Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *R. F. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 153

Tribunal File Numbers: GE-16-1514 and GE-16-1515

BETWEEN:

R. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARD ON: October 20, 2016

DATE OF DECISION: December 19, 2016

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

[1] The Appellant, Mr. R. F., participated in the videoconference hearing on October 20, 2016. He was represented by Mr. Yvan Bousquet from Mouvement Action-Chômage [Unemployment-Action Mouvement] Saint-Hyacinthe.

INTRODUCTION

[2] On January 9, 2016, the Appellant submitted a claim for benefits, which took effect on December 20, 2015. He stated that he had worked for the employer M. R., an electrical contractor, until December 18, 2015, inclusively (Exhibits GD3-3 to GD3-11 of file GE-16-1515).

[3] On February 17, 2016, the Respondent, the Canada Employment Insurance Commission (Commission), informed the Appellant that he was not entitled to regular Employment Insurance benefits as of December 20, 2015, because he had stopped working for the employer 9303-1672 Québec Inc. (Bistro X) on August 23, 2015, due to his misconduct. The Commission explained that, to qualify for regular Employment Insurance benefits after losing his job due to misconduct, he would have to accumulate the minimum number of insurable hours required (Exhibits GD3-20 and GD3-21 from file GE-16-1514 and Exhibits GD3-17 and GD3-18 from file GE-16-1515).

[4] On March 4, 2016, the Appellant submitted a request for reconsideration of an Employment Insurance decision (Exhibits GD3-20 and GD3-21 from file GE-16-1514 and Exhibits GD3-17 and GD3-18 from file GE-16-1515).

[5] On April 6, 2016, the Commission notified the Appellant that it had replaced the decision rendered in his case on February 10, 2016, with a new decision. The Commission indicated that it found he had left his job with the employer 9303-1676 Québec Inc. (Bistro X) without just cause (Exhibits GD3-45 and GD3-46 of file GE-16-1514).

[6] On April 6, 2016, the Commission notified the Appellant that it was maintaining the decision rendered in his case on February 17, 2016, concerning the establishment of his benefit period. The Commission informed the Appellant that, to qualify for regular benefits after voluntarily leaving his job without just cause, he would have to accumulate the minimum number of insurable employment hours required. The Commission specified that he had accumulated 484 hours of insurable employment, whereas he required 665 insurable hours to qualify for benefits (Exhibits GD3-22 and GD3-23 of file GE-16-1515).

[7] On April 14, 2016, the Appellant, represented by Mr. Yvan Bousquet from Mouvement Action-Chômage [Unemployment-Action Mouvement] Saint-Hyacinthe, submitted a notice of appeal with the Employment Insurance Section of the General Division of the Social Security Tribunal of Canada (Tribunal). (Exhibits GD2-1 to GD2-7 of files GE-16-1514 and GE-16-1515).

[8] On April 15, 2016, the Tribunal informed the employer 9303-1672 Québec Inc. (Bistro X) that if it wanted to join the appeal as an "Added Party" it would have to file a request to that effect to the Tribunal no later than May 2, 2016 (Exhibits GD5-1 and GD5-2 of file GE-16-1514). The employer did not respond to the Tribunal's letter.

[9] On June 8, 2016, the representative informed the Tribunal that it would not be available to accompany the Appellant during the following periods: July 28 to August 1, 2016, and August 18 to 29, 2016, inclusively (Exhibits GD6-1 to GD6-3 of file GE-16-1514 and Exhibits GD5-1 and GD5-2 of file GE-16-1515).

[10] On June 30, 2016, the Appellant's representative informed the Tribunal that a correction had to be made to the Appellant's address (Exhibits GD6-1 and GD6-2 of file GE-16-1514).

[11] On July 15, 2016, the Tribunal informed the Appellant and his representative that the appeals numbered GE-16-1514 and GE-16-1515 had been attached pursuant to section 13 of the *Social Security Tribunal Regulations*, because "a common question of law or fact arises" in the appeals, and "no injustice is likely to be caused to any party." (Exhibits GD7-1 and GD7-2 of file GE-16-1514 and Exhibits GD6-1 and GD6-2 of file GE-16-1515)

[12] This appeal was heard by videoconference for the following reasons:

a) The Appellant or other parties are represented.

b) 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.

ISSUES

[13] The Tribunal must determine whether the appeal from the Commission's decision has merit on the following two issues:

a) the Appellant's indefinite exclusion from receiving Employment Insurance benefits because he failed to prove just cause for leaving his employment under sections 29 and 30 of the *Employment Insurance Act* (Act); and

b) the number of insurable hours of employment accumulated by the Appellant, since he had voluntarily left his job without just cause, to meet the conditions required to receive benefits, under section 7 or 7.1 of the Act.

EVIDENCE

[14] The evidence in the docket is as follows:

a) On August 13, 2015, the Appellant filed a renewal claim for benefits effective July 19, 2015. He stated that he had worked for the employer Dépôtcom Inc. from August 3 to August 13, 2015 (Exhibits GD3-3 to GD3-13 of file GE-16-1514);

b) A Record of Employment dated March 9, 2015, indicating that the Appellant had worked as an electrician for Dépôtcom Inc. from January 5 to February 27, 2015, inclusively, and that he stopped working for this employer due to a shortage of work (code A – Shortage of work/ End of contract or season). According to the Record of Employment, the Appellant had accumulated 313 insurable hours during this period (Exhibit GD3-12 of file GE-16-1515);

c) A Record of Employment dated September 15, 2015, indicating that the Appellant had worked as an electrician for Dépôtcom Inc. from March 23 to September 11, 2015, inclusively, and that he stopped working for this employer due to a shortage of work (Code A – Shortage of work/ End of contract or season). According to the Record of Employment, the Appellant had accumulated 828 insurable hours during this period (Exhibit GD3-15 of file GE-16-1514 or Exhibit GD3-13 of file GE-16-1515);

d) A Record of Employment dated November 23, 2015, indicating that the Appellant had worked as a server for the employer 9303-1672 Québec Inc. (Bistro X) from June 20 to August 29, 2015, inclusively, and that he stopped working for this employer due to a dismissal (Code M – Dismissal). According to the Record of Employment, the Appellant had accumulated 41 insurable hours during this period (Exhibit GD3-14 of files GE-16-1514 and GE-16-1515);

