[TRANSLATION]

Citation: *A. H. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 196

Date: November 16, 2015

File number: GE-15-2968

GENERAL DIVISION – Employment Insurance Section

Between:

A. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Jean-Philippe Payment, Member, General Division — Employment Insurance Section

Hearing by written questions and answers between October 15 and November 11, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

The claimant answered the Tribunal's questions within the required time period. The Commission answered the Tribunal's questions within the required time period.

INTRODUCTION

[1] On May 21, 2015, the claimant filed a claim for regular Employment Insurance benefits (Exhibit GD3-11). On August 30, 2015, the Canada Employment Insurance Commission ("the Commission") determined, in an initial decision dated June 18, 2005, that the claimant had voluntarily left her employment and had not worked enough to qualify for benefits since she left her employment without just cause (Exhibit GD3-17). In her request for reconsideration dated July 9, 2015, the claimant appealed only the number of "accumulated hours", which she then confirmed with the Commission during the reconsideration process (Exhibit GD3-19 and 22). In its revised decision of August 7, 2015, the Commission upheld its decision in its entirety on the issue of the number of hours worked since the claimant's voluntary leaving (Exhibit GD3-23). Dissatisfied with the Commission's conclusions, the claimant therefore appealed the revised decision on October 2, 2015 (Exhibit GD2A).

[2] The hearing of this appeal was conducted by questions and answers for the following reasons:

a) The fact that credibility does not appear to be a determinative issue;

b) The information in the file, including the need for additional information;

c) This method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[3] The Tribunal must determine whether the claimant accumulated a sufficient number of hours of insurable employment to qualify for benefits under section 7 of the *Employment Insurance Ac*t ("the Act").

THE LAW

[4] Subsection 30(5) of the Act provides that, if a claimant who has lost or left an employment as described in subsection (1) makes an initial claim for benefits, the hours of insurable employment from that or any other employment before the employment was lost or left and hours of insurable employment in any employment that the claimant subsequently loses or leaves, as described in subsection (1), may not be used to qualify under section 7 or 7.1 to receive benefits.

[5] Subsection 7(1) of the Act provides that unemployment benefits are payable to an insured person who qualifies to receive them.

[6] Subsection 7(2) of the Act provides that 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 weeks of insurable employment set out in the following table in relation to the regional rate of unemployment that applies to the person.

*TABLE

Regional Rate of Unemployment	Required Number of Hours of Insurable Employment in
6% and under	700
more than 6% but not more than 7%	665
more than 7% but not more than 8%	630
more than 8% but not more than 9%	595
more than 9% but not more than 10%	560

more than 10% but not more than 11%	525
more than 11% but not more than 12%	490
more than 12% but not more than 13%	455
more than 13%	420

[7] The Federal Court of Appeal in *Canada (Attorney General) v. Knee,* 2011 FCA 301, upheld the principle that adjudicators are permitted neither to rewrite legislation nor to interpret it in a manner contrary to its plain meaning.

[8] In *Granger v. Canada (Canada Employment and Immigration Commission)* (SCC 19959), the Supreme Court of Canada explains that representatives of the Commission do not have the authority to change the law and that to act in a way other than that prescribed by the law would be absolutely void and contrary to public order.

EVIDENCE

[9] The evidence in this case is as follows:

a) a claim for regular employment insurance benefits dated May 21, 2015 (Exhibit GD3-11);

b) a Record of Employment from the employer CPE le Sablier indicating that the claimant's last paid day was May 1, 2015 and that she had accumulated a total of 653 hours of employment (this Exhibit GD3-13);

c) an ROE from the employer CPE le Jardin Charmant indicating that the claimant's last paid day was November 5, 2014 and that she accumulated a total of 1,432 hours of employment (Exhibit GD3-14);

d) that the unemployment rate in the Employment Insurance economic region of X for the period from April 12 to May 9, 2015 was 7.7%

PARTIES' ARGUMENTS

[10] The Appellant argued as follows:

a) that she does not want the Commission's decision on the issue of voluntary leaving in her file concerning CPE le Jardin Charmant to be reconsidered (Exhibit GD3-22);

b) that she worked 652 hours for her other employer (Exhibit GD3-22);

c) that she can prove she accumulated 652 hours of employment with her employer (Exhibit GD5-1).

[11] The Respondent argued as follows:

a) that, under paragraph 30(1)(*a*) of the Act, a claimant is not disqualified if the claimant has, since losing or leaving the employment in question, been employed in insurable employment for the number of hours required by section 7 or 7.1 to qualify to receive employment insurance benefits (Exhibit GD4-3);

b) that subsection 30(5) further provides that, if a claimant who has lost or left an employment as described in subsection (1) makes an initial claim for benefits, the hours of insurable employment from that or any other employment before the employment was lost or left may not be used to qualify under section 7 (Exhibit GD4-3);

c) that the claimant was not a new entrant or a re-entrant to the labour force because she showed that she had accumulated at least 490 hours of employment in the 52 weeks before her qualifying period, as required under subsection 7(4) of the Act (Exhibit GD4-3);

d) that the claimant therefore needed the number of hours of insurable employment stated in paragraph 7(2)(*b*) of the act to qualify to receive benefits (Exhibit GD4-3);

e) that the claimant is disqualified under paragraph 30(1)(*a*) of the Act because she did not accumulate a sufficient number of hours of insurable employment since leaving her employment without just cause to qualify to receive benefits under section 7 of the Act (Exhibit GD4-3);

f) that she may not use the hours she worked before November 5, 2014 to qualify for benefits (Exhibit GD4-3);

g) that the claimant accumulated 389 hours of insurable employment with CPE le Sablier after November 5, 2014, whereas, according to the unemployment rate in her region on the effective date of her claim for benefits, she should have accumulated 630 (Exhibit GD4-3);

