



Citation: *DL v Canada Employment Insurance Commission*, 2025 SST 884

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: D. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (712891) dated February 21, 2025
(issued by Service Canada)

Tribunal member: Bret Edwards

Type of hearing: Teleconference

Hearing date: July 15, 2025

Hearing participant: Appellant

Decision date: July 24, 2025

File number: GE-25-2039

Decision

[1] The appeal is dismissed.

[2] The Appellant hasn't worked enough hours to qualify for Employment Insurance (EI) benefits.

[3] I greatly sympathize with the Appellant's situation, but I can't do anything to help him here. I have to follow the law and can't make an exception for him.

Overview

[4] The Appellant applied for EI benefits on October 30, 2024.¹

[5] The Canada Employment Insurance Commission (Commission) decided that the Appellant hadn't worked enough hours to qualify.² Upon reconsideration, the Commission kept its original decision.³

[6] The Appellant then appealed the Commission's reconsideration decision to the Tribunal's General Division (GD). The GD allowed the appeal.

[7] The Commission then appealed the GD's decision to the Tribunal's Appeal Division (AD). The AD allowed the appeal. It found the GD made a legal error and a jurisdictional error and returned the appeal to the GD for another hearing.⁴

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

[9] The Commission says that the Appellant doesn't have enough hours. It says he needs 665 hours based on when his benefit period should start (on October 27, 2024) and where he was ordinarily resident that week, but he has only 611 hours. It also says

¹ GD3-15.

² GD3-28 to GD3-29. 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."

³ GD3-38.

⁴ AD-25-360, paragraphs 12 to 29.

his benefit period could start earlier (on October 13, 2024), but he still wouldn't have enough hours that week either.

[10] The Appellant disagrees. He says the Commission used the wrong address to determine how many hours he needed to qualify. He also says his benefit period could start on a different week entirely (October 20, 2024), and if it does, he has enough hours because of where he was ordinarily resident that week.

Matter I have to consider first

I gave the Appellant an opportunity to reply to the Commission's post-hearing submissions

[11] The Commission sent in further submissions after the hearing.⁵ I then gave the Appellant an opportunity to respond to those submissions, which he did.⁶ I have considered the Appellant's response, along with the rest of the available evidence.

Issue

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

Analysis

How to qualify for benefits

[13] 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 he has to show that it is more likely than not that he qualifies for benefits.

⁵ RGD5-1 to RGD5-12.

⁶ RGD6-1.

⁷ See section 48 of the EI Act.

[14] To qualify, you need to have worked enough hours within a certain timeframe. This timeframe is called the “qualifying period.”⁸ And the number of hours depends on the unemployment rate in your region.⁹

[15] In this case, there is a clear disagreement between the Appellant and the Commission over which region should be used to calculate the number of hours he needs to qualify.¹⁰

[16] But before I look at the Appellant’s region, I need to first decide when his benefit period started. The benefit period is a different timeframe from the qualifying period. It is the time when you can receive EI benefits.

[17] I need to first decide when the Appellant’s benefit period started because that will determine the week that I then need to focus on when deciding which region should be used to calculate the number of hours he needs to qualify. According to the law, I can’t determine that region without first knowing when his benefit period started.¹¹ And the AD also said that I need to first do this when it returned this appeal to the GD.¹²

The Appellant’s benefit period start date

[18] I find the Appellant’s benefit period started on October 27, 2024.

[19] The law says a benefit period begins on the later of:

- a) The Sunday of the week in which the interruption of the earnings occurs, and
- b) The Sunday of the week in which the initial claim for benefits is made.¹³

[20] The law also says an interruption of earnings occurs when a person is laid off or separated from their job and has a period of seven or more consecutive days during

⁸ See section 7 of the EI Act.

⁹ See section 7(2)(b) of the EI Act and section 17 of the *Employment Insurance Regulations* (EI Regulations).

¹⁰ GD2-11, GD4-2 to GD4-3.

¹¹ See section 17(1.1)(a) of the EI Regulations.

¹² AD-25-360, paragraphs 12 to 18.

¹³ See section 10(1) of the EI Act.

which they perform no work for that employer and are paid no earnings from that employment.¹⁴

[21] I find the Appellant's interruption of earnings occurred on October 23, 2024. He and his employer both confirmed to the Commission that his last day of work was October 16, 2024.¹⁵ And while his employer also told the Commission that he later received severance payments¹⁶, the law says severance payments are not earnings to be taken into account when determining when an interruption of earnings occurs.¹⁷

[22] Since the Appellant's interruption of earnings occurred on October 23, 2024, this means October 20, 2024 is the Sunday of the week in which the interruption of earnings occurred.