e) A Record of Employment dated December 20, 2015, indicating that the Appellant worked as an apprentice electrician for employer M. R., an electrical contractor, from October 6 to December 18, 2015, inclusively, and that he had stopped working for this employer due to a shortage of work (Code A – Shortage of work/ End of contract or season). According to the Record of Employment, the Appellant had accumulated 416 insurable hours during this period (Exhibit GD3-15 of file GE-16-1515);

f) On January 27, 2016, the employer 9303-1672 Québec Inc. (Bistro X) explained that it had dismissed the Appellant because of his failure to show up for work. It specified that the Appellant had called at the last minute to inform it that he would not be coming in to work. This situation did not give the employer enough time to find someone to replace the Appellant (Exhibits GD3-16 and GD3-17 of file GE-16-1514);

g) On February 5, 2016 (Exhibit GD4-1 of file GE-16-1514), the employer 9303-1672 Québec Inc. (Bistro X) stated that it had dismissed the Appellant because he had not notified it of his absences. It explained that the Appellant had been absent from work on August 1 and 2, 2015, as planned in the work schedule. The employer explained that the Appellant had missed entire shifts, that it was what he wanted, and that he did not return the employer's phone calls, despite the messages it had left him. The

employer specified that after leaving a message for the Appellant on August 30, 2015, to which the Appellant did not respond, it terminated the Appellant's employment. The employer indicated that the Appellant had mentioned he was not working enough hours and that this was not his primary employment. The employer stated that the other employees mentioned that the Appellant had not shown up to work because he had drunk too much alcohol (Exhibits GD3-18 and GD3-19 of file GE-16-1514);

h) On March 31, 2016, the employer Dépôtcom Inc. stated that its employees never worked on weekends and that if there was an emergency, the owner of the company would take care of it. The employer indicated that the work shortage at the beginning of September 2015 had been anticipated for a several weeks and that the Appellant had been notified (Exhibit GD3-26 of file GE-16-1514);

i) On April 1, 2016, the employer 9303-1672 Québec Inc. (Bistro X) explained that the Appellant had been dismissed due to his unjustified absences. The employer specified that, the first time the Appellant was absent from work, he said that he was sick. The Appellant was therefore scheduled to work another day, but he did not show up or notify the employer. The employer indicated that he had attempted to reach the Appellant, but was unsuccessful. The Appellant communicated with the employer two or three days later, stating that he had a sore finger. The employer said that it had informed the Appellant that he had to have a valid reason for his absences, or he would lose his job. The employer indicated that the last day the Appellant was supposed to work, he did not show up, did not telephone, and did not respond to the employer's phone calls. The employer said that it did not have the dates of the Appellant's absences (Exhibit GD3-27 of file GE-16-1514).

j) On April 1, 2016, the employer Dépôtcom Inc. stated that the Appellant had never worked on Saturday during the period from August 3 to September 11, 2015. The employer noted that the Appellant had sent an email indicating that he knew he was going to be unemployed (Exhibits GD3-29 to GD3-44 from file GE-16-1514).

k) On April 1, 2016, the employer Dépôtcom Inc. sent the Commission a copy of the following documents:

i. Records of hours worked (time sheets) and emails that the Appellant had sent the employer Dépôtcom Inc. on August 10, August 17, August 23, August 27, September 8 and September 14, 2015, indicating that he worked for this employer during the following periods: Monday, August 3 to Friday, August 7, 2015, Monday, August 10 to Friday, August 14, 2015, Monday, August 17 to Friday, August 21, 2015, Monday, August 24 to Thursday, August 27, 2015, Monday, August 31 to Thursday, September 3, 2015, and Wednesday, September 9 to Friday, September 11, 2015 (Exhibits GD3-30 to GD3-34 and GD3-36 to GD3-43 of file GE-16-1514);

ii. An email from the Appellant to the employer Dépôtcom Inc., dated September 8, 2015, indicating that he was going to be unemployed (Exhibit GD3-35 of file GE-16-1514).

l) A document entitled "Unemployment rates by Employment Insurance economic region, seasonally adjusted (3 months moving average)" indicating that the unemployment rates for the economic region of Montérégie (Region 15) were at 6.5% during the period from December 6, 2015, to January 9, 2016 (Exhibit GD3-24 of file GE-16-1515).

m) On October 21, 2016, the Appellant's representative sent the Tribunal a copy of the following documents:

i. a summary of the Appellant's testimony from the hearing of October 20, 2016, the representative's submissions, and jurisprudence (Exhibits GD8-2 to GD8-8 of file GE-16-1514 and Exhibits GD7-2 to GD7-8 of file GE-16-1515);

ii. time sheets indicating the hours worked by the Appellant for the employer Dépôtcom Inc. for the week ending November 22, 2014. This document indicates that his hours were completed between Monday and Saturday, inclusively (Exhibit GD8-9 of file GE-16-1514 and Exhibit GD7-9 of file GE-16-1515);

iii. an email from the employer Dépôtcom Inc. to the Appellant on September 8, 2015, indicating that it was not going to terminate his employment (Exhibit GD8-10 of file GE-16-1514 and Exhibit GD7-10 of file GE-16-1515); and

iv. an email from the Appellant to the employer Dépôtcom Inc. on September 8, 2015, indicating that he was going "to be unemployed" (Exhibit GD3-35 or GD8-11 of file GE-16-1514 and Exhibit GD7-11 of file GE-16-1515).

[15] The evidence at the hearing is as follows:

a) The Appellant reviewed the main elements in the file and the circumstances that led to him voluntarily leaving his employment with the employer 9303-1672 Quebec Inc. (Bistro X), to show that he had just cause for voluntarily leaving within the meaning of the Act;

b) The representative indicated that he was going to send new documents to the Tribunal after the hearing (Exhibits GD8-1 to GD8-11 of file GE-16-1514 and Exhibits GD7-1 to GD7-11 of file GE-16-1515).

