



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. G. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 25

Tribunal File Number: GE-16-2942

BETWEEN:

**S. G.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Alyssa Yufe

HEARD ON: February 1, 2017

DATE OF DECISION: February 23, 2017

## **REASONS AND DECISION**

### **PERSONS IN ATTENDANCE**

The Appellant attended the hearing on February 1, 2017 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 his 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 April 4, 2016 (GD3-20).

[2] The Canada Employment Insurance Commission (the “Commission”) decided on May 19, 2016, that it was unable to pay the Appellant benefits because the Appellant required 595 hours of insurable employment in his qualifying period (between March 22, 2015 and March 19, 2016) (the “Qualifying Period”) to qualify for benefits and he only had 296 hours of insurable employment (GD2-12, GD3-27).

[3] The Appellant filed a Request for Reconsideration with the Commission. The Commission decided on July 6, 2016 to maintain its original decision. It found, however, that the Appellant had 337 hours instead of 296 hours (GD3-67).

[4] The Appellant filed an appeal to the Tribunal on July 26, 2016 (GD2).

[5] An adjournment was granted at the hearing of February 1, 2017, in order to allow the Appellant to file additional documentation. The Appellant filed documents at GD5 on February 10, 2017. The Commission did not submit any additional representations notwithstanding that it had been provided with an opportunity to so do.

**FORM OF HEARING**

[6] The hearing was heard via teleconference for the reasons indicated in the Notice of Hearing dated November 16, 2016.

**ISSUE**

[7] Whether or not the Appellant had a sufficient number of hours in his qualifying period in order to qualify for regular benefits pursuant to section 7 of the Act.

**THE LAW**

**Qualifying Conditions:**

[8] 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.

[9] The table in paragraph 7(2)(b) provides as follows:

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

**Additional Considerations: New Entrant/Re-entrant**

[10] 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.

[11] 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.

[12] Pursuant to section 8(1) of the Act, 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).

**Benefit Period Commencement:**

10. (1) A benefit period begins on the later of
- a) the Sunday of the week in which the interruption of earnings occurs, and
  - b) the Sunday of the week in which the initial claim for benefits is made.

**Extension of the Qualifying Period:**

8(2) A qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission may direct, that throughout the week the person was not employed in insurable employment because the person was

- (a) incapable of work because of a prescribed illness, injury, quarantine or pregnancy;
- (b) confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the person was being held or any other offence arising out of the same transaction;
- (c) receiving assistance under employment benefits; or
- (d) receiving payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the person, her unborn child or a child whom she was breast-feeding.

8(3) A qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission may direct, that

- (a) earnings paid because of the complete severance of their relationship with their former employer have been allocated to weeks in accordance with the regulations; and
- (b) the allocation has prevented them from establishing an interruption of earnings.

(4) A qualifying period is further extended by the aggregate of any weeks during an extension for which the person proves, in such manner as the Commission may direct, that

- (a) in the case of an extension under subsection (2), the person was not employed in insurable employment because of a reason specified in that subsection; or
- (b) in the case of an extension under subsection (3), the person had earnings paid to them because of the complete severance of their relationship with their former employer.

(7) No extension under any of subsections (2) to (4) may result in a qualifying period of more than 104 weeks.

## **EVIDENCE**

### **Application for Benefits (GD3-11):**

[13] The Appellant advised that he worked at the following employers during the following periods (Application for Benefits, GD3-11):

[14] “Couvre Pl” from June 25, 2014 to July 11, 2014 and was no longer working on account of a shortage of work (GD3-6, GD3-7).

[15] “Miracle” from August 13, 2014 to August 13, 2014 and was no longer working on account of a shortage of work (GD3-6, GD3-8).

[16] “Kuger” from September 15, 2014 to October 8, 2014 and was no longer working on account of a shortage of work (GD3-6, GD3-9).

[17] “Andre rod” from August 24, 2015 to August 27, 2015 and was no longer working on account of a shortage of work (GD3-6, GD3-10).

[18] “Chelco” from September 2, 2015 to September 25, 2015 and was no longer working on account of a shortage of work (GD3-6, GD3-11).

[19] “Plancher” from September 28, 2015 to September 28, 2015 and was no longer working on account of a shortage of work (GD3-6, GD3-12).

[20] “Excel sol couvre” from October 13, 2015 to October 23, 2015 and was no longer working on account of a shortage of work (GD3-6, GD3-13).

