



Citation: *XW v Canada Employment Insurance Commission*, 2025 SST 682

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: X. W.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (708869) dated January 23, 2025
(issued by Service Canada)

Tribunal member: Nathalie Léger

Type of hearing: In writing

Decision date: March 17, 2025

File number: GE-25-323

Decision

[1] The appeal is dismissed with modification.

[2] The Appellant hasn't shown that she has worked enough hours to qualify for Employment Insurance (EI) maternity and parental benefits. She has only worked 322 hours during the extended qualifying period, but she needed 600 hours to qualify.

[3] The Tribunal cannot extend the Appellant's qualifying period by enough weeks for her to qualify for benefits. After submissions, the Commission's argues that the extended qualifying period is 85 weeks. I found that the extended qualifying period is in fact 86 weeks. However, even with this, the Appellant does not have enough hours in her extended qualifying period.

Overview

[4] This case is factually complex. Many different periods of time need to be distinguished for a proper understanding of this decision. This is because the Appellant claims that her qualifying period must be extended a few times because of different events. The Commission agrees for some of them and disagrees for others. For a better understanding of the facts, I have drawn a timeline that can be found in Appendix A of this decision.

[5] The Appellant applied for EI maternity and parental benefits on November 6, 2024.¹ The Commission decided that the Appellant hadn't worked enough hours during her qualifying period to qualify for benefits.² The Appellant has not worked at all during her regular qualifying period of 52 weeks as she was on an unpaid leave of absence during the past year. She had decided to take a leave to accompany her husband to the Netherlands where he was doing a master's program.

¹ See GD3-17.

² Section 7 of the *Employment Insurance Act* (Act) and section 93 of the *Employment Insurance Regulations* (Regulations) say 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."

[6] The Commission says that the Appellant doesn't have enough hours because she needs 600 or more hours but did not accumulate any during her qualifying period.

[7] During the reconsideration process, the Commission agreed that the 26 weeks of her qualifying period when the Appellant was pregnant gave rise to an extension of her qualifying period.³

[8] I have to decide whether the Appellant's qualifying period can be further extended and how many hours she accumulated during that period.

Matter I have to consider first

The Appellant asked for a hearing in writing

[9] The Appellant asked for a hearing in writing as she is out of Canada for the foreseeable future. I granted her request because the facts are not contested, and she could easily be reached via email.

[10] Before writing this decision, I gave the Appellant time to send in more representations if she felt it was needed. She did send them on February 25, 2025.⁴ Those have been taken into consideration in reaching this decision.

I asked the Commission for further submissions

[11] When I read the Appellant's supplementary representations, I was convinced that her qualifying period could be further extended, possibly up to 10 weeks. I asked the Commission for their representations on this matter.⁵

[12] They sent further representations in which they agreed to extend the qualifying period by another 7 weeks.⁶ They say that the Appellant had 284 hours in this new extended qualifying period, which was still not enough to qualify for special benefits.

³ See GD4-4 and GD8-2.

⁴ See GD6.

⁵ See GD7.

⁶ See GD8.

[13] I will review all the events identified by the Appellant that could potentially allow me to extend further her qualifying period and then determine how many hours she accumulated during that period.

Issue

[14] There are two related issues I must decide in this decision:

- a) Can the qualifying period be further extended?
- b) Has the Appellant worked enough hours to qualify for EI maternity and parental benefits during her qualifying period?

Analysis

How to qualify for benefits

[15] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.⁷ 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.

[16] To qualify, you need to have worked enough hours within a certain time frame. This time frame is called the “qualifying period.”⁸ In general, the qualifying period is the 52 weeks before your benefit period would start.⁹ I will refer to this 52-week period as the “regular qualifying period.” In the Appellant’s case, her regular qualifying period goes from November 5, 2023, to November 2, 2024.

[17] In general, the number of hours needed to qualify depends on the unemployment rate in your region.¹⁰ But the law provides another way to qualify for special benefits, including maternity and parental benefits.

⁷ See section 48 of the Act.

⁸ See section 7 of the Act and section 93 of the Regulations.

⁹ See section 8 of the Act.

¹⁰ See section 7(2)(b) of the Act and section 17 of the Regulations.