h) that the Respondent does not doubt the claimant worked 652 hours for CPE le Sablier (Exhibit GD6-1);

i) that the claimant should have worked 630 hours after November 5, 2014 in order to qualify to receive benefits (Exhibit GD6-1);

j) that the claimant worked 652.42 hours for another employer, CPE le Sablier, but, in order to qualify for benefits, should have worked at least 630 of those 652.42 hours after November 5, 2014, which was not the case (Exhibit GD6-1);

k) that pay periods ("P.P.") are reported in Block 15C, starting with the last pay period, which is entered in the P.P. 1 field in Block 15C; the second last pay period is then entered in the P.P. 2 field, and so on (in reference to ROE K02970845) (Exhibit GD8-1);

l) that, to calculate the number of hours worked starting on November 5, 2014, the number of hours from all first 13 pay periods appearing on the ROE must be added (in reference to ROE K02970845) (Exhibit GD8-1);

m) that the thirteenth pay period covers the period from November 1 to 14, 2014 (in reference to ROE K02970845) (Exhibit GD8-1);

n) that November 5, 2014 fell on the Wednesday of the first week covered by that pay period and that all the hours worked during that period were worked after November 5, 2014 and are therefore included in the calculation of the number of hours worked after the claimant's voluntary leaving (in reference to ROE K02970845) (Exhibit GD8-1);

o) that the total number of hours from the pay periods from November 1, 2014 to May 1, 2015 equals 577.17 hours (Exhibit GD8-1)

ANALYSIS

[12] In this case, the Commission asserts that the claimant was not a new entrant or a re-entrant to the labour force because she showed that she had accumulated at least 490 hours of employment in the 52 weeks before her qualifying period, as required under subsection 7(4) of the Act. The Commission further argues that the claimant therefore needed the number of hours of insurable employment stated in paragraph 7(2)(*b*) of the Act to qualify to receive benefits. In the Commission's view, the claimant is disqualified under paragraph 30(1)(*a*) of the Act because she did not accumulate a sufficient number of hours of insurable employment after leaving her employment without just cause to qualify to receive benefits under section 7 of the Act.

[13] The Commission adds that, under subsection 30(5), the claimant may not use the hours she worked before November 5, 2014 to qualify for benefits. It asserts that the claimant accumulated 389 hours of insurable employment with the employer CPE le Sablier after November 5, 2014, whereas, based on the unemployment rate in her region on the effective date of her claim for benefits, she should have accumulated 630. The Commission adds that it does not doubt the claimant worked 652 hours for CPE le Sablier, but she should have worked 630 hours after November 5, 2014 in order to qualify. Lastly, in the Commission's opinion, in order to qualify for benefits, the claimant should have worked at least 630 of those 652.42 hours after November 5, 2014, which was not the case.

[14] The claimant, for her part, states that she does not want the Commission's decision on the issue of voluntary leaving in her file concerning CPE le Jardin Charmant to be reconsidered. She asserts, however, that she worked 652 hours for her other employer and that she can prove she accumulated 652 hours of employment with her employer.

[15] In this case, unfortunately, subsection 30(5) of the Act is clear (my emphasis):

> (5) If a claimant who has lost or left an employment as described in subsection (1) makes an initial claim for benefits, the following hours may not be used to qualify under section 7 or 7.1 to receive benefits: (a) hours of insurable employment from that or any other employment before the employment was lost or left; and (b) hours of insurable employment in any employment that the claimant subsequently loses or leaves, as described in subsection (1).

[16] It therefore follows that, when the claimant voluntarily left her employment with CPE le Jardin Charmant, all the hours of employment to that point and the hours worked for CPE le Sablier to that point "[could] not be used to qualify under section 7 or 7.1 to receive benefits." In short, the Act is drafted in such a manner that it does not discriminate between the employments the claimant may have held and determines that the hours worked prior to disqualification, for voluntary leaving in this case, may not be used to meet the necessary conditions to qualify.

[17] In other words, the total number of hours of employment indicated in Exhibit GD3-14 is unusable under subsection 30(5) of the Act. As to the hours appearing in Exhibit GD5-5 or GD3-13, they are usable in part, but only the hours worked after November 5, 2014. As the

[18] The claimant is not a new entrant or a re-entrant to the labour force, within the meaning of subsection 7(4) of the Act, because she accumulated more than 490 hours of insurable employment during her qualifying period. That may be explained by the fact that the exclusion of the hours described by subsection 30(5) of the Act does not enter into this determination. Based on the evidence presented by the Commission in Exhibits GD3-15 and 16 (unemployment rate of 7.7%), the claimant had to have accumulated 630 hours of insurable employment under subsection 7(2) of the Act, which, based on the evidence submitted by the parties, she clearly did not do. According to the evidence adduced by the Commission in Exhibit GD8-1, the claimant accumulated only 577.17 hours of employment from November 1, 2014 to May 1, 2015.

[19] The Tribunal recalls that the Federal Court of Appeal in *Canada (Attorney General) v. Knee*, 2011 FCA 301, upheld the principle that adjudicators are permitted neither to rewrite legislation nor to interpret it in a manner contrary to its plain meaning. Unfortunately, the claimant does not meet the tests of section 7 of the Act because she did not accumulate a sufficient number of hours of insurable employment to qualify to receive benefits.

[20] The Tribunal also recalls in passing that, as the Supreme Court of Canada held in *Granger* (SCC 19959), representatives of the Commission do not have the authority to change the law and that to act in a way other than that prescribed by the law would be absolutely void and contrary to public order.

CONCLUSION

[21] The appeal is dismissed.

Jean-Philippe Payment
Member, General Division — Employment Insurance Section