



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *N. T. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 84

Tribunal File Number: GE-16-3506

BETWEEN:

N. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Bernadette Syverin

HEARD ON: April 20, 2017

DATE OF DECISION: June 9, 2017

DECISION AND REASONS

OVERVIEW

[1] N. T. (Appellant) filed a claim for Employment Insurance benefits to the Canada Employment Insurance Commission (Commission) on June 23, 2016. According to the *Employment Insurance Act* (Act), a claimant must have a set number of hours of insurable employment in the qualifying period, which is normally 52 weeks.

[2] In the Appellant's case, the Commission determined that the Appellant was a new entrant or a re-entrant to the labour force because, under subsection 7(4) of the Act, he had not accumulated at least 490 hours of employment in the last 52 weeks before his qualifying period. The Appellant, therefore, needed to have accumulated 910 hours of insurable employment, pursuant to paragraph 7(3)(b) of the Act, to be entitled for Employment Insurance benefits.

[3] The Appellant had 589 hours of insurable employment between June 5, 2015, and June 4, 2016, when he needed 910 hours of insurable employment. The Appellant was therefore refused benefits because he did not have the required 910 hours of insurable employment. He appealed the decision to refuse him benefits to the General Division of the Social Security Tribunal of Canada (Tribunal). The Appellant provided the Tribunal with detailed statements of the hours he had worked.

[4] In his notice of appeal, the Appellant asked the Tribunal to determine the number of insurable hours he had accumulated. However, the Tribunal does not have the jurisdiction to determine the number of hours of insurable employment that a claimant has accumulated. Section 90.1 of the Act stipulates that the Canada Revenue Agency (CRA) has exclusive jurisdiction to determine the number of hours of insurable employment that an insured person has accumulated. Furthermore, subsection 90(1) of the Act indicates that "*An employer, an employee, a person claiming to be an employer or an employee or the Commission may request an officer of the Canada Revenue Agency authorized by the Minister to make a ruling*" regarding the number of hours of insurable employment.

[5] Given the proceeding, the Commission asked the CRA, at the Tribunal's request, to determine the number of hours of employment accumulated by the Appellant in the course of his employment. The CRA determined that the Appellant had accumulated 1,079.5 hours of insurable employment between March 5, 2015, and June 1, 2016. After having assessed the decision issued by the CRA, the Commission pointed out in a new argument that the Appellant had accumulated 858 hours of insurable employment during his qualifying period, while 910 hours were required for him to be considered a new entrant or re-entrant to the labour force. The Appellant is therefore still disentitled as of June 23, 2016. However, the Commission added that the entitlement requirement for 910 hours of insurable employment was repealed on July 3, 2016. Thus, since July 3, 2016, the number of insurable hours required to be entitled to benefits is calculated based on the rate of unemployment in effect in the economic region where the claimant lived. Thus, the Appellant could be entitled to benefits as of July 3, 2016, because he would have accumulated 791 insurable hours, while 595 hours were needed based on his economic region.

[6] The Tribunal must decide whether the Appellant accumulated the number of insurable hours required to be entitled to Employment Insurance benefits.

[7] The hearing of this appeal was held by teleconference for the following reasons:

- Credibility does not appear to be a prevailing issue;
- The Appellant will be the only party attending the hearing; and
- This type of hearing respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness, and natural justice permit.

[8] An initial hearing date was set for February 24, 2017, but the hearing was put on hold pending the CRA's decision. A new hearing took place on April 20, 2017, which was attended by the Appellant but not the Commission.

[9] The Tribunal finds that the Appellant did not have the hours of insurable employment required to be entitled to Employment Insurance benefits as of June 23, 2016, or as of July 3, 2016. The reasons for this decision follow.

EVIDENCE

[10] The Tribunal considered all the evidence before it and retained the evidence that was most relevant to the issue of whether the Appellant had accumulated the number of hours of insurable employment required to be entitled to benefits.

[11] At the outset, a record of employment indicates that the Appellant worked as an inspector for the Ordre des ingénieurs du Québec from January 1, 2015, to June 1, 2016, and that he stopped working because his term ended. The Appellant accumulated 600 hours of insurable employment (GD3-16).

