

[TRANSLATION]

Citation: *L. R. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 79

Appeal #: GE-14-70
GE-14-73

BETWEEN:

L. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance

SOCIAL SECURITY TRIBUNAL MEMBER: Claude Durand

HEARING DATE: April 23, 2014

TYPE OF HEARING: In person

DECISION: Appeal allowed

PERSONS IN ATTENDANCE AND FORM OF HEARING

[1] The Appellant, L. R., attended the hearing with her representative, counsel Mario Goulet. The hearing was held in person on April 23, 2014, for the reasons given in the notice of hearing dated March 14, 2014.

[2] Pursuant to section 13 of the *Social Security Tribunal Regulations*, the Tribunal may, on its own initiative or if a request is filed by a party, deal with two or more appeals or applications jointly if

(a) a common question of law or fact arises in the appeals or applications; and

(b) no injustice is likely to be caused to any party to the appeals or applications.

[3] An agreement was made to deal with appeal nos. GE-14-70 and GE-14-73 jointly. These appeals concern the same issue but for different periods. Therefore, the same decision, the same evidence and the same arguments apply to both appeals.

DECISION

[4] The Tribunal allows the Appellant's appeal in both cases mentioned above, and finds that the Appellant demonstrated that she was unemployed in accordance with sections 9 and 11 of the *Employment Insurance Act* (the Act) and section 31 of the *Employment Insurance Regulations* (the Regulations). Accordingly, the disentitlement imposed on the Appellant is not justified.

INTRODUCTION

[5] On July 16, 2013, the Canada Employment Insurance Commission (the Commission) determined that the Appellant was engaged in the operation of a business and concluded that her employment or engagement in the business was not of such a minor extent that she would not normally rely on it as a principal means of livelihood.

[6] In appeal no. GE-14-70, the Commission determined that the Appellant was engaged in the operation of a business and informed the Appellant that she had not demonstrated that she was unemployed. The Commission imposed a disentitlement effective January 24, 2010, in accordance with sections 9 and 11 of the Act and subsection 30(1) of the Regulations (pages GD3-26 and GD3-27).

[7] In appeal no. GE-14-73, the Commission also determined that the Appellant was engaged in the operation of a business and informed the Appellant that she had not demonstrated that she was unemployed. The Commission imposed a disentitlement effective December 11, 2011, in accordance with sections 9 and 11 of the Act and subsection 30(1) of the Regulations (pages GD3-25 and GD3-26).

[8] The Appellant requested a reconsideration of the Commission's decisions regarding her unemployment status. In support of her request for reconsideration, the Appellant submitted that the decisions contained errors of fact and of law and that she was not engaged in the operation of any business.

[9] The Commission upheld its decisions and the Appellant appealed to the Social Security Tribunal (the Tribunal) on January 9, 2014.

ISSUES

[10] The Tribunal must determine whether the Appellant was unemployed within the meaning of sections 9 and 11 of the Act, whether subsection 30(1) of the Regulations was the applicable provision in this case and, if it was not, which one of sections 29, 30 and 31 of the Regulations applies, and whether the imposed disentitlement was justified.

APPLICABLE LAW

[11] Section 9 of the Act:

When an insured person who qualifies under section 7 or 7.1 makes an initial claim for benefits, a benefit period shall be established and, once it is established, benefits are payable to the person in accordance with this Part for each week of unemployment that falls in the benefit period.

[12] A week of unemployment is defined in subsection 11(1) of the Act as a week in which the claimant does not work a full working week.

[13] The conditions required for benefits to be payable are set out in section 7 of the Act.

7. (1) Unemployment benefits are payable as provided in this Part to an insured person who qualifies to receive them.

(2) An insured person, other than a new entrant or a re-entrant to the labour force, qualifies if the person

(a) has had an interruption of earnings from employment; and

(b) has had during their qualifying period at least the number of hours of insurable employment set out in the following table in relation to the regional rate of unemployment that applies to the person.

[14] Interruption of earnings

[15] Section 14 reads:

14.(1) Subject to subsections (2) to (7), an interruption of earnings occurs where, following a period of employment with an employer, an insured person is laid off or separated from that employment and has a period of seven or more consecutive days during which no work is performed for that employer and in respect of which no earnings that arise from that employment, other than earnings described in subsection 36(13), are payable or allocated.

