



Citation: *BA v Canada Employment Insurance Commission*, 2025 SST 448

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:

B. A.

Respondent:

Canada Employment Insurance Commission

Decision under appeal:

Canada Employment Insurance Commission
reconsideration decision (67734) dated September 17,
2024 (issued by Service Canada)

Tribunal member:

Bret Edwards

Type of hearing:

Teleconference

Hearing date:

March 18, 2025

Hearing participant:

Appellant

Decision date:

March 24, 2025

File number:

GE-25-429

Decision

[1] The appeal is dismissed with modification.

[2] The Appellant is entitled to 36 weeks of Employment Insurance (EI) regular benefits. This is more weeks than what the Canada Employment Insurance Commission (Commission) originally decided he is entitled to.

[3] In this case, the Appellant was already paid more than 36 weeks of regular benefits. This means he was overpaid benefits and must pay back the money he owes. But the increase in the Appellant's entitlement means the overpayment is now significantly lower than the original amount.

[4] The Appellant also raises other issues related to specific actions of the Commission and the Canada Revenue Agency (CRA) during the appeal process. I greatly sympathize with his frustration here, but I can't resolve these issues myself, unfortunately.

Overview

[5] The Appellant applied for EI regular benefits on February 15, 2024.¹

[6] Initially, the Commission established the Appellant's benefit period as of February 11, 2024 and determined that he was entitled to 22 weeks of benefits.²

[7] The Appellant then asked to antedate the start of his benefit period to August 30, 2023.³

[8] The Commission allowed the Appellant's antedate request and determined that he was now entitled to 23 weeks of benefits.⁴

¹ GD4-1.

² GD4-1.

³ GD3-34, GD4-1.

⁴ GD4-1.

[9] But multiple processing errors meant that the Commission didn't initially backdate the Appellant's claim and continued to pay him benefits as he submitted reports. In total, it paid him 14 weeks of benefits from February 18, 2024 to May 25, 2024.⁵

[10] Once the Commission reviewed the Appellant's claim and antedated the benefit period start date, he was paid an additional 23 weeks of benefits from September 10, 2023 to February 17, 2024.⁶

[11] Adding these two payment periods together, the Commission paid the Appellant a total of 37 weeks of benefits. But since he was only entitled to 23 weeks, this created an overpayment of \$9,316, which the Commission asked the Appellant to repay.⁷

[12] Upon reconsideration, the Commission kept its original decision about the Appellant's entitlement and the resulting overpayment.⁸

[13] The Appellant appealed the Commission's reconsideration decision to the Tribunal's General Division, but it dismissed his appeal.

[14] The Appellant then appealed the General Division's decision to the Tribunal's Appeal Division.

[15] The Appeal Division determined that the General Division had made an error of law and that an insurability ruling from the Canada Revenue Agency (CRA) didn't cover the Appellant's full qualifying period. The Appeal Division returned the appeal to the General Division for a new hearing.⁹

[16] After obtaining another CRA ruling and a new Record of Employment (ROE) from the Appellant's former employer ("X"), the Commission now says the Appellant is entitled to 36 weeks of regular benefits, which has reduced the overpayment to \$866.¹⁰

⁵ GD3-37 to GD3-39, GD4-1 to GD4-2.

⁶ GD3-37 to GD3-39, GD4-2, GD4-4.

⁷ GD3-46, GD3-47.

⁸ GD3-55.

⁹ AD-24-786, paragraph 7.

¹⁰ RGD10-1, RGD10-5.

[17] The Appellant says he agrees with the Commission's new calculations and will repay the money he owes. But he is unhappy with some of the Commission and the CRA's actions during the appeal process and wants an explanation.

Matter I have to consider first

The Appellant doesn't want me to look at the Commission's decision to review his claim

[18] As discussed above, the Commission initially determined the Appellant was entitled to 22 weeks of benefits after he applied. It then allowed his antedate request and determined that he was now entitled to 23 weeks of benefits.

[19] But multiple processing errors meant that the Commission didn't initially backdate the Appellant's claim and continued to pay him benefits (14 weeks in total) while he submitted reports. And once it reviewed his claim and finalized the antedate, it paid him 23 more weeks of benefits.

[20] Since the Appellant received 37 weeks of benefits in total but was entitled to only 23 weeks, this meant he had received 14 more weeks of benefits than he was entitled to, which created an overpayment of \$9,316.