[23] I also find the Appellant made his initial claim (meaning applied) for benefits on October 30, 2024. That is the date he submitted his application.¹⁸

[24] Since the Appellant made his initial claim for benefits on October 30, 2024, that means October 27, 2024 is the Sunday of the week in which he made his initial claim.

[25] As a result, I find the Appellant's benefit period starts on October 27, 2024. It is later than October 20, 2024. And the law says benefit period starts on the later date.

[26] I note the Commission also brings up the possibility of the Appellant's benefit period being backdated to October 13, 2024, but says he wouldn't have enough hours to qualify from that date.¹⁹

[27] And I note the Appellant now asks if the start of his benefit period can be backdated to October 20, 2024 instead because he would qualify for benefits then.²⁰

¹⁴ See section 14(1) of the EI Regulations.

¹⁵ GD3-7, GD3-23.

¹⁶ RGD3-6.

¹⁷ See section 35(6) of the EI Regulations.

¹⁸ GD3-15.

¹⁹ RGD5-1 to RGD5-2.

²⁰ RGD6-1.

[28] I've already found the Appellant's benefit period started on October 27, 2024. But I will consider the Commission's position and the Appellant's argument later in this decision in order to show that even if the benefit period start date were to be changed to October 13, 2024 or October 20, 2024, the Appellant still wouldn't qualify for benefits.

[29] I will now look at which region applies to the Appellant based on his benefit period start date of October 27, 2024.

The Appellant's region and regional rate of unemployment

[30] The Commission says the Appellant's region was Southern Manitoba during the week his benefit period started and the regional rate of unemployment at the time was 6.6%.²¹

[31] This means the Appellant needs to have worked at least 665 hours in his qualifying period to qualify for EI benefits.²²

[32] The Appellant doesn't dispute that he was living in X, Manitoba during the week of October 27, 2024 or that X is in the Southern Manitoba region. I take that to mean that he agrees with the Commission on this specific point.

[33] But even so, I will still look more closely at which region applies to the Appellant during the week his benefit period started.

[34] The law says that the hours that you need to qualify for benefits depends on the rate of unemployment in the region where you were ordinarily resident during the week that your benefit period starts.²³

[35] Based on what the says, I find the phrase "during the week" is meant to refer to the **entire period of that week** and not simply the start of the week. I think this is a reasonable interpretation based on how the law is worded. And I think that if Parliament

²¹ RGD5-2.

²² 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.

²³ See section 17(1.1)(a) of the EI Regulations.

intended for it to mean at the start of the week only, it would have adopted that language instead.

[36] This means I need to look at where the Appellant was living over the course of the entire week when his benefit period started and determine where he ordinarily resided for the **majority of that week**.

[37] The law also doesn't define the term "ordinarily resident". So, I must be guided by the cases where a court has considered this term and decided what it means.

[38] The Tax Court of Canada has said that the term "ordinarily resident" is "held to mean residence in the course of the customary life of the person concerned, and it is contrasted with (different from) special or occasional or casual residence."²⁴

[39] And a decision from the Canadian Umpire Benefit (CUB), which is the predecessor to the Tribunal, said that the term "ordinarily resident" means your regular or customary place of residence. It also said that it isn't necessarily the place where you live permanently or exclusively, but where you have your usual abode during the time in question.²⁵

[40] I adopt these approaches to determining "ordinarily resident" and find that the definition of "ordinarily resident" in the context of EI law requires me to consider where, **during the week his benefit period began**, the Appellant was regularly or customarily residing. The residence must be something more than simply an occasional or casual residence.

[41] And in this case, I find the Appellant was ordinarily resident in X, Manitoba during the week of October 27, 2024. He confirmed in his testimony that he moved from Z to X on October 21, 2024 "there or thereabouts", which means he was living in X from the start to the end of the week that his benefit period started. And there's also no evidence

²⁴ See *Mcfayden v The Queen*, (2000) 2000 CanLII 480 (TDD), paragraph 99.

²⁵ See CUB 9074.

that he continued to look for work in Z after he relocated to X. To me, this all shows that X was his usual abode during the week of October 27, 2024.

[42] I therefore find as fact that the Appellant's region was Southern Manitoba during the week his benefit period started.

