of the *Employment Insurance Act* (EI Act) uses the term "initial claim" when talking about an application.
[2] See GD3-13.
[3] See GD3-16 to 20.
[4] 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

[7] Can the Appellant's application for benefits be treated as though it was made on April 14, 2024? This is called antedating the application.

Analysis

How to qualify for benefits at an earlier date

[8] To get your application for benefits antedated, you have to prove these two things:[5]

a) 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.

b) You qualified for benefits on the earlier day (that is, the day you want your application antedated to).

[9] The main arguments in this case are about whether the Appellant qualified for benefits on the earlier day. So, I will start with that.

How to qualify for benefits

[10] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.[6] 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.

[11] To qualify, you need to have worked enough hours within a certain timeframe. This timeframe is called the "qualifying period."[7]

[12] The number of hours depends on the unemployment rate in your region.[8]

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[5] See section 10(4) of the EI Act.
[6] See section 48 of the EI Act.
[7] See section 7 of the EI Act.
[8] See section 7(2)(b) of the EI Act and section 17 of the *Employment Insurance Regulations* (EI Regulations).

The Appellant's region and regional rate of unemployment

[13] The Commission decided that the Appellant's region was Toronto and that the regional rate of unemployment at the time was 7.4%.[9]

[14] This means that the Appellant would need to have worked at least 630 hours in his qualifying period to qualify for EI benefits.[10]

– The Appellant agrees with the Commission

[15] The Appellant agrees with the Commission's decisions about which region and regional rate of unemployment apply to him.

[16] There is no evidence that makes me doubt the Commission's decision. So, I accept as fact that the Appellant needs to have worked 630 hours to qualify for benefits.

The Appellant's qualifying period

[17] 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.[11]

[18] 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.

[19] The Commission decided that the Appellant's qualifying period was the usual 52 weeks. It determined that the Appellant's qualifying period went from April 16, 2023, to April 13, 2024.[12]

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[9] See GD3-21 to 23.
[10] 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.
[11] See section 8 of the EI Act.
[12] See GD3-27 to 28, and 36

– **The Appellant doesn't agree with the Commission**

[20] The Appellant disagrees with the Commission about his qualifying period. The Appellant says that he was let go on April 10, 2024, so his qualifying period should include one more week of earnings.

[21] To qualify for EI benefits, a person has to have an interruption of earnings, along with enough hours to qualify.

[22] An interruption of earnings takes place when:[13]

a) an insured person is laid off or separated from employment,

b) has **a period of 7 or more consecutive days where no work is performed** for that employer, and

c) no earnings arise from that employment, other than certain prescribed earnings.

[23] So, although the Appellant was let go from employment on April 10, 2024, he didn't have an interruption of earnings until a period of 7 or more consecutive days had passed where no work was performed.

[24] A benefit period begins on the later of:[14]

a) the Sunday of the week in which the interruption of earnings occurs, and

b) the Sunday of the week in which the initial claim for benefits is made.

[25] As the Appellant asked for his application to be antedated to the earlier day, he is asking for the benefit period to begin on the Sunday of the week in which the interruption of earnings occurred. This means that his benefit period begins on Sunday, April 14, 2024.

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[13] See section 14(1) of the EI Regulations.
[14] See section 10(1) of the EI Act.

[26] The qualifying period generally is the 52 weeks before your benefit period would start.[15] This means that the Appellant's qualifying period is from April 16, 2023, to April 13, 2024.

The hours the Appellant worked

– What the Canada Revenue Agency says

[27] The Canada Revenue Agency (CRA) made a ruling on the number of hours that the Appellant worked during his qualifying period. It said that the Appellant worked 595 hours.[16]

– The Appellant doesn't agree with the Commission

[28] The Commission decided that the Appellant had worked 595 hours during his qualifying period. The Appellant disputed this, saying that he had worked more hours than that.

[29] The Appellant worked for the employer's Canadian division until August 11, 2023.[17]

[30] The Appellant's employer says that he was a salaried employee. He was paid biweekly for 70 hours, or 35 hours weekly.[18]

[31] The Appellant says that, although he was a salaried employee, he worked more than 35 hours weekly. He says that these extra hours should be included in his qualifying period.

[32] The Appellant says that he worked between 40 and 43 hours weekly, as he worked part of his lunch break, and dealt with issues that arose during the weekend.

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[15] See section 8 of the EI Act.
[16] See GD3-35.
[17] See GD3-14 to 15.
[18] See GD3-29.

[33] The Appellant says that he resigned from the Canadian division and worked for the employer's American division until he was let go on April 10, 2024. He doesn't have insurable hours from his employment at the American division.

[34] I am bound by the CRA's ruling on the number of hours.[19] In other words, I can't decide that the number of hours is different. So, 595 hours is the number that I will use in deciding this appeal.

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

[35] I find that the Appellant hasn't proven that he has enough hours to qualify for benefits because he needs 630 hours, but has worked 595 hours.

[36] EI is an insurance plan and, like other insurance plans, you have to meet certain requirements to receive benefits.

[37] 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.[20]

[38] As the Appellant didn't qualify for benefits on the earlier day, I don't have to decide if he had good cause for delaying his application for EI benefits.

Conclusion

[39] The Appellant doesn't have enough hours to qualify for benefits at the earlier date. This means that the Appellant's application can't be treated as though it was made earlier.

[40] The appeal is dismissed.

Kristen Thompson

Member, General Division – Employment Insurance Section

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[19] See section 90 of the EI Act.
[20] See *Pannu v Canada (Attorney General)*, 2004 FCA 90.