[21] As I will discuss more below, the Commission now says the Appellant is entitled to 36 weeks of benefits, which has reduced the overpayment to \$866.

[22] The Appellant submitted his notice of appeal prior to these recent developments. In it, he says that he feels the Commission didn't process his EI payments correctly and that the resulting overpayment was completely out of his control.¹¹

[23] At the hearing, I explained to the Appellant that I can look at the Commission's decision to review a claim after already paying someone benefits. I explained that this requires me to look at whether the Commission acted fairly when it decided to do such a

¹¹ GD2-4 to GD2-5.

review and that I can only potentially change the Commission's decision to do the review if I decide it didn't act fairly.

[24] I also explained to the Appellant that if I were to look at the Commission's decision to review his claim in this case, it would be specifically when the Commission determined that a review was needed because it hadn't processed his antedate request correctly. In other words, I would focus on a period that was well before the recent developments in his favour that have subsequently increased his entitlement. This means that if I were to decide the Commission didn't act fairly and shouldn't have reviewed his claim in the first place, it would nullify those recent developments.

[25] After explaining the above, I then asked the Appellant if he wanted me to look at the Commission's decision to review his claim. He said no.

[26] I therefore won't look at the Commission's decision to review the Appellant's claim. The Appellant confirmed at the hearing that he doesn't want me to do that. So, my decision won't consider that issue.

Issue

[27] How many weeks of regular benefits is the Appellant entitled to?

Analysis

How many weeks of regular benefits is the Appellant entitled to?

[28] I find the Appellant is entitled to 36 weeks of regular benefits.

[29] You can get EI benefits for each week in a benefit period where you don't work.¹² A benefit period is the time during which you get those benefits.

[30] The Appellant applied for regular benefits. The law sets out how many weeks of regular benefits you can get in a benefit period. The maximum number of weeks is determined using a table that refers to the regional unemployment rate where the

¹² See section 12(1) of the *Employment Insurance Act* (EI Act).

Appellant lived when his benefit period started and the number of hours he worked in his qualifying period.¹³

[31] After allowing the Appellant's antedate to September 3, 2023, the Commission determined that the Appellant was entitled to 23 weeks of regular benefits in his benefit period.¹⁴

[32] But the Appeal Division decided that an insurability ruling from the CRA didn't cover the Appellant's full qualifying period and that hours he worked might be missing from the Commission's calculation.¹⁵

[33] Once the Appeal Division returned the appeal for redetermination, the Commission asked the CRA for another insurability ruling on the Appellant's employment with X, specifically for the period from September 4, 2022 to December 31, 2022.¹⁶

[34] The CRA then ruled that the Appellant was an employee with X from September 4, 2022 to December 31, 2022 and that his employment during that period was insurable. But its ruling didn't mention the Appellant's hours and earnings.¹⁷

[35] Following the CRA's ruling, I asked the Commission for more information about the ruling.¹⁸ In response, the Commission said that the CRA said an insurability ruling for hours and earnings can't be done without a ROE and that the Appellant had to ask X for one himself.¹⁹

[36] I then scheduled a case conference with the Appellant. At the case conference, the Appellant was adamant that he has repeatedly asked X for a ROE for his entire

¹³ See section 12(2) of the EI Act and the table in Schedule I of the EI Act referring to that section (Table of Weeks of Benefits). The qualifying period is generally the 52 weeks before a person's benefit period would start. See section 8 of the EI Act.

¹⁴ GD3-40 to GD3-45, GD4-4.

¹⁵ AD-24-786, paragraph 7.

¹⁶ RGD2-1.

¹⁷ RGD3-2.

¹⁸ RGD4-1 to RGD4-3.

¹⁹ RGD5-1.

employment period without success and argued that the Commission needed to make that same request now and should have done it in the first place.

