



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. R. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 46

Tribunal File Number: GE-15-3431

BETWEEN:

G. R.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Eleni Palantzas

HEARD ON: March 1, 2016

DATE OF DECISION: March 25, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

On January 6, 2016, the Tribunal was informed that the Claimant was not going to attend the hearing and that an adjournment was not being requested.

The Claimant's representative, Mr. Marimuthu Krishnan, attended the hearing as scheduled on behalf of the Claimant who was out of the country.

INTRODUCTION

[1] On December 30, 2014, the Claimant made an initial claim for employment insurance maternity and parental benefits. On June 23, 2015, the Canada Revenue Agency (CRA) determined that the Claimant's employment with R. Services Incorporated was not insurable.

[2] On September 3, 2015, the Canada Employment Insurance Commission (Commission) denied the Claimant's application for benefits because she had zero hours of insurable employment during her qualifying period.

[3] On September 21, 2015, the Claimant requested that the Commission reconsider its decision however; on October 9, 2015, the Commission maintained its decision.

[4] On October 27, 2015, the Claimant appealed to the General Division of the Social Security Tribunal.

[5] The hearing was held by teleconference given (a) the complexity of the issue under appeal (b) the information in the file, including the need for additional information and (c) the form of hearing respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[6] The Member must decide whether the Claimant has sufficient insurable hours to establish a claim for employment insurance maternity benefits pursuant to section 7 of the *Employment Insurance Act* (EI Act) and section 93 of the *Employment Insurance Regulations* (Regulations).

THE LAW

[7] Section 7 of the EI Act sets out the requirements that a claimant must meet in order for benefits to be payable.

[8] Subsection 7(3) of the EI Act stipulates that an insured person who is a new entrant or a re-entrant to the labour force qualifies to receive benefit 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.

[9] Subsection 7(4) of the EI Act stipulates that a new entrant or re-entrant to the labour force is a claimant that, during the last 52 weeks before their qualifying period, had fewer than 490

- (a) hours of insurable employment;
- (b) hours for which benefits have been paid or were payable to the person, calculated on the basis of 35 hours for each week of benefits;
- (c) prescribed hours that relate to the employment in the labour force; or hours comprised of any combination of those hours.

[10] Subsection 93(1) of the Employment Insurance Regulations (Regulations) stipulates that an insured person who does not qualify for benefits under section 7 of the Act and who is claiming special benefits qualifies to receive the special benefits if the person

- (a) has had an interruption of earnings from employment; and
- (b) has had 600 or more hours of insurable employment in their qualifying period.

EVIDENCE

[11] On December 30, 2014, the Claimant made an initial claim for employment insurance maternity and parental benefits in anticipation of the birth of her child on January 13, 2015. Her record of employment (ROE) indicates that she was employed with R. Services Incorporated from April 4, 2014 until December 30, 2014. Her employer is her spouse (GD3-3 to GD3-23).

[12] To the Commission, the Claimant stated that she was hired as a manager by her spouse's company initially in 2013 after their marriage in India. She was employed at one of the five branches in India until she moved to Canada and started to work at the Canadian branch in X on April 10, 2014 (GD3-26 to GD3-28).

[13] On June 23, 2015, the Canada Revenue Agency (CRA) determined that although the Claimant is an employee R. Services Incorporated, her employment from April 10, 2014 to December 31, 2014 was not insurable (GD3-29 to GD3-33).

[14] On August 6, 2015, the Claimant requested that the Commission reconsider its decision (no written communication) and CRA ruling. She noted that when she arrived in Canada, she updated her accounting skills and started working for R. Services Incorporated. She worked more than (1440 hours) the required 600 hours for maternity benefits and was not exempt from any employment insurance contributions or income tax. The Claimant indicated that the CRA ruling does not mention that she applied for maternity (not regular) benefits (GD3-34 to GD3-37).

[15] On September 3, 2015, the Commission advised the Claimant and her representative that although it had received her request for reconsideration, an initial decision had not yet been rendered since receiving the CRA ruling. The Claimant confirmed that she had not appealed the CRA ruling. On that same day, the Commission rendered a decision (GD3-45) denying the Claimant's application for maternity benefits because she had zero hours of insurable employment during her qualifying period (January 5, 2014 and January 3, 2015) while she required 600 hours of insurable employment to qualify (GD3-41 to GD3-49).

[16] On September 21, 2015, the Claimant resubmitted her request for reconsideration (GD3-50 to GD3-54).

