



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *F. F. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 80

Tribunal File Number: GE-16-3980

BETWEEN:

F. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Angela Ryan Bourgeois

HEARD ON: March 14, 2017

DATE OF DECISION: June 8, 2017

REASONS AND DECISION

PERSONS IN ATTENDANCE

F. F., Appellant

INTRODUCTION

[1] The Appellant applied for regular employment insurance (EI) benefits on September 3, 2016. The Respondent determined that the Appellant did not qualify for benefits at both the initial and reconsideration levels because he had not accumulated sufficient insurable hours within his qualifying period to qualify for EI benefits under section 7 of the *Employment Insurance Act* (EI Act).

[2] The Appellant has appealed the Respondent's reconsideration decision to the Tribunal on the premise that his qualifying period should be extended based on the wording set out on the Respondent's website that states that in some cases the qualifying period may be extended to a maximum of 104 weeks if you were not employed in insurable employment *and* you were not receiving EI benefits.

[3] The Tribunal decided to hold the hearing by way of teleconference after considering:

- a) the complexity of the issue under appeal;
- b) that credibility was not anticipated to be a prevailing issue;
- c) that the Appellant was likely to be the only party in attendance; and
- d) the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as permitted by the circumstances and the considerations of fairness and natural justice.

[4] After the hearing, the Tribunal asked the Respondent to obtain a ruling from Canada Revenue Agency (CRA) on the number of hours the Appellant had in insurable employment between August 30, 2015 and August 27, 2016 with Offshore Recruiting Services Inc. The ruling was received by the Tribunal on May 15, 2017 and a copy was provided to the Appellant,

as were the Respondent's submissions. The Appellant was permitted to make further submissions but none were received.

ISSUE

[5] The Appellant and the Respondent agree that the Appellant requires 420 hours of insurable employment during his qualifying period to qualify for benefits pursuant to section 7 of the EI Act. Therefore, the Tribunal must determine:

- a) the Appellant's qualifying period and whether it can be extending to 104 weeks; and
- b) whether the Appellant has 420 hours of insurable employment during his qualifying period.

EVIDENCE

[6] The Appellant provided the Tribunal with a page from the Respondent's website that reads (GD2-4):

Number of hours of insurable employment required to qualify for EI

The number of hours of insurable employment you need to qualify for EI depends on your situation. However, in all cases, the hours of insurable employment that are used to calculate your benefit must have been accumulated during your qualifying period.

The qualifying period is the shorter of:

- the 52-week period immediately before the start date of your claim; or
- the period from the start of a previous benefit period to the start of your new benefit period, if you applied for benefits earlier and your application was approved in the last 52 weeks.

Exception: In some cases, the qualifying period may be extended to a maximum of 104 weeks if you were not employed in insurable employment or if you were not receiving EI benefits.

You will need to have accumulated between 420 and 700 hours of insurable employment during the qualifying period to be entitled to receive EI regular benefits.

If you received a notice of violation regarding prior EI benefit periods, the number of insurable hours required to qualify is increased.

[7] There are three Records of Employment on file for the Appellant. Two are for work the Appellant did for a company for which he is the sole shareholder. These were completed in error as noted on the documents (GD3-15 and GD3-16) and the Appellant acknowledged during the hearing that he does not consider these to represent insurable employment. A ruling from CRA confirms that these hours are not insurable hours.

[8] The third Record of Employment is for work the Appellant did for Offshore Recruiting Services Inc. from June 24, 2015 until September 21, 2015 and shows that the Appellant has 528 insurable hours during this period. (GD3-14)

[9] A CRA ruling indicates that the Appellant has 276 insurable hours with Offshore Recruiting Services Inc. for the period from August 30, 2015 to September 21, 2015.

[10] The Workforce History portion of the Appellant's application for EI benefits states that in the past two years he was not at any time:

- a) in receipt of Workers' Compensation;
- b) unable to work for medical reasons;
- c) in receipt of group wage loss insurance benefits;
- d) prevented from working due to a labour dispute (strike or lockout);
- e) on a training course to which he was referred by a designated authority;
- f) in jail; or
- g) in receipt of a payment from the Wage Earner Protection Program.

[11] The Appellant confirmed these answers were correct in his testimony at the hearing.

SUBMISSIONS

[12] The Appellant's primary submission is that his qualifying period should be extended to 104 weeks based on the information available on the Respondent's website and with this extension he would be able to use all of his insurable hours from Offshore Recruiting Services Inc.; he would then have sufficient insurable hours to qualify for EI benefits.

[13] The Appellant stated that when you call the Respondent's office it is nearly impossible to talk to anyone. You have to rely on automated telephone answers and the website. Based on the information on the website he felt he was fully compliant with the legislation when he applied because:

- a) he was not employed in insurable employment; and
- b) he was not in receipt of EI.

[14] The Appellant stated that the website misrepresents the requirements for EI qualifying periods and should be corrected to reflect clearer information that the average Canadian citizen can understand. He stated that the information on the website is vague and misleading. The Appellant submitted that these facts should be considered by the Tribunal in making its decision.

[15] The Appellant submitted that if he had been presented with correct and factual information then he certainly would have opened a claim during the 52-week period and continued to look for gainful employment.

[16] The Respondent submitted that the Appellant has not demonstrated that he qualified to receive EI pursuant to subsection 7(2) of the EI Act because he does not have enough hours of insurable employment during his qualifying period from August 30, 2015 to August 27, 2016 and further does not qualify to have his qualifying period extended pursuant to subsection 8(2) of the EI Act or as a new entrant or re-entrant in accordance with subsection 7(4) of the EI Act.