PARTIES' ARGUMENTS

[16] The Appellant and his representative made the following observations and submissions:

a) The Appellant explained that his employment with the employer Dépôtcom Inc. as of March 23, 2015, was his regular employment. He specified that he had given priority to this employer, because the job was full-time (Exhibit GD3-25 of file GE-16-1514 and Exhibit GD3-15 of file GE-16-1515).

b) He argued that when he voluntarily left his job with the employer 9303-1672 Québec Inc. (Bistro X), he had not anticipated a shortage of work with Dépôtcom Inc. The Appellant specified that there had been a reduction in work, but that the employer had told him it would resume quickly (Exhibits GD3-25 and GD3-28 of file GE-16-1514).

c) The Appellant submitted that the employer Dépôtcom Inc. had told him at the beginning of August 2015—a few weeks before he voluntarily left his job with

employer 9303-1672 Québec Inc. (Bistro X), that he would be offered a new contract beginning mid-September 2015 that would demand a lot of hours of work. He specified that he would be expected to work at least six days per week, including Saturday. The Appellant explained that he voluntarily left his job with employer 9303-1672 Québec Inc. (Bistro X) to meet the requirements of the employer Dépôtcom Inc. and to give it priority (Exhibits GD3-22 to GD3-25 and GD3-28 of file GE-16-1514).

d) He specified that on September 8, 2015, he learned that he was going to be laid off, as indicated in the email he sent to the employer that day (Exhibit GD3-35 of file GE-15-1514).

e) The Appellant explained that the employer had told him in an email on September 8, 2015, that he would not receive a termination of employment. He noted that the employer informed him that his lay-off period was going to be too short (Exhibit GD8-10 of file GE-16-1514 and Exhibit GD7-10 of file GE-16-1515).

f) He stated that he had occasionally worked on Saturdays for the employer Dépôtcom Inc., despite the employer's assertion to the contrary. The Appellant said that he had worked on Saturdays for this employer during the month of August 2015 in order to complete an important contract. He also indicated that he had found a time sheet dated November 22, 2014, showing that had worked a Saturday in November 2014 for this employer. (Exhibits GD3-22 to GD3-25, GD3-28 and GD8-9 of file GE-16-1514 and Exhibit GD7-9 of file GE-16-1515).

g) The Appellant explained that his hours worked on Saturdays did not appear on the time sheets for the employer Dépôtcom Inc., because after 40 hours of work, the employer would have had to pay its employees double time. He specified that the hours worked on Saturdays were not paid in this way, but rather, they were accumulated to be carried forward to another day of the week or they were used for time off.

h) The Appellant explained that when he worked for the employer 9303-1672 Québec Inc. (Bistro X) during the period from June 20 to August 29, 2015, it was an on-call job that he did on weekends. He specified that he worked about 14 hours per month during his period of employment—17.56 hours in June 2015, 12.14 hours in July 2015 and 11.29 hours in August 2015. He explained that he worked as a server on the establishment's patio and that, when the weather was poor, there was no question of whether he would show up for work: he did not go. He explained that when he worked for this employer, he was the last one to be called back, to do troubleshooting over the summer. The Appellant indicated that this situation enabled the employer to cut his hours during his work day, if there were not enough customers on the patio, and that he would go home. He noted that when this situation occurred, it was not really worth going to work there because it cost as much as he earned. He specified that he resigned on August 29, 2015, and that he had notified the employer by telephone. The Appellant indicated that he did not work enough hours for the employer 9303-1672 Québec Inc. (Bistro X) and that, in any case, he did not need that job because he already had another one. He said that he had never been notified by this employer that he would be dismissed after his next absence (Exhibits GD3-14 and GD3-25 of file GE-15-1514 and Exhibits GD3-16 of file GE-16-1515).

i) The Appellant explained that he had kept his electrician job because it was 40 hours per week but that, during the winter, there are quieter weeks in construction. He argued that he did not see how he could be penalized for trying to work a bit more than average. The Appellant specified that he had not left the job he had with the employer 9303-1672 Québec Inc. (Bistro X) to obtain benefits (Exhibits GD3-22 to GD3-24 of file GE-16-1514).

j) He explained that he had resumed working for the employer Dépôtcom Inc. on January 4, 2016, after being on leave over the holidays. On January 27, 2016, the Commission informed him that if his voluntary departure was not justified within the meaning of the Act, he would have to accumulate enough hours to qualify for Employment Insurance benefits. The Appellant indicated that there was no problem,

because he worked 40 to 50 hours per week and that he just wanted to do his two-week waiting period (Exhibit GD3-16 of file GE-16-1515).

k) The representative argued that the Appellant's electrician job with the employer Dépôtcom Inc., as of March 23, 2015, was his regular employment. He explained that the Appellant had also held a casual on-call job during the period from June 20 to August 29, 2015, for the employer 9303-1672 Québec Inc. (Bistro X). The representative indicated that the Appellant had worked 17.56 hours in June 2015, 12.14 hours in July 2015 and 11.29 hours in August 2015, for the employer 9303-1672 Quebec Inc. (Bistro X). He noted that the Appellant had earned only a small amount of income from this employer (Exhibit GD8-2 of file GE-16-1514 and Exhibit GD7-2 of file GE-16-1515).

l) The representative submitted that, contrary to what the Commission had said, the Appellant did not know that he would be laid off on September 11, 2015, by the employer Dépôtcom Inc. (Exhibit GD3-15 of file GE-16-1514), when he voluntarily left his job with the employer 9303-1672 Quebec Inc. (Bistro X) on August 29, 2015 (Exhibit GD8-2 of file GE-16-1514 and Exhibit GD7-2 of file GE-16-1515).

m) The representative argued that, on the contrary, the employer Dépôtcom Inc. had told the Appellant to be prepared for more hours of work as a result of getting a big contract, but this contract never materialized. The representative noted that the Appellant had acted responsibly by notifying the employer 9303-1672 Québec Inc. (Bistro X) that he would no longer be available to work as of September 2015 (Exhibit GD8-2 of file GE-16-1514 and Exhibit GD7-2 of file GE-16-1515).

n) He indicated that on September 8, 2015, the Appellant had learned that he was going to be laid off, as indicated in the email he sent to the employer Dépôtcom Inc. that same day (Exhibit GD3-35 of file GE-16-1514 or Exhibit GD7-11 of files GE-16-1514 and GE-16-151). The representative noted that the short length of time between the Appellant's voluntary departure (on or about August 29, 2015) had nothing to do with the day on which the Appellant had learned he was going to be

laid off by the employer Dépôtcom Inc. (Exhibits GD8-2 and GD8-3 of file GE-16-1514 and Exhibits GD7-2 and GD7-3 of file GE-16-1515).