[21] “Couvre plancher” November 18, 2015 to November 20, 2015 and was no longer working on account of a shortage of work (GD3-6, GD3-14).

[22] The Appellant repeated that in the last 2 years the Appellant was not in receipt of worker’s compensation and was not unable to work for medical reasons (GD3-15).

## **Records of Employment**

[23] On April 4, 2016, the Commission advised that it required copies of the Appellant's records of employment from all of the employers listed on his application for benefits (GD3-47).

[24] According to the record of employment ("ROE1") dated July 23, 2014 the Appellant worked at "Couv Pl" ("Employer 1") from June 25, 2014 to July 11, 2014 and accumulated 55.5 insurable hours (ROE1). The reason for issuing the ROE was "A" (GD3- 13, GD3-41).

[25] According to the record of employment ("ROE2") dated November 26, 2014 the Appellant worked at "Miracle" ("Employer 2") from August 11, 2014 to August 15, 2014 and accumulated 8 insurable hours (ROE2). The reason for issuing the ROE was "A" for "Manque de travail/Fin de saison ou de contrat" (GD3-42 to GD3-43).

[26] According to the record of employment ("ROE3") dated October 29, 2014, the Appellant worked at "Serv Kug" Employer 3 from September 15, 2014 to October 8, 2014 and accumulated 147.5 insurable hours (ROE3). The reason for issuing the ROE was "A" (GD2-15, GD3-35). A pay statement from Employer 3 dated October 30, 2014 appears at GD2-18 and GD3-38.

[27] According to the record of employment ("ROE4") dated April 6, 2016, the Appellant worked at "andre Rod" ("Employer 4") from August 24, 2015 to August 29, 2015 and accumulated 33 insurable hours (ROE4). The reason for issuing the ROE was "A" for (GD2-17, GD3-38).

[28] According to the record of employment ("ROE5") dated September 30, 2015, the Appellant worked at "Chelco" ("Employer 5") from September 2, 2015 to September 25, 2015 and accumulated 81 insurable hours (ROE5). The reason for issuing the ROE was "A" for "Manque de travail/Fin de saison ou de contrat" (GD3-25, GD3-44). GD3-45 is a pay statement dated October 1, 2015 from Employer 5.

[29] According to the record of employment ("ROE6") dated April 5, 2016, the Appellant worked at "Sol Cov Pl" ("Employer 6") from October 13, 2015 to October 23, 2015 and

accumulated 60 insurable hours (ROE6). The reason for issuing the ROE was “A” for “Manque de travail/Fin de saison ou de contrat” (GD3-24, GD3-46).

[30] According to the record of employment (“ROE7”) dated April 11, 2016, the Appellant worked at “Couv PL” (“Employer 7”) from November 18, 2015 to November 19, 2015 and accumulated 11 insurable hours (ROE7). The reason for issuing the ROE was “A” for “Manque de travail/Fin de saison ou de contrat” (GD3-23).

[31] According to the record of employment (“ROE8”) dated April 6, 2016, the Appellant worked at “JDNC” (“Employer 8”) from February 17, 2016 to March 18, 2016 and accumulated 144 insurable hours (ROE8). The reason for issuing the ROE was “A” for “Manque de travail/Fin de saison ou de contrat” (GD3-22, GD3-40).

#### **Receipts for Employment Insurance Benefits:**

[32] GD3-52 is a letter dated August 17, 2015 from the Commission enclosing certain documents.

[33] GD3-53 is a pay statement showing that the Appellant received benefits of \$722 for the weeks of March 16 and 23, 2014.

[34] GD3-54 is a pay statement showing that the Appellant received benefits of \$722 for the weeks of March 30 and April 6, 2014.

[35] GD3-55 is a pay statement showing that the Appellant received benefits of \$722 for the weeks of April 13 and 20, 2014.

[36] GD3-56 is a pay statement showing that the Appellant received benefits of \$722 for the weeks of April 27 and May 4, 2014.

[37] GD3-57 is a pay statement showing that the Appellant received benefits of \$722 for the weeks of May 11 and 18, 2014.

[38] GD3-58 is a pay statement showing that the Appellant received benefits of \$722 for the weeks of May 25 and June 1, 2014.

[39] GD3-59 is a pay statement showing that the Appellant received benefits of \$722 for the weeks of June 8 and 15, 2014.