The Appellant's qualifying period

[43] 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.²⁶

[44] The Commission says the Appellant's qualifying period was the usual 52 weeks. It says that the Appellant's qualifying period went from October 29, 2023 to October 26, 2024.²⁷

[45] The Appellant doesn't dispute the Commission's calculation of his qualifying period. His post-hearing response²⁸ doesn't say anything about the calculation, which makes me think he accepts it.

[46] There's also no evidence that makes me doubt the Commission's calculation. So, I accept as fact that the Appellant's qualifying period is from October 29, 2023 to October 26, 2024.

The hours the Appellant worked

[47] Following the AD's decision, the Commission asked the Canada Revenue Agency (CRA) for a ruling on the number of hours that the Appellant worked during his employment in Z.²⁹

²⁶ See section 8 of the EI Act.

²⁷ RGD5-2.

²⁸ RGD6-1.

²⁹ RGD3-7 to RGD3-8.

[48] The CRA then ruled that the Appellant worked 611 hours during his employment in Z.³⁰

[49] I acknowledge the CRA's ruling doesn't cover the Appellant's entire qualifying period.

[50] But I find the Appellant didn't have any other employment during his qualifying period. He told the Commission this multiples times³¹ and confirmed it at the hearing. Because of that, I don't think it's necessary to get another CRA ruling for the entire qualifying period as I think it's reasonable to believe that it will produce an identical ruling.

[51] I'm bound by the CRA's ruling on the number of hours.³² In other words, I can't decide that the number of hours is different. So, 611 is the number that I will use in deciding this appeal.

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

[52] No, unfortunately. I find the Appellant hasn't worked enough hours to qualify for EI benefits from the start of his benefit period (October 27, 2024). He needs 665 hours, but he has 611 hours.

But would the Appellant qualify for benefits from October 20, 2024 instead?

[53] No, unfortunately.

[54] The Appellant now asks if the start of his benefit period can be backdated to October 20, 2024 instead. He thinks he qualifies from that date because he was in a different region (Northern Ontario) "for that duration" and has enough hours to qualify on that basis.³³

³⁰ RGD4-1 to RGD4-3, RGD5-8 to RGD5-9.

³¹ GD3-8, GD3-34.

³² See section 90 of the EI Act.

³³ RGD6-1.

[55] The Appellant also testified to the following:

- He worked for an employer in Z, Ontario from July 8, 2024 to October 16, 2024.
- There was a critical housing shortage in Z. He wasn't able to find housing and had to live in a tent.
- Once the weather got colder, he realized he couldn't live outside any longer and told his employer he had to leave his job for that reason.
- He signed a lease for a place in X, Manitoba on October 15, 2024.
- He moved from Z to X on October 21, 2024, "there or thereabouts".

[56] I've already decided that the Appellant's benefit period started on October 27, 2024, not October 20, 2024. And I've decided he doesn't have enough hours to qualify based on that benefit period start date. I've explained why in the previous section.

[57] That said, I will still consider the Appellant's argument that his benefit period should start on October 20, 2024 instead and that he would qualify from that date.

[58] When I review the available evidence, I find the Appellant still wouldn't qualify if his benefit period were to start on October 20, 2024 instead. That's because he was ordinarily resident in X, not Z, contrary to what he says. Here are my reasons.

[59] I've already discussed that the law says the hours that you need to qualify for benefits depends on the rate of unemployment in the region where you were ordinarily resident during the week that your benefit period started.

[60] I've also already discussed that I find the phrase "during the week" is meant to refer to the **entire period of that week** and not simply the start of the week. This means I need to consider where the Appellant ordinarily resided for the majority of the week when his benefit period started.

[61] And I've already discussed that the law doesn't define the term "ordinarily resident" and that I have adopted approaches from other courts, which requires me to

consider where, **during the week his benefit period began**, the Appellant was regularly or customarily residing.

[62] In considering a scenario where the Appellant's benefit period was to start on October 20, 2024, I find he was ordinarily resident in X during that week. His testimony shows that he was living in X for the majority of that week. After signing a lease for an apartment in X, he confirmed that he moved there from Z on October 21, 2024. That means he lived six of the seven days of that week in X, not Z. The fact that he signed a lease shows me that he was committed to making that his regular residence going forward. And there's no evidence that he continued to look for work in Z after he left.

