



Citation: *CL v Canada Employment Insurance Commission*, 2023 SST 2124

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

## **Decision**

**Appellant:** C. L.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (570239) dated February 28, 2023  
(issued by Service Canada)

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**Tribunal member:** Raelene R. Thomas

**Type of hearing:** Teleconference

**Hearing date:** October 27, 2023

**Hearing participant:** Appellant

**Decision date:** November 16, 2023

**File number:** GE-23-940

## Decision

[1] The appeal is allowed. The Tribunal agrees with the Appellant.<sup>1</sup>

[2] The Appellant is ordinarily resident in the Employment Insurance (EI) economic region of Northern Ontario and has shown he worked enough hours to qualify for EI benefits.

## Overview

[3] The Appellant stopped working on December 22, 2022 and applied for EI benefits on January 9, 2023. The Canada Employment Insurance Commission (Commission) decided it could not pay the Appellant EI benefits because it said he hadn't worked enough hours to qualify.<sup>2</sup>

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

[5] The Commission says the Appellant doesn't have enough hours because he resides in the EI economic region of Niagara and he needed 700 hours but has 696.

[6] The Appellant disagrees and says he does not live in the EI economic region of Niagara. He argues he lives in the EI economic region of Northern Ontario where he was required to have 630 hours to qualify for EI benefits. He has 696 hours and should receive his EI benefits.

## Matter I have to consider first

### The hearing was adjourned

[7] The hearing for this appeal was initially scheduled for June 21, 2023.

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<sup>1</sup> A person who applies for employment insurance benefits is called a "Claimant." A person who appeals a decision of the Canada Employment Insurance Commission is called an "Appellant."

<sup>2</sup> 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 Appellant argued in his appeal to the Tribunal the hours reported on his union pension ledger were greater than the hours reported on the Record of Employment (ROE).

[9] I note the CRA is the only authority that can determine whether a person's hours of work are insurable hours of employment for the purposes of the EI Act.<sup>3</sup> So, I asked the Commission to obtain a ruling from the Canada Revenue Agency (CRA) for the number of hours of insurable employment the Appellant worked in the qualifying period.<sup>4</sup> The Commission initially responded it would request the ruling.<sup>5</sup> As a result, I adjourned the hearing to allow the Commission time to obtain the ruling.<sup>6</sup>

[10] After my request, the Appellant sent the Tribunal an email stating the union pension ledger showed his regular hours of work and his overtime hours. He said the ROEs in his appeal file were correct.<sup>7</sup> This email was provided to the Commission.

[11] In September 2023 I wrote the Commission asking for an update on my request to obtain the ruling from the CRA.<sup>8</sup> The Commission responded that it contacted the employer and the Appellant to verify the hours. It said based on the Appellant's email it did not request a ruling from the CRA. It apologized for not updating the Tribunal.

[12] The hearing was then rescheduled for October 27, 2023 and took place on that date.

## **Issue**

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

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<sup>3</sup> See section 90 of the EI Act.

<sup>4</sup> See GD5 in the appeal file. The request was made on May 31, 2023.

<sup>5</sup> See GD6 in the appeal file.

<sup>6</sup> See GD7 in the appeal file.

<sup>7</sup> See GD8 in the appeal file.

<sup>8</sup> See GD9 in the appeal file.

## Analysis

### How to qualify for benefits

[14] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.<sup>9</sup> 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.

[15] To qualify, you need to have worked enough hours within a certain timeframe. This timeframe is called the “qualifying period.”<sup>10</sup>

[16] The number of hours depends on the unemployment rate in your region.<sup>11</sup>

[17] The EI Act divides Canada into EI economic regions for the purpose of calculating regional rates of unemployment.<sup>12</sup> The law says the regional rate of unemployment is the rate produced for the region in which the claimant was, for the beginning of the benefit period, ordinarily resident.<sup>13 14</sup>

[18] In its plainest terms, the phrase “ordinarily resident” requires an analysis of the following question: Where did the Appellant make his home at the beginning of the benefit period?

### The Appellant’s region and regional rate of unemployment

[19] The Commission decided that the Appellant’s region was Niagara.

[20] It based its decision on the address the Appellant used in his application for EI benefits. The Appellant indicated on his application he lived in “C.”

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<sup>9</sup> See section 48 of the EI Act.

<sup>10</sup> See section 7 of the EI Act.

<sup>11</sup> See section 7(2)(b) of the EI Act and section 17 of the *Employment Insurance Regulations* (EI Regulations).

<sup>12</sup> See section 17(1.1)(a) of the EI Regulations.

<sup>13</sup> See Section 10(1) of the EI Act which says a benefit period begins on the later of the Sunday of the week in which the interruption of earnings occurs and the Sunday of the week in which the initial claim for benefits is made.

<sup>14</sup> See section 17(1.1) of the EI Act.

[21] The Commission says at the time the Appellant applied for EI, the regional rate of unemployment in the EI Region of Niagara was 5.3%. This means the Appellant would need to have worked at least 700 hours in his qualifying period to qualify for EI benefits.<sup>15</sup>

[22] The Appellant disagrees with the Commission's decision about which EI region applies to him.