[16]

[17] Subsection 31(1) reads:

31.(1) A full working week of a claimant, other than a claimant referred to in Section 29 or 30, is the number of hours, days, or shifts normally worked in a calendar week by persons in the claimant's grade, class or shift, at the factory, workshop or other premises at which the claimant is or was employed.

[18] Subsection 31(2) reads:

(2) When the number of hours, days or shifts referred to in subsection (1) is the number that is normally worked by persons in part-time employment and is less than the number of hours, days or shifts normally worked in a calendar week by persons employed in full-time employment in the employment that is closest in nature to the claimant's employment, the claimant is considered to have worked a full working week when the claimant has worked the number of hours, days or shifts that are normally worked by a person in full-time employment.

[19] Subsection 31(3) reads:

(3) A full working week of a claimant, other than a claimant referred to in Section 29 or 30, is the number of hours, days, or shifts normally worked in a calendar week by persons in the claimant's grade, class or shift, at the factory, workshop or other premises at which the claimant is or was employed.

[20] Subsection 30(5) of the Regulations states that a "self-employed person" means an individual who

(a) is or was engaged in a business; or

(b) is employed but does not have insurable employment by reason of paragraph 5(2)(b) of the Act.

[21] To determine whether the Appellant's activities on her own account constituted a full working week, the Tribunal must refer to section 30 of the Regulations, in particular the paragraphs that follow.

[22] Subsection 30(1) of the Regulations illustrates the presumption of a full working week completed by self-employed workers:

Subject to subsections (2) and (4), where during any week a claimant is self-employed or engaged in the operation of a business on the claimant's own account or in a partnership or co-adventure, or is employed in any other employment in which the claimant controls their working hours, the claimant is considered to have worked a full working week during that week.

[23] Subsection 30(2) of the Regulations is an exception to overcome the presumption of the full working week, if the employment or engagement in the operation of a business is to such a minor extent that a person would not normally rely on it as a principal means of livelihood:

Where a claimant is employed or engaged in the operation of a business as described in subsection (1) to such a minor extent that a person would not normally rely on that employment

or engagement as a principal means of livelihood, the claimant is, in respect of that employment or engagement, not regarded as working a full working week.

[24] The circumstances to be considered in determining what constitutes a minor extent are set out in subsection 30(3) of the Regulations as follows:

The circumstances to be considered in determining whether the claimant's employment or engagement in the operation of a business is of the minor extent described in subsection (2) are

- (a) the time spent;
- (b) the nature and amount of the capital and resources invested;
- (c) the financial success or failure of the employment or business;
- (d) the continuity of the employment or business;
- (e) the nature of the employment or business; and
- (f) the claimant's intention and willingness to seek and immediately accept alternate employment.

EVIDENCE

GE-14-70

[25] An Employment Insurance benefit claim was established effective January 24, 2010 (pages GD3-2 to GD3-13).

[26] The employer, G. T. Inc., issued a Record of Employment covering the period from January 4, 2007, to January 22, 2010 (page GD3-14).

GE-14-73

[27] An Employment Insurance benefit claim was established effective December 11, 2011 (pages GD3-2 to GD3-12).

[28] The employer, G. T. Inc., issued a Record of Employment covering the period from August 23, 2010, to December 9, 2011 (page GD3-13).

Common evidence in both appeals

[29] An investigation revealed that the Appellant, Ms. L. R., made Records of Employment and was responsible primarily for performing administrative tasks for her employer, G. T. Inc. This business, which sells and repairs gardening and snow equipment, is owned by her husband.

[30] The Commission contacted a former employee, Ms. S., who was the employer's accounting clerk. She confirmed that she reported to the Appellant as part of her duties and that the Appellant was responsible for various other administrative tasks (page GD3-15).

[31] On February 27, 2013, the Appellant met with a Commission officer. She stated that she did not have any shares in the business and that she was an accounting technician.

[32] Ms. L. R. confirmed that she was responsible for accounting duties. She said it was her husband who approved and signed timesheets, employees' pay and Records of Employment.

[33] With regard to administration, the Appellant said she was the only one responsible for this work, but she said an employee helped her do bookkeeping work from May 2011 to mid-November 2011.

[34] The Appellant added that she also sometimes helped client services during busy periods.

[35] With regard to the work schedule, it was determined based on 40 hours and she worked from Monday to Friday.

[36] During the busy season, from May to October, she also worked on Saturday mornings in exchange for time off on a weekday.

[37] The Appellant said she set her own schedule and in the off-season she worked as needed.