[40] GD3-60 is a pay statement showing that the Appellant received benefits of \$722 for the weeks of June 22 and 29, 2014.

[41] GD3-61 is a pay statement showing that the Appellant received benefits of \$722 for the weeks of July 6 and 13, 2014.

[42] GD3-48 and GD3-65 is a pay statement showing that the Appellant received benefits of \$724 for the weeks of February 15 and 22, 2015.

[43] GD3-49 and GD3-64 is a pay statement showing that the Appellant received sickness benefits of \$724 for the weeks of February 1 and 8, 2015.

[44] GD3-50 and GD3-63 is a pay statement showing that the Appellant received benefits of \$724 for the weeks of January 18 and 25, 2015.

[45] GD3-51 and GD3-62 is a pay statement showing that the Appellant received benefits of \$724 for the weeks of January 4 and 11, 2015.

**Conversations with the Commission:**

[46] The Appellant advised the Commission that he submitted all of his ROEs. The Commission agent advised that he had 337 hours in his qualifying period. The Appellant argued that he had worked 210 hours between June 26, 2014 and October 8, 2014. The Commission advised that the calculation had been made and that he needed 595 hours. The Appellant argued that he only needed 490 hours. The Appellant wanted to know the difference between the 595 hour requirement and the 490 labour force attachment requirement. The agent explained the difference to the Appellant and the Appellant kept arguing that he needed only 490 hours (Commission notes, July 5 and 7, 2016, GD3-66 and 69 and 70).

**Testimony at the hearing:**

[47] The Appellant testified under solemn affirmation.



[48] The Appellant read from GD2-10 and made the same arguments.

[49] The Appellant testified that he is a member of the CCQ and the FTQ unions and that he has been trying desperately to find employment and that he has no income.

[50] The Appellant advised that he is waiting to get calls and that at the same time, he has been telephoning employers himself.

[51] The Appellant testified that he had worked for two other employers since he applied for benefits and that he had obtained an additional 51.5 hours, which were comprised of 35.5 hours at one employer from October 13, 2016 to October 21, 2016 and 16.0 hours at another employer from October 27 to 28, 2016).

[52] The Appellant also advised that he was in receipt of documentation from his union, which supported the legal arguments, which he was making. The Appellant argued that the law changed and that he now has 598.5 insurable hours.

[53] The Appellant did not cease to argue that he has been in receipt of employment insurance benefits at least 5 or 6 times and that on each occasion, his qualifying period was at least 2 years in duration.

[54] The Appellant argued that the Commission had first erred in calculating 296 hours instead of 337 hours and that this meant that the Commission lacked credibility and that the Commission was susceptible to making mistakes.

[55] The Tribunal granted the Appellant an adjournment in order to provide him with the opportunity to submit all of his legal arguments and the additional hours, which he is claiming to have worked.

## **Documents Submitted After the Hearing (GD5)**

[56] The Appellant submitted a pay statement from “Carufel”, which provided that the Appellant worked 16 hours during the week of October 29, 2016 (GD5-1).

[57] The Appellant provided a pay statement showing that he worked 8 hours during the week ending October 15, 2016 (GD5-2).

[58] The Appellant provided a pay statement showing that he worked 27.5 hours during the week ending 22, 2016 (GD5-3).

[59] The Appellant provided documentation from his union showing that the rules and regulations for employment insurance have been amended. Specifically, in the second paragraph the documentation advised that during the month of July 2016, the new arrivals do not have to prove 910 hours in the labour market to be entitled to benefits. The regional rate is sufficient and this varies between 420 hours and 700 hours depending on the rate of unemployment (GD5-4).

## **SUBMISSIONS**

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

- a) Between August 24, 2015 and March 17, 2016, the Appellant accumulated 337 hours and 210 hours between June 25 and October 8, 2016. This adds up to 547 hours (GD2-4, testimony);
- b) The Appellant had a sufficient number of insurable hours (GD2-4, testimony);
- c) The Appellant was informed that he could combine 2 years of insurable hours (GD2-4, testimony);
- d) The Appellant should be able to have a reference period of 104 weeks (GD2-10, GD2-13, GD3-30, GD3-32, testimony);

- e) The Commission advised the Appellant that he only required 490 hours and he had 547 hours (GD2-10, testimony);
- f) The Appellant received regular benefits from March 16 to July 19, 2014. The Appellant received sickness benefits from January 4, 2015 to February 28, 2015 (GD2-13) (GD2-10, testimony);
- g) The Appellant had 547 hours from June 25, 2014 to March 17, 2016 and he only needed 490 hours in 2 years (GD3-33, testimony);
- h) The law changed and the Appellant now has a sufficient number of hours to qualify for benefits (testimony);
- i) The Appellant received information from his union(s), which shows that he no longer needs the same hours to qualify for benefits (testimony); and,
- j) The Appellant worked in October 2016 and now has a sufficient number of hours to qualify for benefits (GD5, testimony).

