

Citation: *X. G. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 157

Date: September 16, 2015

File number: GE-15-1635

GENERAL DIVISION – Employment Insurance Section

Between:

X. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Alyssa Yufe, Member, General Division - Employment Insurance Section

Heard by Teleconference on September 16, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant attended the hearing on September 16, 2015 by way of telephone conference. No one else was in attendance.

DECISION

The Tribunal finds that the Appellant did not have a sufficient number of hours to qualify for benefits in her qualifying period, pursuant to section 7 of the *Employment Insurance Act* S.C. 1996, c. 23 (the “Act”). The appeal is, accordingly, dismissed.

INTRODUCTION

[1] The Appellant filed an initial claim for benefits on March 11, 2015 (GD3-13).

[2] The Canada Employment Insurance Commission (the “Commission”) decided on April 1, 2015 (verbally, GD4-2), that it was unable to pay the Appellant benefits. The Appellant required 630 hours of insurable employment in the period between March 23, 2014 and March 21, 2015 and she had accumulated 0 hours of insurable employment (GD4-2).

[3] The Appellant filed a Request for Reconsideration with the Commission. The Commission decided on June 22, 2015 to maintain its original decision (GD3-21).

[4] The Appellant filed an appeal to the Tribunal on May 15, 2015. By way of letter dated June 1, 2015, the Appellant explained that she did not understand how the reconsideration process worked and that she would submit a copy of the reconsideration decision as soon as it was received by her (GD2A). The Appellant provided a copy of the reconsideration decision on July 7, 2015 (GD2B).

FORM OF HEARING

[5] The hearing was heard via teleconference for the reasons indicated in the Notice of Hearing dated August 4, 2015.

ISSUE

[6] Whether or not the Appellant had a sufficient number of hours in her qualifying period in order to qualify for regular benefits pursuant to section 7 of the *Employment Insurance Act* S.C. 1996, c. 23 (the “Act”).

THE LAW

Qualifying Conditions:

[7] Subsection 7(2) of the Act stipulates that in order to qualify for employment insurance benefits, an insured person must (a) have experienced an interruption of earnings from employment, and (b) must also have acquired, in his/her qualifying period, at least the number of hours of insurable employment set out in the table within that subsection, in relation to the regional rate of unemployment where the person normally resides.

[8] According to subsection 7(4)(a) of the Act, an insured person is a new entrant or a re-entrant to the labour force if, in the last 52 weeks before their qualifying period, the person has had fewer than 490 hours of insurable employment.

[9] Subsection 7(3) provides that an insured person who is a new entrant or a re-entrant to the labour force qualifies for benefits if the person (a) has had an interruption of earnings from employment; and (b) has had 910 or more hours of insurable employment in their qualifying period.

Determining the Qualifying Period

8. (1) Subject to subsections (2) to (7), the qualifying period of an insured person is the shorter of (a) the 52-week period immediately before the beginning of a benefit period under subsection 10(1), and (b) the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period under subsection 10(1).

[10] Subsection 76.09 of the Employment Insurance Regulations, SOR /96-332 (the “Regulations”) provides as follows:

76.09 (1) Subject to subsection (2), every claimant is disentitled to be paid benefits under section 22 or 23 of the Act if they are entitled to receive provincial benefits under a provincial plan.

- (2) Subsection (1) does not apply if, at the request of the claimant, it is determined by the Commission that the amount of provincial benefits the claimant is entitled to receive under the provincial plan is not substantially equivalent to or greater than the amount of benefits that they are entitled to receive under section 22 or 23 of the Act.
- (3) Every claimant who has received, or has applied for and is entitled to receive, provincial benefits under a provincial plan in respect of any week is disentitled to be paid benefits in respect of that same week under
- (a) Part I of the Act, other than benefits under section 22 or 23 of the Act; or
 - (b) the *Employment Insurance (Fishing) Regulations*.
- (4) For greater certainty, subsections (1) to (3) apply in respect of a claimant who has applied for and is entitled to receive provincial benefits under a provincial plan even if the claimant, after making that application, ceases to reside in the province where that plan was established.
- (5) For greater certainty, if two persons are caring for the same child or children and one of them is a claimant referred to in subsection (4),
- (a) subsections (1) to (3) apply in respect of the other person if that other person is an insured person; and
 - (b) subsections 76.36(1) to (3) apply in respect of the other person if that other person is a self-employed person.