[38] The business is open from 8:30 a.m. to 5:30 p.m. all year. It is closed for two weeks in July and during spring break in early March (pages GD3-16 to GD3-18).

[39] On April 19, 2013, the owner, Mr. G. T., was contacted to verify the Record of Employment that had been issued to the Appellant. The reason given on the Record of Employment was shortage of work / end of contract or season.

[40] He confirmed that the Appellant had no shares in the business.

[41] He said she was paid for the hours worked.

[42] Mr. G. T. said it was he who determined work interruptions based on the volume of work.

[43] Mr. G. T. indicated that the Appellant's main duties were to take care of accounting and administration, while parts and sales were his responsibility.

[44] When the Appellant was not working at the business, Mr. G. T. said she visited to make sure he was feeling well. She therefore could have answered the telephone to help out if it was busy.

[45] Mr. G. T. confirmed that he did not keep records of the hours worked by employees. Lastly, he said that there were two people operating the business because his wife was always heavily involved in its operations. He specified that she had all the skills and knowledge to operate the business because she came from a family of administrators (pages GD3-19 to GD3-21).

[46] On April 23, 2013, the Commission contacted the Appellant. She was informed that her employer, Mr. G. T., had confirmed that she had gone to the business to make sure everything was going well or to help out as needed.

[47] Ms. L. R. explained that her husband had had health problems and that he still got headaches. She went to check on him (pages GD3-22 to GD3-23).

[48] According to a request made to the Canada Revenue Agency, her employment was deemed insurable (pages GD3-24 to GD3-25).

[49] Based on the facts in evidence, the Commission concluded that the Appellant was engaged in the operation of a business and that she was not employed or engaged in the operation of a business to such a minor extent.

[50] The Commission informed the Appellant that she did not demonstrate that she was unemployed within the meaning of the Act. Accordingly, it imposed a disentitlement under sections 9 and 11 of the Act and subsection 30(1) of the Regulations (pages GD3-26 to GD3-27 of appeal no. GE-14-70, and GD3-25 to GD3-26 of appeal no. GD-14-73).

[51] **In the case of appeal no. GD-14-70**, the Commission's decision resulted in an overpayment of **\$19,271.00** (page GD3-28).

[52] The Appellant requested a reconsideration of the Commission's decision regarding her unemployment status. In support of her request for reconsideration, the Appellant indicated that the decision contained errors of fact and of law and that she was not engaged in the operation of any business (pages GD3-29 to GD3-30).

[53] **In the case of appeal no. GD-14-73**, the Commission's decision resulted in an overpayment of **\$10,192.00** (page GD3-27).

[54] The Appellant requested a reconsideration of the Commission's decision regarding her unemployment status. In support of her request for reconsideration, the Appellant indicated that the decision contained errors of fact and of law and that she was not engaged in the operation of any business (pages GD3-28 to GD3-29).

Evidence at the hearing from the Appellant

[55] The Appellant received administrative technician training with a finance option, which she completed in 1971 at the CEGEP de Sherbrooke.

[56] After completing her studies, she worked for 21 years, until 1991, for Industries PPD Hercules Inc. in the accounting department. The business folded in 1991, as indicated by the news release issued on September 19, 1991, and filed as Exhibit GD6-2.

[57] The description of her position at Industries PPD Hercules Inc., filed as Exhibit GD6-1, shows that the Appellant prepared financial statements, paid suppliers, took care of client accounts and invoicing, did bookkeeping and completed inventory checks.

[58] Exhibit GD36-3 shows that, in the last year of her employment at Industries PPD Hercules Inc., the Appellant received a gross annual income of \$42,965, which corresponds to \$826 a week.

[59] After Industries PPD Hercules Inc. folded, the Appellant worked for G. T. Inc. This business was established in 1987. Her husband took over the business after his father retired.

[60] The Appellant had no interest in the business and never invested in it, as shown by the information from the Registraire des Entreprises (business registrar) filed as Exhibit GD3-17. She was hired as a salaried employee.

[61] At G. T. Inc., the Appellant did basically the same tasks as she had done in her previous job. The Appellant was on salary and her employment was declared insurable by the Canada Revenue Agency (CRA), as demonstrated in Exhibits GD3-4 and GD3-5.

[62] The Appellant worked 40 hours a week. If she had to work on Saturday, she made up for the time worked in the same week.