[61] The **Respondent** submitted as follows:

- a) The Appellant's qualifying period was from March 22, 2015 to March 19, 2016 (GD4-1);
- b) The following ROES were provided: JDNC, February 17, 2016 to March 18, 2016 (144 hours); CP November 18, 2015 to November 19, 2015 (11 hours); Sol CP, October 13 to October 23, 2015 (60 hours); Chelco September 2, 2015 to September 25, 2015 (81 hours)(GD4-1).
- c) The Appellant resides in the economic region of Montreal and the rate of unemployment in his region when he filed for benefits was 8.8% (GD4-1);
- d) Subsection 7(2) of the Act provides that in order to qualify for employment insurance benefits, an insured 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 (GD4-3);

- e) The Appellant's qualifying period was established from March 22, 2015 to March 19, 2016 pursuant to paragraph 8(1)(a) of the Act (GD4-3);
- f) The Appellant was not a new entrant or reentrant because, in accordance with subsection 7(4) of the Act, he had at least 490 hours of labour force attachment in the 52 week period preceding the qualifying period. The Appellant, therefore, needed the number of insured hours specified in paragraph 7(2)(b) of the Act (GD4-3);
- g) According to the table in subsection 7(2) of the Act, the minimum requirement for the claimant to qualify to receive benefits was 595 hours with the rate of unemployment at 8.8%. The Appellant only has 337 hours of insurable employment in his qualifying period. He, therefore, did not demonstrate that he qualified to receive benefits pursuant to subsection 7(2) of the Act (GD4-3);
- h) There are 4 grounds under which the qualifying period may be extended but it may never be extended beyond the commencement date of any prior benefit period, and pursuant to section 8(7) of the Act, the extended qualifying period may not exceed 104 weeks in total (GD4-3);
- i) The four acceptable grounds for extending the qualifying period are 1) incapacity for work; 2) confinement in a prison or similar institution; 3) attendance at a course or other employment related activity; or, 4) receipt of payments under provincial law for ceasing to work because of a danger to an unborn baby (GD4- 4);
- j) The Appellant was incapable of working due to his illness between January 4, 2015 and April 4, 2015 so his qualifying period could be extended according to subsection 8(2) of the Act. Unfortunately, because the Appellant was in receipt of sickness benefits between January 4, 2015 and February 28, 2015, the extension cannot apply for this period pursuant to subsection 8(5) of the Act. The period

between March 1, 2015 and April 4, 2015 can be considered for an extension. This period does not, however, provide the Appellant with any additional insurable hours because the Appellant did not work during this period and was sick (GD4-4);

- k) The 490 hour requirement is used to qualify a person as a regular claimant as opposed to a new entrant in accordance with subsection 7(4) of the Act. The Appellant had more than 490 hours of labour force attachment in the period between March 23, 2014 and March 21, 2015 (GD4-4);
- l) The Commission sympathizes with the Appellant's difficult situation. The Commission must, however, render a decision, which complies with the Act and which is supported by the case law (GD4-4);
- m) The payment of unemployment benefits is not based on the personal needs or financial obligations of an individual (GD4-4);
- n) That one has paid premiums to the employment insurance funds does not by itself give rights to receive benefits (GD4-4);
- o) Receiving employment insurance benefits depends on abiding by the various conditions established by law (GD4-4);
- p) The requirements under section 7 of the Act do not allow any discrepancy and provide no discretion (*Levesque* 2001 FCA 304)(GD4-4); and,
- q) Hours accumulated outside of the qualifying period cannot be used to qualify the Appellant for benefits (*Haile* 2008 FCA 193)(GD4-5).

## **ANALYSIS**

[62] The Tribunal finds that the Appellant has not proven on a balance of probabilities that he qualifies for benefits because he has not proven that he has a sufficient number of insurable hours in his qualifying period.