EVIDENCE

[11] The Appellant worked at the Employer from November 28, 2011 to March 21, 2014. The Appellant was no longer working because the Employer was bankrupt. The Appellant received Quebec Parental Insurance Plan (“QPIP”) benefits from March 23, 2014 to March 7, 2015 (Application for Benefits, October 24, 2014 (GD3-2 to GD3-14)).

[12] According to the record of employment (“ROE”) dated April 14, 2014, the Appellant worked at “YS-GU” (the “Employer”) from November 28, 2011 to March 21, 2014, in sales and accumulated 1,839.00 insurable hours (ROE). The reason for issuing the ROE was “F” (GD3-15).

[13] GD2-4 appears to be a benefit calculation report from the QPIP. It shows that the Appellant was in receipt of maternity benefits from March 23, 2014 to July 26, 2014 and parental benefits from July 27, 2014 to March 7, 2015.

[14] GD3-16 is an attestation certificate showing that the regional rate of unemployment between February 8, 2015 and March 14, 2015, for the economic region of Montreal was 7.9% and that this required 630 hours of insurable employment were required for that period.

[15] On June 22, 2015, the Commission advised the Appellant by telephone that she received all of the benefits to which she was entitled and that she has a right of appeal to the Tribunal (Commission notes, June 22, 2015, GD3-20).

Testimony at the hearing:

[16] The Appellant testified under solemn affirmation.

[17] The Appellant repeated her submissions at GD2.

[18] The Appellant advised that she was in receipt of employment insurance benefits for two weeks in March 2015 after her QPIP benefits had ended.

[19] The Appellant advised that she did not work or earn income during the 52 weeks preceding March 2015 because she gave birth to her son and was at home caring for him.

[20] The Appellant advised that she was not working and was still attempting to secure employment.

SUBMISSIONS

[21] The Appellant submitted that she should be qualified to receive benefits for the following reasons:

- a) The Commission's decision is unfair and is incorrect (GD2);
- b) There is no conflict between employment insurance and maternity and parental benefits because they are two different systems (GD2);
- c) This is a time in the Appellant's life where she needs assistance from her government and local community (GD2);
- d) She cannot find a job despite her efforts due to her the bad economic situation (GD2);

- e) The Appellant's expenses have increased with the addition of her baby and she cannot afford to pay for toys in addition to the necessities, which she purchases for her son (GD2);
- f) Her spouse's salary is being used to cover the mortgage, the car loan, maintenance, utilities, insurance and taxes (GD2);
- g) The Appellant and her family are accumulating debt (GD2); and,
- h) For humanitarian reasons, the conventional algorithm should not be applied to determine the Appellant's working hours (GD3-17);

[22] The Respondent submitted as follows:

- a) An employment insurance claim was established on March 23, 2014, at the same time that the Appellant's QPIP benefits started. Her employment insurance claim could last 52 weeks and be terminated no later than March 21, 2015. The Appellant received her last QPIP benefits on the week ending March 7, 2015. Consequently, she was eligible to receive regular benefits from the weeks between March 8, 2015 and March 21, 2015 (GD4-1);
- b) To establish a subsequent employment insurance claim, which would start as of March 22, 2015, the Appellant would have required the number of insurable hours to qualify;
- c) The Appellant's qualifying period is from March 23, 2014 to March 21, 2015, which is the 52 week period, which immediately precedes the week of the benefit period commencement (GD4-2);
- d) The Appellant resides in the Montreal region and the rate of unemployment in this region is 7.9% (GD3-16);
- e) The administrative antedate procedure is used to ensure that QPIP claimants are treated the same way as employment insurance claimants living in other provinces (who receive maternity and parental benefits through employment insurance).