[18] If you claim special benefits, you can qualify if you have 600 or more hours.¹¹ But this is only if you don't qualify under the general rule, which sometimes requires less than 600 hours.¹²

[19] The parties agree that the Appellant doesn't qualify under the general rule, and there is no evidence that makes me doubt it. So, I accept this as a fact.

Extension of a qualifying period

[20] The Act allows for the extension of a qualifying period in certain specific circumstances.¹³ Only the first one applies to the Appellant. This section of the Act reads as follows:

8(2) A qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission may direct, that throughout the week the person was not employed in insurable employment because the person was

(a) incapable of work because of a prescribed illness, injury, quarantine or pregnancy;

[21] This means that the illness, injury or quarantine must have occurred during the qualifying period. The total number of weeks for which the person was unable to work because of one or more of those reasons will then be added to the regular 52 week qualifying period to make it longer. This will in effect create a new qualifying period comprised of two parts: the regular qualifying period and the extension.

[22] If one of the events mentioned above occurs during the extension, it must also be taken into consideration.¹⁴ The qualifying period would then be extended again by the

¹¹ See section 93(1) of the Regulations. The hours need to be hours of insurable employment.

¹² Section 7 of the Act sets out the general rule.

¹³ See section 8 of the Act.

¹⁴ See section 8(4) of the Act.

number of weeks where a claimant was unable to work during the extension period, up to a maximum of 104 weeks.¹⁵

The Appellant's qualifying period

[23] As noted above, the hours taken into consideration are the ones the Appellant worked during her qualifying period. The Commission initially decided that the Appellant's qualifying period should be from November 5, 2023, to November 2, 2024¹⁶. This is the 52-week period immediately preceding her claim for benefits. I agree that this is the Appellant's regular qualifying period.

[24] When the Commission examined the Appellant's reconsideration request, it agreed that the Appellant was indeed incapable of working from May 9, 2024, to November 2, 2024, because of her pregnancy. Because those 26 weeks fell within her regular qualifying period, they could be used to extend the qualifying period by the same number of weeks¹⁷ So, the Appellant's qualifying period was determined to start earlier. It was established as going from May 7, 2023, to November 2, 2024.¹⁸ I agree with the Commission's decision on this point.

[25] The Appellant provided more submissions following a request from the Tribunal.¹⁹ In those, she pleads that 3 other events justify a further extension of her qualifying period. After reviewing those submissions, the Commission only agreed to extend the qualifying period by another 7 weeks due to illness.

[26] I will analyze each event in turn to see if they justify a further extension of the Appellant's qualifying period.

¹⁵ See section 8(7) of the Act.

¹⁶ See GD3-25.

¹⁷ See GD3-55 and section 8(2)a) of the Act.

¹⁸ See GD3-56 and 57.

¹⁹ See GD7.

a) Start date of her pregnancy

[27] The Appellant says the medical evidence demonstrates that her pregnancy started on April 23, 2024, and not May 9, 2024, the date initially used by the Commission.

[28] The medical certificate she provided show that she was examined by her doctor on June 21, 2024. The doctor determined that she was at “8 weeks + 3 days of pregnancy.”²⁰ Therefore, this would add two weeks to her qualifying period.

[29] The Commission says that the 2-week extension cannot be granted because there is no evidence that she was prevented from working during this period.²¹

[30] I agree with the Commission. The evidence on file shows that in vitro fertilization (IVF) was used for this pregnancy and that the transfer of the egg to the mother was done on May 9, 2024. Before that, she was not yet in a high-risk pregnancy and therefore not incapable of working.

[31] This means that the qualifying period cannot be extended by a further two weeks.

b) Illness – Traditional Chinese Medicine Treatment.

[32] The Appellant claims she was unable to work during the period where she was receiving Traditional Chinese Medicine treatments. Those were made necessary because she was diagnosed with “Infertility, Diminishing Ovarian Reserve, and Spleen and Kidney Deficiency Syndrome.”²²

[33] This treatment started on September 11, 2023, and finished on December 1, 2023, which totalled 12 weeks. She claims that her doctor recommended she took time off work during the treatment because she needed to stay away from “mental pressure.”