o) The representative submitted that the employer had informed the Appellant, in an email dated September 8, 2015, that, because he would not be laid off long enough, it was not going to provide him with a termination of employment (Exhibit GD8-10 of file GE-16-1514 and Exhibit GD7-10 of file GE-16-1515).

p) The representative submitted that the employer Dépôtcom Inc.'s statement that the Appellant had never worked on Saturdays was false (Exhibit GD3-44 of file GE-16-1514). He argued that the Appellant had occasionally worked on Saturdays and that he had the time sheets to prove it. The representative submitted that one of the Appellant's time sheets showed that he had worked for the employer Dépôtcom Inc. on a Saturday in November 2014 (Exhibits GD8-3 and GD8-9 of file GE-16-1514 and Exhibits GD7-3 and GD7-9 of file GE-16-1515).

q) The representative argued that the employer contradicted itself in its statements when it said that its employees never worked on weekends (Exhibit GD3-26 of file GE-16-1514), to later state that it would [translation] "check the [Appellant's] time sheets" to see if he had worked on Saturdays in August and September 2015 (Exhibit GD3-29 of file GE-16-1514). According to the representative, this statement clearly implies that employees work on Saturdays. The representative noted that if the employer had been certain that employees did not work on Saturdays, it would not have had to check the time sheets.

r) The representative argued that, according to the employer's existing internal policies, the hours of work performed on Saturdays were not paid as overtime, but rather these hours were accumulated and carried forward to another day of another week. The representative noted that the Appellant had nothing to do with the employer's practices in this regard—he was subject to them (Exhibit GD8-3 of file GE-16-1514 and Exhibit GD7-3 of file GE-16-1515);

s) The representative also argued that the fact that the employer had indicated it was not going to give him a termination of employment also contradicts its statement that the Appellant knew he was going to be laid off (Exhibit GD8-10 of file GE-16-1514 and Exhibit GD7-10 of file GE-16-1515);

t) The representative argued that the Appellant had reasonable assurance of another job with the employer Dépôtcom Inc. for which he had to be available on weekends (CUB 75312, ***Imran*, 2008 FCA 17**, ***Murugaiah* 2008 FCA 10**, CUB 54820 and CUB 54680), (Exhibits GD8-3 to GD8-5, GD8-7 and GD8-8 of file GE-16-1514 and GD7-3 à GD7-5, GD7-7 and GD7-8 of file GE-16-1515);

u) The representative explained that when he voluntarily left his job with the employer 9303-1672 Québec Inc. (Bistro X), the Appellant already had another job with the employer Dépôtcom Inc. and did not know that he was going to be laid off (CUB 54820, ***Lamonde*, 2006 FCA 44**);

v) The representative argued that in CUB 54820, the Umpire found: "With respect to the requirement of an interview according to the evidence recited by the Board although the claimant's prospective employer intended to conduct an interview the likelihood existed that claimant would be hired -and -indeed she was hired and commenced work on October 2, 2000. [...] For the foregoing reasons I allow the appeal." (Exhibit GD8-7 of file GE-16-1514 and Exhibit GD7-7 of file GE-16-1515);

w) The representative noted that we must also refer to the time when the person made their decision to voluntarily leave their job. He argued that in ***Lamonde* (2006 FCA 44)**, the Federal Court of Appeal (Court) stated: "The circumstances referred to in paragraph 29(*c*), which must be taken into account in determining whether the taking of leave may be justified, are those existing at the time the respondent took leave from his employment: see *Canada (Attorney General of Canada) v. Furey* (1996), 201 N.R. 237, at paragraph 3. They are thus to be assessed as of that time." (Exhibit GD8-8 of file GE-16-1514 and Exhibit GD7-8 of file GE-16-1515);

x) The representative argued that there were similarities between the Appellant's situation and the one presented in CUB 54680, in which the Umpire stated: "There is evidence in the record that Mr. Doucette did have reasonable assurance of other employment when he left his job at North Central Plywood. In Exhibit 13 he said he had a job offer that promised better wages and benefits plus straight day shift work. The job was supposed to start after January 1, 2001. Mr. Doucette left his job at North Central on December 29, 2000. The potential employer confirmed, in Exhibit 14, that Mr. Doucette was to have started work on January 8. Unfortunately the work for which he was to have been hired was delayed until March. The Board of Referees found as a fact that Mr. Doucette had the promise of a job that would allow him to take the course in which he was enrolling but that the economic situation had resulted in withdrawal of that job offer. Reasonable assurance of another employment in the immediate future is just cause to leave one's job. Having made those findings of fact the Board erred in failing to find that Mr. Doucette had just cause." (Exhibits GD8-7 and GD8-8 of file GE-16-1514 and Exhibits GD7-7 and GD7-8 of file GE-16-1515);

y) He submitted that the Appellant had no other reasonable alternative to leaving his job with the employer 9303-1672 Québec Inc. (Bistro X) because he could not work both for that employer and the employer Dépôtcom Inc. (CUB 66126, ***Cloutier*, 2007 FCA 161**). The representative argued that in CUB 66126, a decision confirmed by the Court (***Cloutier*, 2007 FCA 161**), the Umpire stated: "The correct legal test for voluntary leaving, as set out by the Federal Court of Appeal, is whether the claimant had a reasonable alternative to voluntarily leaving his employment when he did (see *Rena Astronomo* A-141-97, and *Tanguay* A-1458-84). In the present case, I am of the opinion that the Board was clearly cognizant of the correct legal test, as the test was enumerated in the Board's reasons. In addition, the Board did effectively apply the legal test to the facts of the case, in finding that the claimant was not able to be available for employment in his chosen field if he remained employed by the staffing agency. As regards the applicability of paragraph 29(*c*)(vi) to the present situation, the Board did not err in taking the claimant's reasonable assurance of employment with the Union into account. Subsection 29(*c*) sets out factors that may be considered, if relevant, in each individual case. In the claimant's case, paragraph 29(*c*)(vi) was a

relevant consideration for the Board. Given that the Board did not err in applying the reasonable alternatives test set out in *Tanguay* and *Rena Astronomo, supra*, the consideration of a relevant, and applicable, factor under section 29 of the *Act* does not constitute an error in law. I am of the opinion that paragraph 29(*c*)(vi) was a relevant factor in the present matter. As an *obiter* comment, the Board could have also considered 29(*c*)(*xiv*) ("other reasonable circumstances"). I am of the opinion that the Board did not err in law in the decision concerned. The Board applied the correct legal test for voluntary leaving, and took relevant statutory considerations into account, in allowing the claimant's appeal. There is no error of law upon which the Board decision should be overturned." (Exhibits GD8-5 and GD8-6 of file GE-15-1514 and Exhibits GD7-5 and GD7-6 of file GE-16-1515).