[17] On October 9, 2015, the Claimant and her representative confirmed again that she has not appealed the CRA ruling. The Commission maintained its decision indicating that the CRA determines the insurability of employment and since her employment with R. Services Incorporated was deemed not to be insurable, she does not have the requisite 600 hours of insurable employment to qualify for maternity benefits (GD3-51 to GD3-58). The Claimant

had accumulated zero hours of insurable hours in the 52 weeks prior to her qualifying period from January 6, 2013 to January 4, 2014 (GD3-60).

[18] In her notice of hearing, the Claimant indicates that she is confused by the process and the letters received by the Commission (GD2-7).

[19] At the hearing, the Claimant's representative confirmed that the Claimant worked for R. Services Incorporated from April 10, 2014 until December 31, 2014 and that she had no other employment. The Claimant's representative submitted that the CRA provided a general ruling without considering the details of the case. He also confirmed that the Claimant has not appealed the June 23, 2015 CRA ruling but is considering it.

SUBMISSIONS

[20] The Claimant submitted that she immigrated to Canada to legitimately work for her spouse's company; she was on the payroll, made employment insurance contributions and paid the commensurate income tax; she accumulated 1440 hours of employment and therefore, should qualify for maternity benefits.

[21] The Commission submitted that the Claimant does not qualify for maternity and parental benefits because she accumulated zero insurable hours during her qualifying period but required 600 insurable hours to qualify for special benefits pursuant to subsection 93(1) of the Regulations; its decision is based on the CRA's insurability ruling that her employment from April 10, 2014 until December 31, 2014 was not insurable.

ANALYSIS

[22] Subsection 93(1) of the Regulations considers an insured person who does not qualify for benefits under section 7 of the EI Act, and who is claiming special benefits. In order for the Claimant to receive maternity and parental benefits, the Commission must first determine whether she would qualify for employment insurance regular benefits under section 7 of the EI Act.

[23] The Commission determined that the Claimant's qualifying period was from January 5, 2014 and January 3, 2015. Since the Claimant had not worked in Canada in the 52 weeks prior

to her qualifying period (the NERE period) from January 6, 2013 to January 4, 2014 (GD3-60), she had accumulated zero hours of insurable employment during this period. The Commission therefore determined that, since she had accumulated less than 490 hours of insurable employment in the NERE period, the Claimant is a new-entrant to the employment insurance system. According to subsection 7(4) of the EI Act, a new-entrant or re-entrant requires 910 hours of insurable employment during their qualifying period in order to establish a claim.

[24] Given the Claimant's relationship to the employer, the Commission next requested an insurability ruling from the CRA. The CRA determined that although the Claimant was considered an employee, her employment with R. Services Incorporated from April 10, 2014 to December 31, 2014 was not insurable. In the absence of any other employment during her qualifying period, the Commission determined that the Claimant had accumulated zero hours of insurable employment and therefore, did not qualify for benefits under section 7 of the EI Act.

[25] The Commission therefore, also looked to subsection 93(1) of the Regulations that considers an insured person who does not qualify for benefits under section 7 of the EI Act and is claiming special benefits. In order to receive the special benefits, that person must have an interruption of earnings and 600 or more hours of insurable employment in the qualifying period to qualify for those benefits. In this case, the Claimant is claiming maternity and parental benefits however, she has zero insurable hours in her qualifying period. The Member finds therefore, that the Claimant does not qualify for maternity and parental benefits pursuant to subsection 93(1) of the Regulations.

[26] The Member noted that the Claimant had 90 days to appeal the CRA ruling (GD3-32) and in the absence of any new information and/or an appeal of that ruling, the Member is rendering a decision based on the evidence herein. The Member understands that the Claimant's representative is of the sentiment that the CRA did not take into consideration details of the Claimant's employment, however; the Member notes that the issue here is not whether the Claimant's employment was legitimate but whether it was insurable.

[27] The Member also notes that the Federal Court of Appeal has stated many times that the decision as to insurability of an employment is unrelated to that of benefit entitlement (GAUTHIER A-105-98). The jurisdiction to make decisions on insurability and the quantum of

insured hours rests with the CRA (Didiodato A-354-01, Banwatt A-470-00, Haberman A-717-98, Vautour A-733-95, Kaur A-487-93). The jurisdiction to make decisions regarding entitlement rests with the Commission.

[28] In this case, the Commission sought an insurability ruling from the CRA regarding the Claimant's employment and then the Commission made its decision accordingly. The Member finds that the Claimant did not demonstrate that she met the minimal requirements prescribed in section 7 of the EI Act and subsection 93(1) of the Regulations to qualify for maternity and parental benefits and therefore, a benefit period cannot be established.

CONCLUSION

[29] The appeal is dismissed.

Eleni Palantzas

Member, General Division - Employment Insurance Section