[23] The Appellant testified he lives "off the grid" on a private island, which he owns, located on the north side of Lake H, in the province of Ontario.

[24] The Appellant purchased the island in 2019. He is the sole owner of the island. In the first year of ownership, he camped on the island and moved building materials onto the island using barges and boats in the summer and a skidoo and sleds when the lake froze over.

[25] The Appellant testified since 2020 he has lived full time on the island in a house he built. He explained his island is part of a larger island group called the "C" Islands. His island is identified with a combination of two letters and one number. He said the island does not have a street address and without a street address it cannot be assigned a postal code by Canada Post. The Appellant testified he cannot get a Post Box at the nearest Canada Post office (located in "T" on the mainland) because the island does not have a street location.

[26] The Appellant pays property taxes on the island to the Municipality of HS and has done so since September 2019. He provided copies of his tax bill and amounts paid.

[27] The Appellant explained that to enter an address on the application for EI benefits you first have to enter a postal code. He testified when he completed his application for EI benefits, he listed his mother's postal code and her address in "C" as his residential address because she does his taxes, he has all his income tax and EI

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<sup>15</sup> 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.

information sent to that address and the postal code for her address was functioning. The Appellant said when he tried to indicate on the application that his residential address was different from his mailing address, he could not advance the application because he did not have a postal code for the island, which had to be entered first. So, he went back in the application and indicated that his residential and his mailing address were the same.

[28] The Appellant says he has since rectified the issue with the postal code by purchasing a piece of land in the rural area associated with the town of T which is nearest mainland town to his island. The Appellant explained that the piece of land is on a street and was given a street (civic) address. Although mail is not delivered to that street address it is covered by the postal code for the rural area of T and he now has a Post Office box located in the town of T. As a result, the Appellant can now enter an accurate mailing address on an application for EI and can also accurately enter his residential address as being the island.

[29] The Appellant testified he works on various worksites on the mainland of Ontario. When he works, he either stays with friends who live near the worksite, or he uses his trailer which he parks at the worksite or at friends' houses near the worksite. When not in use, the trailer is parked on the rural piece of land in T. The Appellant testified whenever he finished working, he would return to his island and live there.

[30] The law says the EI economic regions are defined by reference to Census Divisions.<sup>16</sup> A Census Division is defined by the Statistics Canada document "*Standard Geographical Classification (SGC) 1996*."<sup>17</sup>

[31] The law says the EI economic region of Northern Ontario consists of:

(a) those portions of Census Division Nos. 52 and 53 that are not part of the Census Metropolitan Area of Sudbury;

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<sup>16</sup> See Schedule I of the EI Regulations

<sup>17</sup> See Schedule I, section 1 of the EI Regulations.

(b) the portion of Census Division No. 58 that is not part of the Census Metropolitan Area of Thunder Bay; and

(c) Census Division Nos. 48, 49, 51, 54, 56, 57, 59 and 60.<sup>18</sup>

[32] The law says the EI economic region of Niagara consists of:

(a) the portion of Census Division No. 26 that is not part of the Census Metropolitan Area of Hamilton or the Census Metropolitan Area of St. Catharines — Niagara;

(b) the portion of Census Division No. 34 that lies east of and is not part of the Census Metropolitan Area of London; and

(c) Census Division Nos. 28 and 29.<sup>19</sup>

[33] Statistics Canada publishes maps of the census divisions on its web site.<sup>20</sup> I asked the Commission to identify which EI economic region it believed the Appellant resided in. Included with my request were website links and pdfs of the maps for the Niagara region and the Northern Ontario region. My request was shared with the Appellant.

[34] The Commission responded that based on the Appellant's postal code in his application for EI benefits his region was identified as Niagara and based on the 2021 census map (with a website link) the Appellant's area of residence would be defined by Census Division 28. This response was shared with the Appellant.

[35] At the hearing, I asked the Appellant to identify where his residence was located with reference to the two maps. The Appellant testified his island is located in Census Division Number 57. The Appellant also noted his land located in the rural area of T is also located in Census Division Number 57.

[36] The EI Act does not define "ordinarily resident."

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<sup>18</sup> See Schedule I, section 2(3) of the EI Regulations

<sup>19</sup> See Schedule I, section 2(9) of the EI Regulations

<sup>20</sup> For this appeal see: <https://www12.statcan.gc.ca/census-recensement/2021/geo/maps-cartes/referencemaps-cartesdereference/sgc-cgt/files-fichiers/2021-12572-02-10.pdf> and <https://www12.statcan.gc.ca/census-recensement/2021/geo/maps-cartes/referencemaps-cartesdereference/sgc-cgt/files-fichiers/2021-12572-02-11.pdf> accessed on November 16, 2023

[37] In *McFayden v. The Queen*,<sup>21</sup> the Tax Court of Canada adopted the analysis from *Thomson v MNR*,<sup>22</sup> wherein Justice Rand considered the term “ordinarily resident” and held it to mean “residence in the course of the customary mode of life of the person concerned”, as opposed to an “occasional or casual residence.”