[12] The Commission informed the Appellant that he was disentitled from benefits because he had not accumulated the required number of hours. The Appellant had accumulated 589 hours of insurable employment between June 5, 2015, and June 4, 2016, whereas 910 hours of insurable employment were needed for him to be entitled to benefits as a new entrant or a re-entrant to the labour force. The Commission upheld this decision after the Appellant requested a review, stating that [translation] “*Moreover, with the hours indicated on the record, if we were to establish your request as of July 3, 2016, you would have 544 insurable hours, whereas you needed 595*” (Exhibits GD3-17 to GD3-18 and GD3-24).

[13] In his notice of appeal, the Appellant explained that, in the course of his employment with the Ordre des Ingénieurs du Québec, he had performed professional inspections according to a fluctuating schedule. He was paid a flat fee for each inspection conducted. The Appellant claims to have worked 850 hours in the last year. However, the employer refused to revise the hours on his record of employment. The appellant is asking the Tribunal to consider the actual number of hours worked because he was not paid an hourly rate (GD2-2). The Appellant also sent the Tribunal an Excel spreadsheet of all the hours worked between March 2015 and June 1, 2016 (GD5-1 to GD5-7).

[14] Following a request from the Commission, the CRA determined on March 3, 2017, that the Appellant had accumulated 1,079.5 hours of insurable employment during the period from March 5, 2015, to June 1, 2016 (GD9-1 to GD9-2).

[15] After reviewing the CRA's decision, the Commission confirmed that the Appellant remained disentitled from benefits starting June 5, 2016, but that, given the legislative amendments of July 3, 2016, the Appellant could qualify for benefits starting July 3, 2016, particularly (GD11 and GD12):

[translation]

- Verification of entitled as of June 5, 2016:

Last day worked: June 1, 2016

Claim date: June 23, 2016

Qualifying period: June 7, 2015, to June 4, 2016

Insurable hours accumulated during the qualifying period: 858 hours

Labour force participation: 224 hours

Usual region of residence: X

Regional rate of unemployment: 8.2%

Newcomer claimant and 910 hours are needed for entitlement.

The claimant remains disentitled as of June 5, 2016.

"2- Entitlement as of July 3, 2016, has been verified (change to the Employment Insurance Act).

Last day worked: June 1, 2016

Claim date: June 23, 2016

Qualifying period: July 5, 2015, to July 2, 2016

Accumulated insurable hours during the qualifying period: 791 hours

Usual region of residence: X

Regional rate of unemployment: 8.2%

Variable entrance requirement: 595 hours

The claimant is entitled as of July 3, 2016. The rate is \$488 at BPC on July 3, 2016, and entitlement is 21 weeks of regular benefits.”

[16] The Commission also confirmed that an initial claim for benefits may be established starting July 3, 2016, since the Appellant had accumulated the required number of hours for entitlement. The Appellant does not need to file a new claim for benefits. If the Tribunal renders a favourable decision to the Appellant, the Commission will complete the transactions needed to establish the claim as of July 3, 2016 (GD14-1 and GD4-2).

[17] At the hearing, the Appellant pointed out that he meets the eligibility criteria after the CRA’s decision. Furthermore, he accepts that his benefits period begins on July 3, 2016, instead of June 23, 2016. He resides in the X region and has always been available and capable of working.

PARTIES’ ARGUMENTS

[18] The Appellant pointed out that, based on the CRA’s decision, he is entitled to benefits starting July 3 since he has accumulated the required number of hours of insurable employment.

[19] The Commission determined that, at the time the Appellant filed his benefit claim on June 23, 2016, he was a new entrant or a re-entrant to the labour force because, under subsection 7(4) of the Act, he had not accumulated at least 490 hours of employment during the 52 weeks before the qualifying period. According to paragraph 7(3)(b) of the Act, in order to be entitled for Employment Insurance benefits, the Appellant would have had to accumulate 910 hours during his qualifying period. However, file evidence demonstrated that the Appellant had

accumulated only 589 hours of insurable employment during his qualifying period of June 7, 2015, to June 5, 2016. The Commission therefore submits that the Appellant failed to prove that he was entitled to Employment Insurance benefits under paragraph 7(3)(b) of the Act.

[20] After analyzing the CRA's decision, the Commission submits that the Appellant remained disentitled as of June 23, 2016, because he needed 910 hours of insurable employment on that date, whereas according to the CRA's decision, the Appellant had accumulated only 858 hours during his qualifying period. That said, the Appellant could be entitled to benefits as of July 3, 2016, because he accumulated 791 hours of insurable employment during his qualifying period from July 5, 2015, to July 2, 2016, whereas he needed 595 hours as of July 3, 2016.