[63] During busy periods, she occasionally helped the sales and client services departments because she had developed solid expertise over the years.

[64] The Appellant was paid a fixed weekly salary. She made \$950 per week (\$23.75 per hour).

[65] The owner, G. T., managed the business and supervised the mechanical department and parts department.

[66] The business normally operates with five people, specifically, the owner, one full-time mechanic, one full-time parts clerk and one other half-time person, and the Appellant, who is in charge of administration.

[67] Exceptionally, Ms. S., a bookkeeping assistant, was hired from May 2011 to mid-November 2011.

[68] During the off-season, the business laid off employees due to a shortage of work.

[69] The Appellant prepared Records of Employment and the owner, G. T., signed them (Exhibits GD6-9 to GD6-13).

[70] When work interruptions occurred, the Appellant worked approximately seven hours a week to complete quarterly remittances and prepare employees' pay. She always reported the hours worked during her benefit periods.

[71] The Appellant conducted job searches during her benefit periods. She consulted the Emploi-Québec site and offered her services to suppliers and other business contacts. She stated that she was always available for work.

[72] The family home and the business were located on the same land, three minutes' walking distance from one another, as demonstrated by the certificate of location filed as Exhibit GD5-14a. Sometimes the Appellant went to the business when she was not working,

primarily to see her husband, bring his medications or a meal to him, or to look for work because she used the office computer, as there was no computer at home.

[73] In recent years, the owner, Mr. G. T., has had health problems. He has to take medication regularly for his heart problems. He also suffers from headaches and hearing problems.

[74] In 2012, the owner decided to sell his business. A broker, notary and accountant were hired to prepare the legal documents and bill of sale, and to prepare and audit the financial statement, as indicated in the documents filed as Exhibits GD5-15 and GD5-16.

[75] In preparation for the hearing, Mr. G. T. produced a written statement specifying his and the Appellant's roles in the business. The statement was filed in its entirety as Exhibit GD6-17. In this letter, he stated that there were major contradictions between the statements he made to the investigator, Annie Maziali, and the summary of the investigation report.

[76] Mr. G. T. said the investigator exaggerated the Appellant's tasks, and he reiterated that he was the only one responsible for making decisions about purchases, sales, hiring and lay-offs.

[77] He also wrote that, when he sold the business, the Appellant provided the broker, notary and accountant with the documents they required.

[78] G. T. Inc. was sold to Alain Matteau, who kept the business name for one year. The owner, G. T., remained employed to help out with the change of leadership. One part of the business, used equipment, was not sold to Mr. Matteau.

SUBMISSIONS OF THE PARTIES

[79] The Appellant's representative submitted the following:

- (a) The Commission submits that the Appellant had an interest in the business, but the evidence shows that the Appellant had no interest and did not make any profit from the sale of the business.
- (b) The Appellant did the same tasks that she had done for a previous employer for 21 years, and her salary was comparable and reasonable.
- (c) The Appellant's regular schedule was 40 hours a week. Her schedule sometimes varied by a few hours depending on workload or accounting and administrative follow-up, but that did not mean that the Appellant managed her own work unilaterally or managed the business.
- (d) The business is a small retail store whose operations are subject to the seasons. It is normal for work schedules to vary based on needs.
- (e) There is no indication that the Appellant spent more time on the business than what she reported, contrary to what the Commission submitted.
- (f) This was an inquisitorial investigation that relied in part on a former employee's perception of the Appellant's role, an employee who had worked for only a few months, and on the interpretation of the Appellant's and the owner's statements taken out of context.

[80] In support of his submissions, the Appellant's representative filed Exhibit GD6-18, which contains several pieces of applicable case law.

[81] The Commission presented the same arguments for both periods under appeal. Since the two appeals (GE-13-70 and GE-13-73) were dealt with jointly, there is no need to reproduce the same arguments twice.

[82] The Commission Respondent submitted the following:

(a) A claimant who operates their own business is presumed to have worked a full working week unless they can demonstrate that their involvement in this business is of such a minor extent that a person could not normally rely on this work as a principle means of livelihood.

(b) According to subsection 11(1) of the Act, for a claimant, a week of unemployment “is a week in which the claimant does not work a full working week”. Furthermore, when the claimant is a self-employed worker or operates a business on their own account or in a partnership or co-adventure, the claimant is considered to have worked a full working week (subsection 30(1) of the Regulations; CUB 63395).