z) The representative argued that the Appellant was not obligated to seek alternative employment before leaving the one he had (CUB 47822). He noted that in CUB 47822, the Umpire established: "Requiring the claimant to find another employment before leaving is also an error in law. No such obligation exists if s. 29(*c*)(iv) applies to this case. Section 29(*c*)(iv) does apply to this case, however. First of all, one must bear in mind the claimant's credibility when he mentioned that he was unable to work a regular working week (cf., Claire Brisebois, A-510-96). Furthermore and given the credibility of his testimony, I do not believe the legislation compels the claimant to compromise his health by continuing to perform a task he is no longer physically able to while he looks for work elsewhere. For these reasons, I must uphold the appeal." (Exhibits GD8-6 and GD8-7 of file GE-16-1514 and Exhibits GD7-6 and GD7-7 of file GE-16-1515);

aa) According to the representative, the Appellant did not know he was going to be laid off by the employer Dépôtcom Inc. and offered it maximum availability because this employer told him he was going to get a big contract, but that this contract materialized much later than expected. The representative noted that the Appellant acted in accordance with what the employer Dépôtcom Inc. had asked of him, that is, to make himself available to work six days per week, including Saturdays;

bb) The representative noted that the Appellant had no reasonable alternative to leaving the job he held with the employer 9303-1672 Québec Inc. (Bistro X);

cc) The representative explained that the decisions rendered in the Appellant's case concerning his voluntary departure and the establishment of his period for Employment Insurance benefits were unfounded in fact and in law. He submitted that the facts interpreted by the Commission did not reflect reality as they were produced (Exhibit GD2-3 of files GE-16-1514 and GE-16-1515).

[17] The Commission made the following submissions and arguments:

a) It explained that subsection 30(2) of the Act provides for an indefinite disqualification when a claimant voluntarily leaves an employment without just cause. The Commission specified that the legal test consists of determining whether leaving the employment was the only reasonable alternative for the Appellant in that case (Exhibits GD4-3 of file GE-16-1514 and Exhibit GD4-2 of file GE-16-1515);

b) The Commission indicated that under paragraph 30(1)(*a*) of the Act, no disqualification will be imposed if, since leaving the employment in question, the Appellant held insurable employment for the number of hours required under section 7 or 7.1 of the Act to qualify for Employment Insurance benefits (Exhibit GD4-2 of file GE-16-1515);

c) The Commission clarified that subsection 30(5) of the Act stipulates that if a claimant who has lost or left an employment without justification makes an initial claim for Employment Insurance 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 to receive benefits under section 7 or 7.1 of the Act (Exhibit GD4-2 of file GE-16-1515);

d) The Commission stated that, on the Record of Employment, the employer 9303-1672 Québec Inc. (Bistro X) indicated that the Appellant had been dismissed (Exhibit GD3-14 of file GE-16-1514) but that, according to the facts on the record, it

determined that the Appellant had voluntarily left his employment when he stopped going to work (Exhibit GD4-3 of file GE-16-1514);

e) The Commission indicated that the Appellant left his employment with the employer 9303-1672 Québec Inc. (Bistro X) because there had been a scheduling conflict between the two jobs. He was working part-time, on Saturdays, with this employer, and this conflicted with his full-time employment with Dépôtcom Inc., because he was called to work on Saturdays (Exhibits GD4-4 of file GE-16-1514);

f) The Commission explained that the Appellant had never worked on Saturdays for the employer Dépôtcom Inc. It noted that the time sheets clearly showed that he had not worked on Saturdays and that there was no scheduling conflict between the two jobs (Exhibit GD4-4 of file GE-16-1514);

g) The Commission stated that the Appellant mentioned that he did not need this work (employer 9303-1672 Québec Inc. – Bistro X), because he worked elsewhere, and that the shortage of work with Dépôtcom Inc. was unforeseeable. The Commission indicated that the employer Dépôtcom Inc. said the work shortage was anticipated and that the Appellant had been advised of the situation. It explained that in the email sent to this employer on September 8, 2015, the Appellant clearly indicated that he was going to be unemployed, which shows that he was aware of the situation (Exhibit GD4-4 of file GE-16-1514);

h) The Commission argued that, to avoid ending up without a job, any reasonable person would have continued working (even if the job was part-time) until they found alternate employment. It noted that nowhere in the Act is it indicated that voluntarily leaving employment, even if it is not the primary employment, cannot be justified without a valid reason (Exhibit GD4-4 of file GE-16-1514);

i) It found that leaving his part-time job, knowing that the primary employment was going to end due to a shortage of work, did not justify leaving his employment (Exhibit GD4-4 of file GE-16-1514);

j) The Commission found that the Appellant did not have just cause for leaving his employment on August 29, 2015, because he had not exhausted all reasonable alternatives before leaving that employment. Considering all of the evidence, it found that a reasonable solution would have been to keep his job while he looked for another one (Exhibit GD4-4 of file GE-16-1514);

k) The Commission found that the Appellant had failed to show just cause for leaving his employment under the Act (Exhibit GD4-4 of file GE-16-1514);

l) It determined that the Appellant was not a new entrant or re-entrant to the labour force, because, as set out in subsection 7(4) of the Act, he demonstrated that he had accumulated at least 490 hours of activity in the labour force in the 52 weeks before his qualifying period. The Commission further noted that the Appellant needed the number of hours of insurable employment set out in paragraph 7(2)(*b*) of the Act (Exhibit GD4-2 of file GE-16-1515);

m) The Commission indicated that the Appellant had accumulated 484 hours since leaving his employment without just cause, while according to the table in subsection 7(2) of the Act and the 6.5% unemployment rate in the economic region where he lives, he needed 665 hours. It therefore found that the indefinite disqualification must be re-imposed on the current claim, according to paragraph 30(1)(*a*) of the Act, because the Appellant had not accumulated the number of hours required since leaving his job, and thus establish a claim for benefits (Exhibits GD3-22, GD3-23 and GD4-3 of file GE-15-1515);

n) The Commission advised that even if the Appellant had not clearly indicated that he was requesting an administrative review on the issue of his exclusion, due to the number of hours of insurable employment he had accumulated following his voluntary departure, it decided on this issue in order to determine whether he could qualify for benefits. It noted that if the Appellant recovered from this exclusion, the decision for this issue would be cancelled (Exhibits GD4-2 and GD4-3 of file GE-16-1515).