²⁰ See GD3-53.

²¹ See GD8-

²² See GD6-2 and GD6-7.

She does not claim that her doctor said she was incapable of working and has not provided any evidence to this effect.

[34] The Commission submits that there is no evidence that the Appellant was incapable of working during this period, and that it does not meet the criteria for a further extension.²³

[35] I find that the evidence provided by the Appellant does not show she was incapable of working while receiving her treatments.²⁴ The fact that her doctor told her it would be wise to take time off is not the same as saying she *could* not work. Furthermore, in all the documents she provided, nowhere does it say she should be off work.

[36] Considering that there is no evidence that the Appellant was incapable of work during this period, it cannot be used to extend her qualifying period.

c) Illness – Sudden loss of hearing

[37] The Appellant says she was off work for an 8-week period, from April 10, 2023, to June 2, 2023, because of a sudden loss of hearing. She has not provided a medical certificate as evidence. Instead, she provided copies of a letter sent by her Group Disability Insurer confirming she met the definition of “total disability” in the short-term disability contract.²⁵

[38] The Commission agrees that the evidence shows she was incapable of working due to illness during the weeks of April 11, 2023, to June 2, 2023 (8 weeks total). They also agree that the qualifying period must be extended for this reason, but only by 7 weeks because only full weeks can be counted. During the first week of her sick leave, the Appellant received partial earnings from her employer.²⁶ The Commission says that this week is therefore not a “full” week and cannot be counted.

²³ See GD4-3.

²⁴ See GD6-7 to 12.

²⁵ See GD3-45 for the definition of “total disability” and GD3-42 to GD3-49 for the complete document.

²⁶ See GD8-1.

[39] I disagree with the Commission. Being incapable to work because of a prescribed illness and receiving earnings for part of the week are two different things. If the legislator had wanted the absence of earnings to be the main determinant for allowing an extension, it would have said so. Instead, the legislator decided that it was the incapacity to work that was important. In this case, the evidence clearly shows that the Appellant was incapable of working from April 10, 2023, to June 2, 2023.²⁷

[40] The following paragraphs will explain why this 8 week illness can be used to extend the qualifying period as far back as March 12, 2023.

[41] I find that 4 of these 8 weeks overlap the extended qualifying period of May 7, 2023, to November 2, 2024. This means that there are 4 extra weeks that can be extended.

[42] This also means the new extended qualifying period should be April 9, 2023, to November 2, 2024, or 82 weeks. I used the word should for a reason. As explained above, the Appellant was still incapable of working for medical reasons for the all the 4 weeks of this 2nd extension.

[43] For this reason, these 4 weeks can also be used to create a 3rd extension of her qualifying period. This means that the new extended qualifying period is now 86 weeks that go from March 12, 2023, to November 2, 2024.

Conclusion on the qualifying period

[44] I find that the qualifying period of the Appellant can be extended by another 8 weeks. This means that her qualifying period starts on **March 12, 2023**, and end on **November 2, 2024**, for a total of 86 weeks.

²⁷ See GD3-42 to GD3-49.

The hours the Appellant worked

[45] The Commission decided that the Appellant had worked 284 hours during her qualifying period, as they had defined it.²⁸

[46] The Appellant doesn't dispute this, and there is no evidence that makes me doubt it.

[47] But because I find that one more week of extension must be granted, I find that another 38 hours must be added to the Commission's total.²⁹ Therefore, I find that the total number of hours worked by the Appellant during her qualifying period is 322 hours.

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

[48] I find that the Appellant hasn't proven that she has enough hours to qualify for EI maternity and parental benefits because she needs 600 or more hours but has 322 hours.

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

[50] In this case, the Appellant doesn't meet the requirements, so she doesn't qualify for benefits. While I sympathize with the Appellant's situation, I can't change the law.³⁰

Conclusion

[51] The Appellant doesn't have enough hours to qualify for EI maternity and parental benefits.

[52] This means that the appeal is dismissed with modification.

Nathalie Léger

Member, General Division – Employment Insurance Section

²⁸ See GD8-2.

²⁹ See section 10.2(b) of the Employment Insurance Regulations.

³⁰ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

Appendix A

Timeline