(c) In order to determine whether the claimant’s engagement in self-employment is minor, the Commission must apply the objective criteria set out in subsection 30(2) of the Regulations to the six factors listed in subsection 30(3) of the Regulations in the context of the claimant’s business over the benefit period. The time spent, and the claimant’s intention and willingness to seek and immediately accept alternate employment are the two most important factors.

(d) In this case, the evidence in the file reveals the following about these six factors.

(e) The time spent:

i. Ms. L. R. stated that she worked from Monday to Friday, and that she determined her work hours herself. From May to October, she also works on Saturday mornings because it is the busy season.

ii. With regard to the off-season, she works as needed. The business is closed for two weeks in July and one week in early March (pages GD3-16 to GD3-18).

iii. The employer stated that he did not have a record to confirm his wife's hours, but admitted that she sometimes worked more hours in a week (pages GD3-19 to GD3-21).

(f) The nature and amount of the capital and resources invested:

i. The claimant has no shares but she manages the business with her husband (page GD3-20).

(g) The financial success or failure of the employment or business:

i. Ms. L. R. is paid for the hours worked based on her own schedule (page GD3-20).

(h) The continuity of the employment or business:

i. The claimant's husband said it was the business that supported their life together with their children (page GD3-20).

ii. He also said that his wife was committed to the business's success and that she invested a great deal to make sure it ran smoothly (page GD3-21).

(i) The nature of the employment or business:

i. The business has been in operation since 1992.

ii. The business sells and repairs gardening and snow equipment (page GD3-15).

(j) The claimant's intention and willingness to seek and immediately accept alternate employment:

i. Ms. L. R. has worked as an accountant in her husband's business for several years (page GD3-14).

ii. When she completed her claim, she reported that she had a business relationship with her husband (pages GD3-5 and GD3-6) and that she was available for work (page GD3-7).

iii. However, she never mentioned that her intention was to seek other full-time employment while she was still employed in her husband's business.

iv. According to the Appellant's husband, it would have been difficult for his wife to work elsewhere during the period in which she was on unemployment, given the time she invested in the business (page GD3-20).

(k) The Commission submits that, when considered objectively, all six factors support the conclusion that the Appellant's involvement in her husband's business is that of a person who would normally rely on this level of self-employment as a principal means of livelihood.

(l) The evidence clearly shows that the Appellant engaged in the operation of her husband's business in a co-adventure on a regular basis. Although she had no shares, she managed the business and its operations, with her husband, in addition to having fairly significant decision-making authority.

(m) She took care of the administrative part of sales, which goes well beyond the business's accounting, due to her non-arm's length relationship and her interest in the operations of the business.

(n) For all these reasons, the Commission found that the Appellant was not unemployed.

(o) The Appellant therefore failed to rebut the presumption that she worked a full working week because she did not meet the exception set out in subsection 30(2) of the Regulations.

(p) Although L. R. submitted that she never operated or was in a co-adventure in a business (pages GD2-1 to GD2-10), she failed to overcome the presumption regarding the time she spent on the business owned by her husband, with whom she worked.

(q) The Commission explained that the most important and relevant factor is the time spent on the business.

(r) In this case, the Appellant is the wife of the owner and she managed the business in addition to performing administrative duties. It is therefore clear that she spent much more time on her husband's business than she claimed.

ANALYSIS

[83] When an insured person makes a claim for benefits, section 9 of the Act requires the establishment of a benefit period and mandates the payment of benefits to the claimant for each week of unemployment that falls within the benefit period.

[84] According to subsection 11(1) of the Act, a week of unemployment is a week in which the claimant does not work a full working week.

[85] Section 31 of the Regulations defines a full working week for an employee other than an employee referred to in sections 29 and 30 of the Regulations.

[86] If the claimant is self-employed, it is section 30 of the Regulations that must be considered to determine what constitutes a full working week.

[87] According to subsection 30(5) of the Regulations, a “self-employed person” means an individual who

(a) is or was engaged in a business; or

(b) is employed but does not have insurable employment by reason of paragraph 5(2)(b) of the Act.

[88] If a claimant is considered to be a self-employed person, the relevant case law very clearly indicates that the six factors set out in subsection 30(3) of the Regulations must be taken into consideration to determine whether the exception set out in subsection 30(2) of the Regulations applies.