ANALYSIS

[18] The relevant legislative provisions are reproduced in an appendix to this decision.

Voluntary Departure

[19] In ***Rena Astronomo*** **(A-141-97)**, which confirmed the principle established in ***Tanguay*** **(A-1458-84)** that the onus is on the claimant who voluntarily left his employment to prove there was no reasonable alternative to leaving his employment when he did, the Court issued the following reminder: "The test to be applied having regard to all the circumstances is whether, on the balance of probabilities, the claimant had no reasonable alternative to immediately leaving his or her employment."

[20] This principle was confirmed in other decisions of the Court (***Peace,*** **2004 FCA 56,** ***Landry,*** **A-1210-92)**.

[21] Moreover, the words "just cause," as used in paragraph 29(*c*) and subsection 30(1) of the Act, are interpreted by the Court in ***Tanguay v. UIC*** **(A-1458-84** (October 2, 1985); 68 N.R. 154) as follows:

> In the context in which they are used these words are not synonymous with "reason" or "motive". An employee who has won a lottery or inherited a fortune may have an excellent reason for leaving his employment: he does not thereby have just cause within the meaning of s. 41(1). This subsection is an important provision in an Act which creates a system of insurance against unemployment, and its language must be interpreted in accordance with the duty that ordinarily applies to any insured, not to deliberately cause the risk to occur. To be more precise, I would say that an employee who has, voluntarily left his employment and has not found another has deliberately placed himself in a situation which enables him to compel third parties to pay him unemployment insurance benefits. He is only justified in acting in this way if, at the time he left, circumstances existed which excused him for thus taking the risk of causing others to bear the burden of his unemployment.

[22] The Court also held that a claimant who voluntarily leaves his or her employment has the onus of proving that he or she had no reasonable alternative to leaving at that time (***White,*** **2011 FCA 190**).

[23] In ***Leung* (2004 FCA 160)**, the Court held as follows:

> […] We are unable to conclude that the decision of the Umpire was palpably wrong in the result. He concluded, as apparently did the minority of the Board of Referees, that Mr. Leung had every reason to expect that his employment with Integrated Cable Systems Inc. would continue and therefore had just cause for leaving the employment with Shanghai Chinese Bistro. […] The application will be dismissed.

[24] This principle was also confirmed in other similar decisions rendered by the Court (***Gennarelli*, 2004 FCA 198**, ***Marier*, 2013 FCA 39**).

[25] In ***Marier* (2013 FCA 39)**, the Court held as follows:

> In my view, the Attorney General's position puts at risk anybody who holds concurrent employment and chooses to leave one position voluntarily. Without a demonstration of one of the situations described in paragraph 29(*c*), above, or any other similar or prescribed circumstances, the worker's decision can never meet the "only reasonable alternative" test. In practice, according to this position, the only reasonable alternative open to Mr. Marier was to maintain the *status quo* and never quit either of his concurrent jobs for fear of risking disqualification from benefits. However, nothing in the Act requires claimants to hold more than one position at a time. […] I must point out this Court's decisions in *Canada (Attorney General) v. Leung*, 2004 FCA 160, and *Gennarelli v. Canada (Attorney General)*, 2004 FCA 198, in which it was held that the claimants had just cause for leaving one of their two concurrent positions voluntarily because each had "reasonable grounds to believe" that the other position would continue. […] I have reached the same conclusion in this case.

[26] A claimant has just cause for voluntarily leaving their employment if, having regard to all the circumstances, including those set out in paragraph 29(*c*) of the Act, leaving is the only reasonable alternative in their case.

[27] In this case, the Tribunal finds that the Appellant's decision to leave his job at 9303-1672 Canada Québec Inc. (Bistro X) must be considered the only reasonable alternative in this situation. Under paragraph 29(*c*) of the Act, there existed circumstances justifying his leaving voluntarily (***White*, 2011 FCA 190**; ***Rena Astronomo*, A-141-97**; ***Tanguay*, A-1458-84**; ***Peace*, 2004 FCA 56**; ***Landry*, A-1210-92**, ***Marier*, 2013 FCA 39**, ***Gennarelli*, 2004 FCA 19**8, ***Leung*, 2004 FCA 160**).

[28] The Tribunal finds that when he voluntarily left his employment with employer 9303-1672 Québec Inc. (Bistro X), on or around August 29, 2015, the Appellant had every reason to believe that he would be able to continue working for the employer Dépôtcom Inc. (***Marier*, 2013 FCA 39, *Gennarelli*, 2004 FCA 198, *Leung*, 2004 FCA 160**).

[29] In this regard, the Tribunal finds that, before voluntarily leaving, the Appellant had obtained "reasonable assurance of another employment in the immediate future," as provided for by paragraph 29(*c*)(vi) of the Act.

[30] The Tribunal finds that the Appellant's credible testimony during the hearing yielded a comprehensive and highly detailed picture of the circumstances leading to his voluntary departure. The Appellant's testimony was also supported by the relevant evidence (i.e. documents showing that the employer Dépôtcom Inc. was not going to issue a termination of employment and that the Appellant had already worked on Saturdays for this employer).

[31] The Tribunal gives greater credence to the Appellant's explanations than to the statements obtained by the Commission from the employer Dépôtcom Inc.

[32] The Tribunal finds that the employer Dépôtcom Inc. made contradictory statements concerning the information that the Appellant had that may have led him to believe that he knew he was going to lose his job, on September 11, 2015.

[33] The evidence shows that in an email addressed to the employer Dépôtcom Inc. on September 8, 2015, the Appellant indicated that he [translation] "was going to be unemployed" (Exhibits GD8-10 of file GE-16-1514 and Exhibit GD7-10 of file GE-16-1515).