### **The Qualifying Period:**

[63] The Appellant's qualifying period was from March 22, 2015 to March 19, 2016 (the "Qualifying Period"). The Qualifying Period was determined pursuant to paragraph 8(1)(a) of the Act.

[64] The Appellant argued that his Qualifying Period should have been determined with reference to a two year period. The Appellant also argued that he has had several claims processed by the Commission and that in each case, a two year period has always been considered.

[65] The Tribunal finds that the Qualifying Period had to have been determined pursuant to paragraph 8(1)(a) of the Act and that it was, therefore, only 52 weeks in duration.

[66] In certain circumstances, a Qualifying Period can be extended to a maximum of 104 weeks pursuant to subsections 8(2) and 8(7) of the Act. The Tribunal finds that it is arguable that the Appellant's Qualifying Period should have been extended pursuant to paragraph 8(2)(a) of the Act because the Appellant was incapable of work because of illness or injury between January 4, 2015 and April 4, 2015 (GD4-4, GD2-13, GD2-10, testimony), but that an extension cannot be effected for all of these weeks because the Appellant was in receipt of sickness benefits from January 4, 2015 to February 28, 2015 and subsection 8(5) provides that a week during which a person is in receipt of benefits does not count for the purposes of a Qualifying Period extension (GD4-4, GD3-48 to GD3-65, (GD2-13) (GD2-10, testimony).

[67] The only part of the Appellant's period of illness, which could be used for an extension to the Qualifying Period is the period between March 1, 2015 and April 4, 201. Given that the Appellant did not work during this period, this period does not provide the Appellant with any additional insurable hours (GD4-4, ROE1 to ROE8).

### **The NERE Provision:**

[68] The Tribunal finds that the Appellant was not a new entrant or re-entrant ("NERE") and did not require at least 910 hours in the Qualifying Period pursuant to subsection 7(4) of

the Act, because the Appellant had at least 490 hours of labour force attachment in the 52 weeks preceding the Qualifying Period (the “NERE Provision”).

[69] The Tribunal notes, parenthetically, that the “NERE” provision was eliminated effective July 1, 2016, by the amendments contained in the *Budget Implementation Act, 2016, No. 1*, 2016, No. 1 (S.C. 2016, c. 7). This means that, for all claimants, the minimum number of insurable hours required to qualify for regular benefits under Part I of the Act will be based on the applicable regional rate of unemployment.

[70] These amendments, however, only came into force on July 3, 2016 and apply to benefit periods established on or after July 3, 2016. The amendments are not retroactive, and the NERE Provision continues to apply to benefit periods established before July 3, 2016. Given that the Appellant applied for benefits on April 4, 2016 (GD3-20), his qualification for benefits is not affected by the amendments to the NERE Provision.

[71] All of that having been said, the Tribunal finds that whether the NERE Provision applies or does not apply to the Appellant is not relevant because he was never determined to have been a NERE under the Act.

[72] The Tribunal has only explained the NERE Provision because the Appellant appears to have referred to it as a ground for his appeal and has included mention of its elimination in the recent amendments in the documentation, which he supplied at GD5-4.

### **The Number of Hours Required:**

[73] Given that the Appellant was not a NERE, in order to be entitled to benefits, the Appellant was required to prove that he had the amount of insurable hours in his Qualifying Period that is determined with reference to the table in subsection 7(2) of the Act.

[74] Given that the regional rate of unemployment for the economic region where the Appellant resides was 8.8% at the time that the Appellant applied for benefits and the table at subsection 7(2) of the Act, the Appellant was required to have had 595 hours of insurable employment in the Qualifying Period.

[75] The Tribunal finds that the Appellant had only 337 insurable hours in the Qualifying Period (GD3, ROE1 to ROE8) and that he was required to have had 595 insurable hours.

[76] The Appellant argued that he worked an additional 51.5 hours. The Tribunal finds that these hours cannot be considered because they are outside of the Qualifying Period and would likely only be considered if a new claim was filed (*Haile* 2008 FCA 193).

[77] The Tribunal finds, therefore, that at the time that the Commission rendered its original decision and its reconsideration decision and denied the Appellant benefits on the basis of an insufficiency of hours, the decision was arrived at correctly. This is because 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**

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

Alyssa Yufe

Member, General Division - Employment Insurance Section