[63] In other words, even if the Appellant started the week of October 20, 2024 living in Z, his subsequent actions show that he ordinarily resided in X, and not Z, during that week.

[64] I acknowledge the Appellant specifically testified that he moved to X on October 21, 2024 or "there or thereabouts".

[65] But even so, I still find that it's more likely than not that the Appellant was ordinarily resident in X during the week of October 20, 2024. While I'm willing to accept from the Appellant's testimony that he may not be entirely sure exactly when he moved to X, I'm not persuaded that he moved after October 22, 2024, or one day later than he said. I think it's reasonable to believe that if the Appellant had moved later than October 22, 2024, he wouldn't have told me he moved when he did. He would have given me a different, later date instead. And even if I accept the Appellant moved on October 22, 2024 instead of October 21, 2024, that still means he spent the majority of the week (4 days, from October 23 to October 26) in X after signing a new lease there. And it still means there's no evidence that he looked for work in Z after he left.

[66] I also acknowledge that the Appellant was living in a tent in Z due to a critical housing shortage and had to leave because the weather was getting cold.

[67] Unfortunately, this doesn't change my above findings. Regardless of the Appellant's reasons for relocating, his own testimony shows that Z wasn't his usual

abode during the week of October 20, 2024. Whether he moved from Z to X on October 21, 2024 (as he said) or on October 22, 2024 (if I'm to make allowances for him also adding "there or thereabouts"), he still spent the majority of the week in X, not Z. And by signing a lease there, he showed his commitment to making X his regular and customary residence going forward.

[68] For the reasons above, I therefore find the Appellant was ordinarily resident in X during the week of October 20, 2024.

[69] This means the Appellant's region would still be Southern Manitoba if his benefit period were to start on October 20, 2024. X is in the Southern Manitoba region. And the parties don't dispute that.

[70] It also means the Appellant would still need to have worked at least 665 hours in his qualifying period to qualify for EI benefits.³⁴

[71] In this case, the Commission says the Appellant's qualifying period would be from October 22, 2023 to October 19, 2024.³⁵

[72] The Appellant doesn't dispute the Commission's calculation of that qualifying period. He testified that he doesn't completely understand the Commission's calculations, but he will defer to the Commission here.

[73] I therefore accept as fact that the Appellant's qualifying period in this scenario would be from October 22, 2023 to October 19, 2024.

[74] I've already discussed that the CRA ruled the Appellant has 611 hours from his employment in Z. And he has confirmed that he doesn't have any other employment that would fall within this qualifying period.

[75] This means the Appellant would have 611 hours in this qualifying period too.

³⁴ GD4-4.

³⁵ GD4-2.

[76] It also means the Appellant wouldn't qualify for benefits if his benefit period were to start on October 20, 2024 instead, unfortunately. He would need 665 hours to qualify, but he would only have 611 hours in his qualifying period.

Or would the Appellant qualify for benefits from October 13, 2024 instead?

[77] No, unfortunately.

[78] Commission says it has an administrative policy that allows it to consider backdating the start of the Appellant's benefit period to October 13, 2024, but that he wouldn't qualify from that date either.³⁶

[79] Given the Commission's position, I will also look at whether the Appellant would qualify for benefits from October 13, 2024 instead.

[80] The Commission says the Appellant's region during the week of October 13, 2024 was Southern Manitoba because by that week, "he no longer intended to stay" in Northern Ontario and "had relocated" to X after he "secured living arrangements" there.³⁷

[81] I disagree with the Commission.

[82] I find the Appellant was ordinarily resident in Z during the week of October 13, 2024. He testified that while he did sign a lease for a place in X on October 15, 2024, he didn't actually move there until October 21, 2024 or "there or thereabouts", as discussed above. He was also still working in Z for part of that week, until October 16, 2024. And I think that shows that his usual abode during the week of October 13, 2024 was in Z, not X.

³⁶ RGD5-1 to RGD5-2.

³⁷ RGD5-2.

[83] Since the Appellant was ordinarily resident in Z during the week of October 13, 2024, this means his region was Northern Ontario. Z is in Northern Ontario region. And the parties don't dispute that.

[84] This also means the Appellant would need to have worked at least 595 hours in his qualifying period to qualify for benefits.³⁸

[85] In this case, the Commission says the Appellant's qualifying period would be from October 15, 2023 to October 12, 2024, which means any hours he worked after October 13, 2024 would fall outside the qualifying period.³⁹

[86] The Appellant doesn't dispute the Commission's calculation of that qualifying period. In his response he acknowledges that "backdating the claim to October 13th leaves me short hours", which makes me think he accepts the Commission's calculation of this qualifying period.⁴⁰

[87] I therefore accept as fact that the Appellant's qualifying period in this scenario would be from October 15, 2023 to October 12, 2024.