[37] After the case conference, I wrote to the Commission and outlined the Appellant's position, including his request that the Commission ask X for his complete ROE.²⁰ In response, the Commission said that it would ask X for the ROE from January 1, 2022 to December 31, 2022.²¹

[38] Following this exchange, the Commission now says the Appellant is entitled to 36 weeks of regular benefits. It says it has received another ROE from X that has filled in the missing hours in his qualifying period.²² It says this means he has 1820 hours in his qualifying period. And those hours, combined with an unemployment rate of 6.0% in his region when his benefit period started, means that he is now entitled to 36 weeks of benefits.²³

[39] The Commission also says the Appellant's higher entitlement means that the overpayment has now been reduced to \$866.²⁴

[40] When I look at the evidence myself, I find the Appellant is entitled to 36 weeks of regular benefits. Based on what the table in the law says, 1820 hours in the Appellant's qualifying period and a 6.0% unemployment rate in the region where he lived at the start of his benefit period means that he is entitled to 36 weeks.²⁵

[41] The Appellant testified that he agrees with the Commission's newest calculations.

[42] But the Appellant testified that he is very unhappy with the Commission and the CRA's actions during the appeal process, specifically regarding the retrieval and sharing of documents related to his employment with X.

²⁰ RGD8-1 to RGD8-3.

²¹ RGD9-1.

²² RGD10-3.

²³ RGD10-1.

²⁴ RGD10-1, RGD10-5.

²⁵ See Table of Weeks of Benefits.

[43] More specifically, the Appellant testified that he wants the Commission to explain why it didn't ask X for a ROE for his entire employment period after I had made it known to the Commission that this is what he wanted done following the case conference.

[44] I acknowledge the Appellant's testimony. It's clear to me from speaking with him that he's very frustrated with the Commission.

[45] But unfortunately, I can't resolve this issue for him. This is because I can't control how the Commission responds to a request from me for more information related to an appeal. I can only make that request and then decide if or how the Commission's response (or lack thereof) affects the outcome of the appeal before me.

[46] I also note the Commission did reach out to X after I made that request on the Appellant's behalf and was able to obtain a ROE that had the missing hours during his qualifying period²⁶, which has subsequently increased his entitlement, as I've discussed above. But if the Appellant is still dissatisfied with the Commission's actions and wants a specific explanation for why it didn't ask X for a complete ROE instead, I would encourage him to reach out to the Commission directly.

[47] The Appellant also testified that he wants the CRA and the Commission to explain why they didn't send him original copies of documents related to his employment with X. In the case of the CRA, he never received an original copy of an earlier insurability ruling, dated February 21, 2025. And in the case of the Commission, he never received an original copy of his ROE from January 1, 2023 to August 31, 2023 and from September 1, 2023 to December 31, 2023.

[48] I acknowledge the Appellant's testimony. I understand and sympathize with his frustration here too.

[49] But I can't resolve this issue for him either, unfortunately. This is because I don't have the power to compel the CRA or the Commission to send him original documents related to his employment with X. While he did receive copies of those documents as

²⁶ RGD10-3.

part of the appeal record²⁷, I would encourage him to reach out to the CRA and the Commission directly if he wants to pursue this matter further.

[50] I therefore find the Appellant is entitled to 36 weeks of regular benefits. This is more weeks than he was originally entitled to (23 weeks) after his antedate was approved.

[51] As discussed above, the Appellant was paid more than 36 weeks of benefits. But the increase in his entitlement means that his overpayment is now much lower than it was originally. The Commission says the current overpayment is \$866.²⁸

[52] The Appellant testified that he understands that his overpayment is now only \$866 and that he is willing to repay this money. But he would appreciate repaying the money in stages if he can.

[53] It should be possible for the Appellant to repay the money in stages. He just needs to contact the Canada Revenue Agency's Debt Management Call Centre at 1-866-864-5823 to arrange a repayment schedule.²⁹

[54] And to facilitate this process, I would ask the Commission to now promptly recalculate the Appellant's claim to reflect his updated entitlement and send him an updated notice of debt that confirms the overpayment has been substantially reduced.

Conclusion

[55] The appeal is dismissed with modification.

[56] The Appellant is entitled to 36 weeks of EI regular benefits. This is more weeks than what the Canada Employment Insurance Commission (Commission) originally decided he is entitled to.

²⁷ RGD3-2 to RGD3-3, GD3-29, RGD10-3.

²⁸ RGD10-1, RGD10-5.

²⁹ That's the phone number found on the Notice of Debt that was sent to the Appellant.

[57] In this case, the Appellant was paid more than 36 weeks of regular benefits. This means he was overpaid benefits and must pay back the money he owes. But the overpayment has now been significantly reduced.

Bret Edwards

Member, General Division – Employment Insurance Section