[89] In this case, the Commission found that the Appellant was disentitled from receiving benefits because she was not unemployed within the meaning of sections 9 and 11 of the Act, and section 30 of the Regulations. The Commission determined that the Appellant was engaged in a co-adventure in her husband’s business, that she did not meet the exception set out in subsection 30(2) of the Regulations and that she was therefore working full working weeks within the meaning of subsection 30(1) of the Regulations.

[90] The main argument submitted by the Appellant’s representative in this case is that the decision contains errors of fact and of law, and that the Appellant was not operating any business.

[91] In this case, it must first be determined which section of the Regulations, namely, 29, 30 or 31, that specifies what is meant by a full working week, applies to the Appellant’s situation.

[92] To determine whether section 30 of the Regulations applies as submitted by the Commission, the Tribunal must establish whether the Appellant meets the definition of *self-employed person* set out in subsection 30(5) of the Act.

[93] I considered the facts and heard the Appellant's testimony at the hearing, which was nearly three hours long.

[94] The Appellant testified with confidence, precision and attention to detail in explaining to me her role in the business from 1992 to 2012, despite her obvious distress with regard to the results of the Commission's investigation.

[95] I appreciated her testimony and found her to be entirely credible.

[96] At the start, I found that the Commission's position was established on the basis that the Appellant was engaged in a co-adventure in her husband's business.

[97] This decision was based on the fact that the Commission had determined that the Appellant was managing the business with her husband, that she had rather significant decision-making authority and that she did not meet the test for minor self-employment set out in subsection 30(2) of the Regulations.

[98] I find that the Commission's decision is in direct conflict with the decision of Canada Revenue, which determined that the Appellant had a contract of service with her employer.

[99] On April 3, 2013, the Canada Revenue Agency wrote to the Appellant (page GD3-24):
[translation] "Subject: Employment Insurance legislation. Decision No.: CE1306 7073 6209 (paragraph 2):

[100] Upon completion of our analysis, we have determined that, during the periods in question, you were an employee. Although the facts show that you had a non-arm's length relationship with 9273-8020 Québec Inc. (G. T. Inc.), it is reasonable to conclude that a similar contract would have been reached between the two of you, even without this relationship. Therefore, your employment was insurable under subsection 5(1) of the *Employment Insurance Act*."

[101] For the Commission, although the Appellant stated that she never operated the business nor was she in a co-adventure, she failed to rebut the presumption that a claimant has worked a full working week when during that week they operated a business in a co-adventure.

[102] Was the Appellant a self-employed person within the meaning of subsection 30(5) of the Regulations? That is the first question that needs to be answered in this case.

[103] The evidence in the file is clear; the Appellant did not have ownership interest in the business.

[104] She did not invest any capital in the business.

[105] Moreover, I find that because she was not a shareholder, she did not profit in any way from the sale of the business.

[106] The Appellant had been employed by the business since 1992. She was on salary and was in charge of administration.

[107] The business was in existence when the Appellant began her employment there. Contrary to what the Commission stated in its arguments, the business had not been in operation since 1992, but, rather, since 1987. The business was then operated by the father of the current owner, who took over later on.

[108] This business sells and repairs gardening and snow equipment, and its business volume is seasonal.

[109] Before she was hired, the Appellant had performed similar duties for 21 years working for PPD Hercules Inc., which closed in December 1991.

[110] Her pay was comparable. The Appellant had a weekly salary of \$750 at PPD Hercules in 1991. In 2012, her weekly salary was \$950.

[111] According to the evidence, if the Appellant had not held this job, the business would have had to hire another qualified person to perform her duties.

[112] And I find that, if the Appellant had not worked for G. T. Inc., she easily could have found similar employment. Her work experience proves that she had worked for 21 years performing similar duties for another employer.

[113] In its arguments, the Commission submitted that the Appellant had no shares, but she managed the business with her husband (page GD3-20).

[114] I read the report of the investigation conducted after a conversation with the owner, Mr. G. T. (pages GD3-19 and GD3-20).

[115] During this conversation, it is true that Mr. G. T. stated that the business belonged to him, but there were two of them responsible for its operation and management. He also stated that it was because of Ms. L. R. that they were able to keep going for as long as they did.

[116] This statement must be understood in its context. I considered the statements of the Appellant and her husband, as well as the letter from Mr. G. T. that was submitted at the hearing. It is clear that Mr. G. T. is a man who has health problems, who is stressed about the situation and who, in addition, has hearing problems.