This procedure consists of establishing an employment insurance benefit period starting at an equivalent date to the QPIP start date. This is why the Appellant's benefit period started at the same date of the QPIP (GD4-3);

- f) Pursuant to section 76.09 of the Regulations, claimants are prevented from receiving employment insurance during their QPIP period. As QPIP weeks paid are counted as employment insurance weeks paid, the remaining weeks of employment insurance benefits payable are adjusted (GD4-4);
- g) In the case at hand, the Appellant received QPIP benefits from March 23, 2014 to March 7, 2015. Since the Appellant received QPIP benefits until March 7, 2015, two weeks of benefits were payable and paid to the Appellant which were for the weeks starting on March 8, 2015 and March 15, 2015. No further week could be paid because the benefit period had ended (GD4-3 to 4);
- h) A subsequent claim could not be established on March 22, 2015 as per the Appellant's request because she would not have any hours to establish another claim afterwards. According to the table in subsection 7(2) of the Act, the minimum requirement for the Appellant to qualify to receive employment insurance benefits was 630 hours based on the rate of unemployment of 7.9% in the region where she resided (GD4-4);
- i) While the Commission is sympathetic that the Appellant is experiencing a difficult period in her life, the Commission maintains that the Appellant failed to demonstrate that she qualified to receive employment insurance benefits pursuant to subsection 7(2) of the Act (GD4-4);
- j) The requirements under section 7 of the Act do not allow any discrepancy and provide no discretion (*Levesque* 2001 FCA 304)(GD4-4);
- k) Subsection 8(1) of the Act provides for two possible qualifying periods and it requires that the shorter of the two possibilities be chosen (*Long* 2011 FCA 99)(GD4-4);

- l) Hours accumulated outside of the qualifying period cannot be used to qualify a claimant for benefits (*Haile* 2008 FCA 193) (GD4-4); and,
- m) The Canada Revenue Agency (the “CRA”) has exclusive jurisdiction to determine the number of hours, which an insured person has had in insurable employment pursuant to section 90.1 of the Act (*Didiodato* 2002 FCA 345).

ANALYSIS

[23] The Tribunal finds that the Appellant did not have a sufficient number of hours of insurable employment during her qualifying period (March 23, 2014 to March 21, 2015 to qualify for benefits (for her March 11, 2015 claim) pursuant to section 7 of the Act.

[24] The Appellant’s qualifying period commenced after the Appellant received the maximum number of employment insurance benefits to which she was entitled to during the weeks of March 8, 2015 and March 15, 2015 in her former benefit period, which commenced on March 23, 2014 (Appellant testimony, Commission submissions, GD4-4). These were all of the benefits to which the Appellant was entitled on the basis of the operation of subsection 22(3) of the Act and Section 76.09 of the Regulations.

[25] The qualifying period was determined pursuant to paragraph 8(1)(b) of the Act. In accordance with that paragraph, the qualifying period begins with the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period under subsection 10(1) (*Long* 2011 FCA 99; *Jackson* A-1073-90).

[26] In the qualifying period for the March 11, 2015 claim, the Appellant only accumulated 0 hours of insurable employment and she required 630 insurable hours pursuant to paragraph 7(2)(b) of the Act and the regional rate of unemployment (which was 7.9% in the region where the Appellant resides)(GD3-16).

[27] The Tribunal finds that the Appellant applied for benefits on March 11, 2015 and that the Commission applied the correct rate pursuant to subsection 17(1) of the Regulations, which rate is set out at GD3-16.

[28] The Tribunal finds that it is unfortunate for the Appellant that the law is not flexible or does not extend sufficiently to cover the Appellant's situation. The Tribunal finds, however, that it has no jurisdiction to deviate from the Act or Regulations or the law for humanitarian or any other reasons, which have been advanced by the Appellant.

[29] The Tribunal finds that at the time that the Commission rendered its original decision and its reconsideration decision and denied the Appellant benefits (for the claim made on March 11, 2015) on the basis of an insufficiency of hours, the decision was arrived at correctly. The law is clear that neither the Commission nor the Tribunal or Court has authority to exempt a claimant from the qualifying provisions of the Act (insurable hours), no matter how sympathetic or unusual the circumstances (*Levesque* 2001 FCA 304; *Pannu* A- 147-03; *Knee* 2011 FCA 301).

CONCLUSION

[30] For the foregoing reasons, the appeal is dismissed.

Alyssa Yufe
Member, General Division - Employment Insurance Section