[17] The Respondent submitted that a review of the information that the Appellant states is unclear on the website clearly states "in some cases, the qualifying period may be extended to a maximum of 104 weeks if you were not unemployed [the website actually reads employed] in insurable employment or if you were not receiving EI benefits." The Respondent submitted

that this would indicate that an extension is not possible in all cases, only in some cases. The Respondent indicated that if further clarification was required regarding eligibility it would have been reasonable for the Appellant to contact Service Canada.

ANALYSIS

[18] The relevant legislative provisions are reproduced in the Annex to this decision.

[19] Paragraph 7(2)(b) of the EI Act stipulates that in order to qualify for EI benefits, an insured person must have acquired, in his qualifying period, at least the number of hours of insurable employment set out within that subsection in relation to the regional rate of unemployment where the person normally resides.

[20] The onus is the Appellant to prove on a balance of probabilities that he meets the requirements set out in subsection 7(2) of the EI Act.

Required hours of insurable employment

[21] In this case, the Appellant and the Respondent agree that the Appellant requires 420 hours of insurable employment in order to qualify for benefits.

[22] Where the parties agree, and having reviewed the evidence on file, the Tribunal accepts that pursuant to subsection 7(2) of the EI Act the Appellant requires 420 hours of insurable employment in order to qualify for benefits.

Qualifying period

[23] Subsection 2(1) of the EI Act defines “week” as a period of seven consecutive days beginning on and including Sunday.

[24] Section 8 of the EI Act sets out the qualifying period. In the Appellant’s case, based on paragraph 8(1)(a) of the EI Act, the Appellant’s qualifying period is the 52-week period immediately before the beginning of his benefit period, which the Tribunal finds would start on Sunday, August 28, 2016, which is the Sunday of the week in which he made his initial claim for benefits (Section 10 of the EI Act).

[25] Based on a benefit period starting on Sunday, August 28, 2016, the Appellant's qualifying period ends on Saturday, August 27, 2016. Going back 52 weeks, the Appellant's qualifying period started on Sunday, August 30, 2015.

[26] Therefore, *before* considering any possible extensions, the Tribunal finds that the Appellant's qualifying period is from Sunday, August 30, 2015 to Saturday, August 27, 2016.

[27] The Appellant's qualifying period can be extended pursuant to subsection 8(2) of the EI Act which provides that a qualifying period can be extended by the total of any weeks during the qualifying period that a person proves that throughout that week he was not employed in insurable employment because he 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.

[28] During the hearing and in his application for EI benefits, the Appellant indicated that none of these situations apply to him and therefore the Tribunal finds, on the evidence before it, that the Appellant does not meet the requirements to extend his qualifying period pursuant to subsection 8(2) of the EI Act.

[29] A qualifying period can also be extended in certain circumstances where there has been an allocation of severance payments (subsection 8(3) of the EI Act). During the hearing the Appellant confirmed that he has not received any severance payments. On the evidence before it, the Tribunal finds that the Appellant does not meet the requirements set out in subsection 8(3) of the EI Act for an extension resulting from severance payments.

[30] The crux of the Appellant's submissions is that his qualifying period should be extended to 104 weeks based on the wording of the Service Canada website. An extension to 104 weeks would give the Appellant a qualifying period from September 1, 2014 until August 27, 2016. By extending his qualifying period back to September 1, 2014, all 528 of his insurable hours with Offshore Recruiting Services Inc. would be included in his qualifying period and he would meet the minimum number of hours (420) required pursuant to paragraph 7(2)(b) of the EI Act.

[31] The Tribunal appreciates and understands the Appellant's argument; however, the law governing the extension of qualifying periods is set out in section 8 of the EI Act. It cannot be varied by the contents of the Service Canada website.

[32] At the hearing the Appellant appeared to understand the EI system and what is generally required to qualify for EI benefits. Given his knowledge of the system, it is likely that the Appellant would have applied for EI benefits earlier had he not truly believed that his qualifying period could be extended to a maximum of 104 weeks. However, the Tribunal must interpret the law as it is written, and although sympathetic to the Appellant's situation, it cannot consider extenuating circumstances where the Appellant simply does not meet the legislative requirements for an extension of his qualifying period.

[33] On the totality of the evidence before it and for the reasons set out above, the Tribunal finds that the Appellant's qualifying period is from August 30, 2015 to August 27, 2016. The Appellant does not meet the requirements to extend his qualifying period.

Qualifying for benefits

[34] Based on the CRA ruling and the records of employment on file, the Appellant has 276 hours of insurable employment in his qualifying period from August 30, 2015 to August 27, 2016.

[35] He requires 420 insurable hours to qualify for EI benefits.

[36] Where the Appellant has 276 hours of insurable employment in his qualifying period and requires 420 in order to qualify for EI benefits, the Tribunal finds that the Appellant does not qualify for EI benefits.

New Entrants or Re-entrant

[37] The Tribunal considered the Respondent's submissions with respect to subsection 7(4) of the EI Act, which has been repealed. The Tribunal finds that where the Appellant's benefit period would have been established after July 3, 2016, this subsection does not apply.

CONCLUSION

[38] For the reasons set out above, the Tribunal finds that the Appellant's qualifying period is from August 30, 2015 to August 27, 2016 and the Appellant does not have the necessary 420 hours of insurable employment during this period to qualify for EI benefits pursuant to section 7 of the EI Act.

[39] The appeal is dismissed.

Angela Ryan Bourgeois
Member, General Division - Employment Insurance Section

ANNEX

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) 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.

8 (1) Subject to subsections (2) to (7), 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).

(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.

(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.

(5) For the purposes of subsections (2) to (4), a week during which the person was in receipt of benefits does not count.

(6) For the purposes of subsection (3) and paragraph (4)(b), a week during which the person was employed in insurable employment does not count.

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