[117] In all the owner's statements, I find quite simply the comments of an entrepreneur, a mechanic by trade, who recognizes the contribution of the work done by his wife. Over the years, his wife became an employee who was invaluable to the sound operation of his business.

[118] There is no evidence in the file proving that the Appellant managed, led or governed the business. On the contrary, the evidence reveals that it was the owner who hired employees, determined work interruptions, signed Records of Employment and made the important decisions. According to the facts, the owner managed the business.

[119] The evidence also reveals that, during the sale of the business, the Appellant was not the contact person. She gave the required documents to the professionals hired by the owner to carry out this transaction, which corresponds to the work she was paid to do by the business.

[120] The Commission submitted that the Appellant's husband stated that it was the business that supported their life together with their children, that his wife was very concerned with the success of the business and that she invested a great deal so that the business operated soundly.

[121] I do not find any irregularities in this aspect of the issue. In my opinion, it is the contrary that would have been very surprising.

[122] The fact that the business belonged to her husband certainly represented an additional source of motivation, but there is nothing reprehensible about that.

[123] I find that the interest demonstrated by the Appellant is like that of any long-time employee who is devoted and efficient and for whom this employment is their livelihood.

[124] The Commission concluded that the Appellant determined her hours of work herself.

[125] This conclusion is based in particular on an interview report where Ms. L. R. had stated that she set her own schedule (pages GD3-16 and GD3-17).

[126] The owner of the business also stated that he did not keep a record to confirm the Appellant's hours of work and that there may be times where she worked more hours in some weeks (pages GD3-19 and GD3-21).

[127] I reread the investigation reports and heard the Appellant's explanations at the hearing, and I do not share the Commission's point of view.

[128] What is evident in both the Appellant's testimony and the evidence in the file is that, based on an established schedule, the Appellant had flexibility to plan certain tasks depending on the needs of the business.

[129] The Appellant worked on the basis of a regular schedule of 40 hours a week.

[130] If an employee had to be away, she could replace them in the client services department.

[131] Monthly progress reports related to her accounting work could require her to work more hours some weeks. The Appellant then was able to adjust her schedule to meet deadlines.

[132] I do not see anything unusual there regarding the organization of work in a small retail business where all employees must demonstrate a certain amount of versatility and flexibility.

[133] The flexibility given to the Appellant to prioritize certain tasks as part of her job is the same as that given to any qualified employee who has many years of experience.

[134] I reject the Commission's arguments according to which the Appellant spent much more time on her husband's business than she claimed.

[135] That argument is an unproven hypothesis.

[136] The work done by the Appellant was paid and insurable, as determined by the Canada Revenue Agency. According to the facts, the Appellant's employment was consistent with a contract of service, meaning that there was an employer-employee relationship.

[137] I conclude that the Appellant was not a *self-employed person* within the meaning of subsection 30(5) of the Regulations and that she was not engaged in the operation of the business in a co-adventure.

[138] Consequently, in order to deal with the matter of the disentitlement and the Appellant's unemployment status, the Tribunal refers to the notion of *a full working week* as established in section 31 of the Regulation, namely, with regard to claimants other than those referred to in section 29 or 30 of the Regulations.

[139] During her periods off work, i.e., when she was unemployed, the Appellant spent some time each week preparing employees' pay and accounts receivable. She then declared the hours worked when she completed her Employment Insurance reports. Therefore, the Appellant did not work a full working week according to section 31 of the Regulations.

[140] She also stated that she conducted job searches by consulting the Emploi-Québec website.

[141] She conducted her searches at the business because she did not have computer equipment at home. It is worth mentioning again that this business is located behind her home.

[142] The Appellant also went to the business to check on her husband's health.

[143] The fact that when she visited the business, she was sometimes able to answer the phones or assist a client to help out does not indicate that she was not unemployed within the meaning of the Act, nor that she worked a full working week within the meaning of section 31 of the Regulations.

[144] **CONCLUSION**

[145] The Tribunal concludes that the Appellant was unemployed within the meaning of sections 9 and 11 of the Act and section 31 of the Regulations for the periods in question in appeal nos. GE-14-70 and GE-14-73. Accordingly, the disentitlement imposed does not apply, nor do the resulting overpayments.

[146] The appeal is allowed.

Claude Durand

A handwritten signature in black ink, appearing to read "C. Durand". The signature is fluid and cursive, with a large initial "C" and a stylized "D".

Member, General Division

DATE OF REASONS: July 25, 2014