[34] Then, the same day, in an email addressed to the Appellant, the employer indicated that it was not going to terminate his employment (Exhibit GD8-10 of file GE-16-1514 and Exhibit GD7-10 of file GE-16-1515).

[35] The Tribunal finds contradictory the employer Dépôtcom Inc.'s statements on March 31 and April 1, 2016, that the work shortage at the beginning of September 2015 had been anticipated for several weeks and that the Appellant had been notified (Exhibit GD3-26 of file GE-16-1514) or that the Appellant knew he was going to be unemployed (Exhibits

GD3-29 to GD3-44 of file GE-16-1514), while on September 8, 2015, the employer told the Appellant that it was not going to terminate his employment (GD8-10 of file GE-16-1514 and Exhibit GD7-10 of file GE-16-1515), only to finally lay him off three days later, on September 11, 2015.

[36] The Tribunal finds that the emails exchanged between the employer and the Appellant on September 8, 2015, do not show that, when he told the employer 9303-1672 Québec Inc. (Bistro X) on August 29, 2015, that he was leaving his job, he knew that his employment with the employer Dépôtcom Inc. was going to end on September 11, 2015 (***Marier*, 2013 FCA 39**, ***Gennarelli*, 2004 FCA 198**, ***Leung*, 2004 FCA 160**).

[37] The Tribunal rejects the Commission's finding that the Appellant's email to the employer Dépôtcom Inc., on September 8, 2015, shows that the Appellant was aware that he was going to be unemployed (Exhibit GD4-4 of file GE-16-1514).

[38] The Tribunal finds that the employer's email message on September 8, 2015, indicating that it was not going to terminate the Appellant's employment (Exhibit GD8-10 of file GE-16-1514 and Exhibit GD7-10 of file GE-16-1515) contradicts the statements previously made by the employer to that effect.

[39] The Tribunal accepts the Appellant's statement that, before voluntarily leaving his employment, the employer Dépôtcom Inc. told him he was going to get a big contract and that he would have to work six days per week, including Saturdays.

[40] The Appellant indicated that it was for this reason that he had given priority to his regular employer by making himself fully available to work, even on Saturdays.

[41] The Appellant also explained that the employer had also told him there would be a reduction in work, but that the lay-off period would be too short to terminate the employment.

[42] The Tribunal is of the opinion that the Appellant must not be unduly penalized for making the choice to hold two jobs simultaneously, and for then deciding to voluntarily leave the one that he held with employer 9303-1672 Québec Inc. (Bistro X), as he could have

reasonably believed that his employment with his principal employer, Dépôtcom Inc., would continue, and there was nothing to make him think it would be compromised (***Marier*, 2013, FCA 39**).

[43] The Appellant also gave several indications as to the nature of the job he had with the employer 9303-1672 Québec Inc. (Bistro X). The Appellant said it was a part-time job and that he only worked on weekends, based on a flexible schedule. To that end, the Appellant indicated that the number of hours worked for this employer depended on how many customers there were and what the weather conditions were, because he worked outside at the establishment: on the patio.

[44] The representative also noted that the number of hours the Appellant had worked from June to August 2015 inclusively, in addition to being very low, had decreased during this period. The representative specified that the Appellant had worked 17.56 hours for the entire month of June 2015, 12.14 hours in July 2015, and 11.29 hours in August 2015.

[45] The Tribunal does not accept the Commission's argument that, to avoid ending up without a job, any reasonable person would have continued working (even if the job was part-time) until they found alternate employment (Exhibit GD4-4 of file GE-16-1514).

[46] The Appellant also denied the employer Dépôtcom Inc.'s statement that it had never asked its employees to work on Saturdays (Exhibits GD3-26 and GD3-29 à GD3-44 of file GE-16-1514).

[47] The Appellant presented a copy of a time sheet from the employer Dépôtcom Inc. showing that he had worked on Saturdays for this employer (Exhibit GD8-9 of file GE-16-1514 and Exhibit GD7-9 of file GE-16-1515). The Appellant also stated that he had worked for this employer on a Saturday in August 2015 to complete an important contract.

[48] The Tribunal rejects the Commission's argument that the time sheets clearly show that the Appellant did not work on Saturdays and that there was no scheduling conflict between the two jobs (Exhibit GD4-4 of file GE-16-1514).

[49] Having regard to the particular circumstances brought to its attention in this case, the Tribunal concludes that the Appellant had no reasonable alternative to voluntarily leaving his employment with the employer 9303-1672 Québec Inc. (Bistro X).

[50] When the Appellant announced that he was leaving his part-time job with the employer 9303-1672 Québec Inc. (Bistro X), he had "reasonable assurance of another employment in the immediate future" pursuant to paragraph 29(*c*)(vi) of the Act because he was still working for the employer Dépôtcom Inc. and had chosen to give priority to that employer. The Appellant had no way of knowing that his employment with that employer would end on September 11, 2015. He knew, or had every reason to believe, that this employment would continue (***Marier,* 2013 FCA 39**, ***Gennarelli,* 2004 FCA 198**, ***Leung,* 2004 FCA 160**).

[51] Relying on the above-mentioned case law, the Tribunal finds that the Appellant has proven that there was no reasonable alternative to leaving his employment with employer 9303-1672 Québec Inc. (Bistro X), (***White,* 2011 FCA 190**, ***Rena-Astronomo,* A-141-97**, ***Tanguay,* A-1458-84**, ***Peace,* 2004 FCA 56**, ***Landry,* A-1210-92**, ***Marier,* 2013 FCA 39**, ***Gennarelli,* 2004 FCA 198**, ***Leung,* 2004 FCA 160**).

[52] Having regard to all the circumstances, the Tribunal concludes that the Appellant had just cause, under sections 29 and 30 of the Act, for voluntarily leaving his employment.

[53] On this issue, the appeal has merit.

Number of Insurable Employment Hours Required

[54] Section 7 of the Act specifies the conditions to be met to receive benefits. More specifically, subsection 7(2) of the Act stipulates that a person is eligible for Employment Insurance benefits if they had an interruption of earnings from employment and held insurable employment for the required number of hours (***Blais,* 2011 FCA 320**).