ANALYSIS

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

[22] Section 7 of the Act specifies the conditions to be met to receive benefits. More specifically, subsection 7(2) stipulates that a person is entitled to Employment Insurance benefits if they had an interruption of earnings from employment and held insurable employment for the number of hours indicated in the Act.

[23] The required number of insurable hours is determined according to the table in subsection 7(2) of the Act. This table states that the required number of insurable hours varies between 420 and 700 hours. However, until July 3, 2016, 910 hours of insurable employment was required in cases where the claimant was a new entrant or re-entrant to the labour force as set out in subsection 7(4) of the Act. This section of the Act defines an insured person who is a new entrant or a re-entrant to the labour force as someone who has had **fewer than** 490 hours of insurable employment in the last 52 weeks before their qualifying period.

[24] In the Appellant's case, the Commission determined that, at the time his claim was filed on June 23, 2016, the relevant legislative provision was subsection 7(4) of the Act, because the Appellant was a new entrant or re-entrant to the labour force since he had not accumulated at least 490 hours of employment in the last 52 weeks before his qualifying period. As a result, the Appellant needed to have accumulated 910 hours of insurable employment to be entitled to Employment Insurance benefits in accordance with paragraph 7(3)(b) of the Act.

[25] The evidence shows that the CRA ruled in its decision that the Appellant had accumulated 1,079.5 hours between March 5, 2015, and June 1, 2016.

[26] Is the Appellant entitled to benefits as of the claim filing date of June 23, 2016?

[27] The Tribunal finds that the Appellant is not entitled to benefits starting June 23, 2016, for the following reasons.

[28] After analyzing the decision issued by the CRA, the Commission maintains that the Appellant is still not entitled to benefits as of June 23, 2016. The evidence shows that the Appellant was a new entrant or re-entrant to the labour force. The Appellant therefore needed to accumulate 910 hours of insurable employment, whereas based on the insurable hours re-assessment, the Appellant had accumulated only 858 hours of insurable employment.

[29] The Tribunal finds that the Appellant did not accumulate the 910 hours required by the Act to be entitled to benefits as of June 23, 2016. Despite the Canada Revenue Agency's decision, the Appellant needed to have accumulated 910 hours of insurable employment, whereas he had accumulated only 858 hours of insurable employment. Thus, the Tribunal finds that the Appellant has failed to meet the requirement of section 7 since he did not accumulate the required number of insurable hours as of June 23, 2016.

[30] Despite the above, the Commission pointed out that the Appellant could be entitled to benefits as of July 3, 2016. The legislative provision requiring that a new entrant or re-entrant to the labour force accumulate 910 hours of insurable employment to be entitled to benefits was repealed on July 3, 2016. As of that date, the only criterion for insurable hours is the variable requirement, namely, 420 to 700 hours of employment based on the unemployment rate in effect in accordance to section 7 of the Act. Consequently, the Commission pointed out that if the Appellant's claim for benefits is established as of July 3, 2016, the Appellant would meet the entitlement criterion in section 7 because he had accumulated 791 hours of insurable employment, whereas according to the rate of unemployment in effect in his economic region, he needed 595 hours.

[31] Is the Appellant entitled to benefits as of July 3, 2016?

[32] The Tribunal finds that the Appellant is not entitled to benefits as of July 3, 2016, for the following reasons.

[33] While the entitlement criterion of 910 hours of employment was repealed on July 3, 2016, it applies only to benefit periods established on or after July 3, 2016. The requirement for 910 hours continues to apply to benefit periods established before July 3, 2016.

[34] In the Appellant's case, the Tribunal cannot establish a benefit period on July 5, 2016 when the claim for benefits was made on June 23, 2016. In fact, this would be the equivalent of postdating the benefit claim that was submitted on June 23, 2016, to July 5, 2016. But, no provision in the Act allows the beginning of the benefit period to be deferred beyond the dates set out in subsection 10(1). Subsection 10(1) sets out that a benefit period begins, depending on the case, 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."

[35] Moreover, while subsection 10(4) of the Act allows antedating a claim for benefits, the Act does not allow postdating.