[88] I've already discussed that the CRA ruled the Appellant has 611 hours from his employment in Z. And he has confirmed that he doesn't have any other employment that would fall within this qualifying period.

[89] But the Commission says that not all of the 611 hours would fall within this qualifying period. According to the employer's records, only 584 of those hours are within the qualifying period.⁴¹

[90] While I agree with the Commission that not all of the 611 hours would fall within this qualifying period, I find the Commission made a small mistake in its calculation. The Employer's records show that the Appellant worked 24 hours between October 14, 2024

³⁸ RGD5-2.

³⁹ RGD5-2.

⁴⁰ RGD6-1.

⁴¹ RGD5-2.

and October 16, 2024⁴², which was his last day of work. This means those 24 hours fall outside the qualifying period. And that means he would have 587 hours in this qualifying period.⁴³

[91] The Appellant doesn't dispute the calculation of the hours in this qualifying period. As discussed above, his post-hearing response says that "backdating the claim to October 13th leaves me short hours"⁴⁴, which makes me think he accepts that he falls short of the hours he would need to qualify from that date.

[92] I therefore find the Appellant wouldn't qualify for benefits if his benefit period were to start on October 13, 2024 either. He would need 595 hours to qualify, but he would only have 587 hours in his qualifying period.

Where does this leave the Appellant now?

[93] Unfortunately, I find the Appellant doesn't have enough hours to qualify for benefits. This is true whether his benefit period starts on October 27, 2024, as I've decided. And it's still true if his benefit period were to start on October 20, 2024 or on October 13, 2024 instead, as I've also discussed above.

[94] The Appellant testified that the Commission has treated him poorly. It was mean and offensive for Service Canada to say that he was temporarily staying overnight in Z as opposed to living there. He didn't choose to sleep in a tent for 3 months. He did what he needed to do to keep a job he was really enjoying. He wanted to stay there longer, but he just didn't have the walls and a roof to be able to make that happen. How does he have to go through all this stress and financial trauma when he hasn't done anything wrong. He has zero respect for the Commission at this point.

[95] I acknowledge the Appellant is very frustrated with the Commission for the reasons he says. It's clear to me that the Commission has unnecessarily prolonged this process, notably by not asking for a CRA ruling earlier even though one was obviously

⁴² RGD3-6.

⁴³ 611 hours minus 24 hours = 587 hours.

⁴⁴ RGD6-1.

required since the Appellant's hours were in dispute. And given what has happened here, I would strongly encourage the Commission to review how it adjudicates EI claims and communicates with claimants to ensure that others don't experience the same treatment as the Appellant.

[96] If the Appellant hasn't done so already, he may wish to consider contacting the Office for Client Satisfaction, which is a neutral organization that handles and responds to complaints about Service Canada's delivery of services.⁴⁵

[97] The Appellant also testified that he has paid into EI and now can't get it when he most needs it. He is experiencing severe financial hardship.

[98] I acknowledge the Appellant's testimony and sympathize greatly with his financial situation. But EI isn't an automatic benefit. Like any other insurance plan, you have to meet certain requirements to qualify for benefits. And in this case, for the reasons above, I find the Appellant hasn't met those qualifying requirements because he doesn't have enough hours.

[99] I also acknowledge the Appellant will be disappointed with this outcome.

[100] But unfortunately, I can't do anything to help him here. I'm not able to disregard or override the EI qualifying requirements.⁴⁶ And I have to follow the law the way it's written⁴⁷ and can't make an exception for him, no matter how unique or compelling his circumstances are.⁴⁸

Conclusion

[101] The Appellant doesn't have enough hours to qualify for benefits.

⁴⁵ The Office for Client Satisfaction website can be found here: <https://www.canada.ca/en/employment-social-development/corporate/service-canada/client-satisfaction.html>.

⁴⁶ See *Attorney General (Canada) v Lévesque*, 2001 FCA 304.

⁴⁷ See *Canada (Attorney General) v Knee*, 2011 FCA 301.

⁴⁸ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

[102] This means the appeal is dismissed.

Bret Edwards

Member, General Division – Employment Insurance Section