[55] The Court confirmed the principle that subsections 30(1) and 30(5) of the Act clearly express that, when a person voluntarily leaves any employment without just cause, 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 or 7.1 of the Act for receiving benefits (***Trochimchuk,* 2011 FCA 268**).

[56] The Court also confirmed the principle whereby the application of subsection 30(2) of the Act (previously section 30.1 of the *Unemployment Insurance Act*) is not discretionary (***Traynor*, A-492-94**).

[57] In its arguments, the Commission indicated that the Appellant was not a new entrant or re-entrant to the labour force under subsection 7(4) of the Act because he had accumulated at least 490 hours of work in the labour market in the last 52 weeks before his qualifying period. The Commission further noted that the Appellant thus needed the number of hours of insurable employment, as set out in paragraph 7(2)(*b*) of the Act, to qualify for benefits (Exhibit GD4-2 of file GE-16-1515).

[58] The Commission determined that the Appellant had accumulated 484 insurable hours after leaving his employment with the employer 9303-1672 Québec Inc. (Bistro X) without just cause, while according to the table in subsection 7(2) of the Act and the 6.5% unemployment rate in the economic region where he lives, he needed 665 hours to qualify for benefits.

[59] The Commission determined that, as a result, an indefinite exclusion had to be re-imposed on the Appellant, following the submission of his benefit application of January 9, 2016 (Exhibits GD3-3 to GD3-11 of file GE-16-1515), and this, under paragraph 30(1)(*a*) of the Act because he had not accumulated the required number of insurable hours due to his leaving voluntarily to establish a claim for benefits (Exhibits GD3-22 to GD3-23 and GD4-3 of file GE-15-1515).

[60] In this case, the Tribunal concludes that the Appellant was justified, within the meaning of the Act, to voluntarily leave his employment with the employer 9303-1672 Québec Inc. (Bistro X) on August 29, 2015.

[61] For this reason, the hours the Appellant worked for this employer must be taken into consideration in order to establish his eligibility for Employment Insurance benefits.

[62] In doing so, the Tribunal finds that the Appellant accumulated more hours of insurable employment during his qualifying period than the minimum number of hours (665) required to enable him to receive benefits.

[63] As a result, the Appellant has demonstrated that he was eligible to receive Employment Insurance benefits because he met the required conditions under section 7 of the Act.

[64] In its arguments, the Commission indicated that, even if the Appellant did not clearly indicate that he was requesting an administrative review of the issue of his exclusion due to the number of hours of employment he had accumulated, following his voluntary departure, it ruled on this issue to determine whether he could be eligible to receive benefits (Exhibit GD4-2 of file GE-16-1515).

[65] The Commission specified the following: [translation] "in the case that the claimant is relieved of the exclusion, in another appeal to that effect, the decision on this matter would be cancelled." (Exhibit GD4-3 of file GE-16-1515).

[66] The Tribunal concludes that the Appellant qualifies for benefits pursuant to section 7 of the Act.

[67] The appeal on this issue has merit.

CONCLUSION

[68] The appeal is allowed on both issues brought before the Tribunal.

Normand Morin
Member, General Division - Employment Insurance Section

ANNEX

THE LAW

Employment Insurance Act

Interpretation

29 For the purposes of sections 30 to 33,

(a) ***employment*** refers to any employment of the claimant within their qualifying period or their benefit period;

(b) loss of employment includes a suspension from employment, but does not include loss of, or suspension from, employment on account of membership in, or lawful activity connected with, an association, organization or union of workers;

(b.1) voluntarily leaving an employment includes

(i) the refusal of employment offered as an alternative to an anticipated loss of employment, in which case the voluntary leaving occurs when the loss of employment occurs,

(ii) the refusal to resume an employment, in which case the voluntary leaving occurs when the employment is supposed to be resumed, and

(iii) the refusal to continue in an employment after the work, undertaking or business of the employer is transferred to another employer, in which case the voluntary leaving occurs when the work, undertaking or business is transferred; and

(c) just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following:

(i) sexual or other harassment,

(ii) obligation to accompany a spouse, common-law partner or dependent child to another residence,

(iii) discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act*,

(iv) working conditions that constitute a danger to health or safety,

(v) obligation to care for a child or a member of the immediate family,

(vi) reasonable assurance of another employment in the immediate future,

(vii) significant modification of terms and conditions respecting wages or salary,

(viii) excessive overtime work or refusal to pay for overtime work,

(ix) significant changes in work duties,

(x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism,

(xi) practices of an employer that are contrary to law,

(xii) discrimination with regard to employment because of membership in an association, organization or union of workers,

(xiii) undue pressure by an employer on the claimant to leave their employment, and

(xiv) any other reasonable circumstances that are prescribed.

Disqualification – misconduct or leaving without just cause

30 (1) A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless

(a) the claimant has, since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 or 7.1 to qualify to receive benefits; or

(b) the claimant is disentitled under sections 31 to 33 in relation to the employment.

(2) The disqualification is for each week of the claimant's benefit period following the waiting period and, for greater certainty, the length of the disqualification is not affected by any subsequent loss of employment by the claimant during the benefit period.

(3) If the event giving rise to the disqualification occurs during a benefit period of the claimant, the disqualification does not include any week in that benefit period before the week in which the event occurs.

(4) Notwithstanding subsection (6), the disqualification is suspended during any week for which the claimant is otherwise entitled to special benefits.

(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).

(6) No hours of insurable employment in any employment that a claimant loses or leaves, as described in subsection (1), may be used for the purpose of determining the maximum number of weeks of benefits under subsection 12(2) or the claimant's rate of weekly benefits under section 14.

(7) For greater certainty, but subject to paragraph (1)(a), a claimant may be disqualified under subsection (1) even if the claimant's last employment before their claim for benefits was not lost or left as described in that subsection and regardless of whether their claim is an initial claim for benefits.

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

(2) An insured person 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.

TABLE

Regional Rate of Unemployment	Required Number of hours of Insurable Employment in Qualifying Period
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

(3) to (5) [Repealed, 2016, c. 7, s. 209]

(6) An insured person is not qualified to receive benefits if it is jointly determined that the insured person must first exhaust or end benefit rights under the laws of another jurisdiction, as provided by Article VI of the *Agreement Between Canada and the United States Respecting Unemployment Insurance*, signed on March 6 and 12, 1942.