[38] The Commission argued the Appellant was unable to provide any evidence such as water, utilities, or telephone bill, banking transactions, which would support that T was his normal area of residence. I do not think a person needs to show water, utility or telephone bills to prove where they are ordinarily resident. It is possible to be ordinarily resident in an area without incurring any of those expenses. It is also not clear to me how banking transactions would establish where a person is ordinarily resident.

[39] I note the EI application process relies on a claimant first entering a postal code so that the software can auto fill the residential and mailing addresses. The Commission also relies on a claimant’s postal code in one of its software applications to determine the EI economic region associated with that postal code so that it can establish the EI economic region in which the claimant is ordinarily resident.

[40] But the law is clear, the EI economic regions are defined by the Census Divisions established by Statistics Canada. The law does not make any reference to postal codes when defining the geographic area of any EI economic region.

[41] I find that, on a balance of probabilities, the Appellant has proven he is ordinarily resident in the EI economic region of Northern Ontario. The reasons for my findings follow.

[42] The Appellant included with his appeal to the Tribunal several pictures of his house on the island and a Google Satellite photo with a “pin” marking his island. He confirmed his island is located within Census Division Number 57 on the Statistics Canada map of that division. When I compare the Google Satellite photo of the island,

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<sup>21</sup> See *McFayden v. The Queen*, (2000) 4 CTC 2573. This is how I refer to the courts’ decisions that apply to the circumstances of this appeal.

<sup>22</sup> See *Thomson v MNR*, [1946] SCR 209]



and its location as part of a group of islands, to the map of Census Division Number 57, I find the Appellant's island is located within Census Division Number 57.

[43] The law says the EI economic region of Northern Ontario includes Census Division Number 57.<sup>23</sup>

[44] The Appellant testified he lives off the grid. That means he is not connected to electricity or to a municipal water supply and/or sewer system. He is also not connected to a land-based telephone line (land line). As a result, he does not have any of the bills the Commission believes are necessary to establish where he was ordinarily resident. He has however, provided proof of paying property taxes to the municipality of H.S. where his island is located.

[45] I accept the Appellant's testimony he has lived and continues to live on the island where he built his home and he returns to live in that residence when his employment ends. The Appellant has consistently said in conversations with Service Canada officers, in his request for reconsideration and in his appeal to the Tribunal that he lives on his island. That the Appellant was unable to clearly indicate his mailing address and residential address were different on his application for EI benefits is not determinative of the matter. That difficulty arises because of the reliance on postal codes to populate the address fields in the application with no provision for a residential address that does not have a postal code. As a result, in light of the forgoing evidence of the location of the Appellant's home on an island in Census Division Number 57, the property tax payments for the island, and the Appellant's testimony of where he resides when he is not working, I find the Appellant is ordinarily resident in the EI economic region of Northern Ontario.

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<sup>23</sup> See Schedule I, section 2(3) of the EI Regulations

## The Appellant's qualifying period

[46] 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.<sup>24</sup>

[47] 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.

[48] The Commission decided that the Appellant's qualifying period was the usual 52 weeks. It determined that the Appellant's qualifying period went from December 26, 2021 to December 24, 2022. The Appellant said he had no reason to object to this period being his qualifying period.

[49] There is no evidence that makes me doubt the Commission's decision. So, I accept as fact that the Appellant's qualifying period begins on December 26, 2021 to December 24, 2022.

## The hours the Appellant worked

[50] The Commission decided the Appellant had worked 696 hours during his qualifying period.

[51] The Appellant doesn't dispute this, and there is no evidence that makes me doubt it. So, I accept it as fact.

## How many hours did the Appellant need

[52] The Appellant stopped working on December 22, 2022 and applied for EI benefits on Monday, January 9, 2023. By law his benefit period started on Sunday, January 8, 2023.<sup>25</sup>

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<sup>24</sup> See section 8 of the EI Act.

<sup>25</sup> See section 10 of the EI Act

[53] The unemployment rate in the EI economic region of Northern Ontario from January 8, 2023 to February 11, 2023 was 7.4%.<sup>26</sup> In a region with an unemployment rate of 7.4% a claimant is required to have 630 hours to qualify for EI benefits.<sup>27</sup>

### **The Appellant has worked enough hours to qualify for EI benefits**

[54] I find that the Appellant has proven he has enough hours to qualify for EI benefits because he needs 630 hours and has worked 696 hours.

### **Conclusion**

[55] The Appellant has enough hours to qualify for EI benefits.

[56] This means the appeal is allowed.

Raelene R. Thomas  
Member, General Division – Employment Insurance Section

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<sup>26</sup> The Commission's Unemployment Rates by EI economic region, seasonally adjusted (3 month average) are available at [https://srv129.services.gc.ca/ei\\_regions/eng/rates.aspx?id=2023#data](https://srv129.services.gc.ca/ei_regions/eng/rates.aspx?id=2023#data) accessed November 16, 2023.

<sup>27</sup> Section 7 of the EI Act has a table that sets out the number of hours required.