[36] Finally, the Tribunal also considered the possibility of cancelling the claim for benefits filed on June 23, 2016, so that a new claim for benefits could be established as of July 5, 2016. However, according to the Act, it is impossible to cancel the June 23, 2016, claim for benefits under paragraph 10(6)(a) of the Act because a benefit period can be cancelled only once it has been established. In the Appellant's case, no benefit period was established because the Appellant did not meet the entitlement criteria when he filed his claim on June 23, 2016.

[37] Unfortunately for the Appellant, the July 3, 2016, legislative change came into effect after his June 23, 2016, claim for benefits was filed. The new legislative measure was not retroactive and cannot help the Appellant, despite the CRA's decision.

[38] In the Appellant's case, he needed to have accumulated 910 hours of insurable employment to be entitled to benefits. After the hours accumulated were calculated subsequent to the receipt of the CRA's decision, the Appellant had accumulated only 858 hours of employment during his qualifying period, while he needed 910 hours.

[39] Although the Tribunal is sympathetic to the Appellant, the Act does not allow any discrepancy and gives the Tribunal no discretion to entitle him to benefits (*Canada (A.G.) v. Lévesque*, 2001 FCA 304).

CONCLUSION

[40] The appeal is dismissed.

Bernadette Syverin
Member, General Division – Employment Insurance Section

APPENDIX

THE LAW

Employment Insurance Act

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) (a) has had an interruption of earnings from employment; and

(b) (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

Qualification requirement for new entrants and re-entrants

(3) An insured person who is a new entrant or a re-entrant to the labour force qualifies if the person

(a) has had an interruption of earnings from employment; and

(b) has had 910 or more hours of insurable employment in their qualifying period.

New entrants or re-entrants

(4) 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

- 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 employment in the labour force; or
 - d) hours comprised of any combination of those hours.
- (3) to (5) [Repealed, 2016, c. 7, s. 209]

Beginning of benefit period:

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.

Late initial claims

(4) An initial claim for benefits made after the day when the claimant was first qualified to make the claim shall be regarded as having been made on an earlier day if the claimant shows that the claimant qualified to receive benefits on the earlier day and that there was good cause for the delay throughout the period beginning on the earlier day and ending on the day when the initial claim was made.

Cancelling benefit period

(6) Once a benefit period has been established for a claimant, the Commission may:

- a) cancel the benefit period if it has ended and no benefits were paid or payable during the period; or
- b) whether or not the period has ended, cancel at the request of the claimant that portion of the benefit period immediately before the first week for which benefits were paid or payable, if the claimant
 - (i) establishes under this Part, as an insured person, a new benefit period beginning the first week for which benefits were paid or payable or establishes, under Part VII.1, as a self-employed person within the meaning of subsection 152.01(1), a new benefit period beginning the first week for which benefits were paid or payable, and
 - (ii) shows that there was good cause for the delay in making the request throughout the period beginning on the day when benefits were first paid or payable and ending on the day when the request for cancellation was made.

Request for ruling

90 (1) An employer, an employee, a person claiming to be an employer or an employee or the Commission may request an officer of the Canada Revenue Agency authorized by the Minister to make a ruling on any of the following questions:

- a) whether an employment is insurable;
- b) how long an insurable employment lasts, including the dates on which it begins and ends;
- c) what is the amount of any insurable earnings;
- d) how many hours an insured person has had in insurable employment;
- e) whether a premium is payable;
- f) what is the amount of a premium payable;
- g) who is the employer of an insured person;
- h) whether employers are associated employers; and
- i) what amount shall be refunded under subsections 96(4) to (10).

Time limit

(2) The Commission may request a ruling at any time, but a request by any other person must be made before the June 30 following the year to which the question relates.

Ruling

(3) The authorized officer shall make the ruling within a reasonable time after receiving the request.

Presumption

(4) Unless a ruling has been requested with respect to an insured person,

- (a) an amount deducted from the remuneration of the person or paid by an employer as a premium for the person is deemed to have been deducted or paid in accordance with this Act; or
- (b) an amount that has not been so deducted or paid is deemed not to have been required to be deducted or paid in accordance with this Act.

1996, c. 23, s. 90;

1999, c. 17, s. 135, c. 31, s. 80;

2005, c. 38, s. 138.

Previous version

Determination of questions

90.1 If a question specified in section 90 arises in the consideration of a claim for benefits, a ruling must be made by an authorized officer of the Canada Revenue Agency, as set out in that section.

2012, c. 19, s. 246.