



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *J. C. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 85

Tribunal File Number: GE-16-3597

BETWEEN:

J. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Bernadatte Syverin

DATE OF DECISION: June 14, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Appellant submitted a claim for sickness benefits in February 2016. A benefit period was established, and 15 weeks of sickness benefits were paid out.

[2] In June 2016, the Appellant submitted a new claim for sickness benefits. The Canada Employment Insurance Commission (Commission) refused the claim because the Appellant had not accumulated any insurable hours between February 21 and June 18, 2016, when he needed 600 hours of insurable employment in order to qualify for sickness benefits. That decision was upheld on reconsideration, hence the appeal before the Tribunal.

[3] The *Employment Insurance Act* (Act) establishes the exact number of insurable hours that an individual needs in order to meet the requirements to receive benefits. This is not subject to interpretation, and the Tribunal cannot ignore it.

[4] According to subsection 53(1) of the *Department of Human Resources and Skills Development Act* (DESD Act), the Tribunal must summarily dismiss an appeal if it is satisfied that the appeal has no reasonable chance of success. After reviewing the docket, the Tribunal determined that the appeal had no reasonable chance of success; the Appellant did not meet one of the essential conditions to qualify, which is to have accumulated the required number of insurable hours. The Appellant was thereby advised in writing of the Tribunal's intent to summarily dismiss the appeal and, pursuant to section 22 of the *Social Security Tribunal Regulations*, was given a reasonable period of time in which to make other submissions. No submissions were received.

ISSUE

[5] The Tribunal must decide whether the appeal filed by the Appellant should be summarily dismissed in accordance with subsection 53(1) of the DESD Act.

THE LAW

[6] Subsection 53(1) of the DESD Act states that the Tribunal must summarily dismiss the appeal if it is satisfied that it has no reasonable chance of success.

[7] Section 22 of the *Social Security Tribunal Regulations* specifies that, before summarily dismissing an appeal, the General Division must give written notice to the Appellant and allow the Appellant a reasonable period of time in which to make submissions.

[8] Subsection 7(2) of the Act stipulates that, in order to qualify for Employment Insurance benefits, an insured person must (a) have had an interruption of earnings from employment; and (b) have 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

[9] Furthermore, subsection 93(1) of the *Employment Insurance Regulations* provides that:

An insured person who does not qualify to receive benefits under section 7 of the Act and who is claiming special benefits qualifies to receive the special benefits if the person

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

(b) has had 600 or more hours of insurable employment in their qualifying period.

[11] Subsection 8(1) of the Act specifies that:

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).

(...)

EVIDENCE

[12] The Appellant submitted a claim for sickness benefits in June 2016 (GD3-3 to GD3-12). A benefit period had already been established on February 21, 2016, and 15 weeks of sickness benefits were paid out to the Appellant. The Commission thereby determined that the Appellant's qualifying period was from February 21 to June 18, 2016 (GD3-15 and GD3-16).

[13] According to the Record of Employment in the docket, the Appellant worked from October 14, 2010, to July 29, 2015. The Appellant accumulated 994 hours of insurable employment in that job. The separation from employment was sickness-related (GD3-13). During a conversation with the Commission, the Appellant claimed that he had not worked since July 29, 2015 (GD3-24).

[14] On July 12, 2016, the Commission decided that the Appellant had not accumulated any insurable hours between February 21 and June 18, 2016, when he needed to accumulate 600 hours of insurable employment in order to qualify for sickness benefits (GD3-17). The Appellant requested a reconsideration of this decision by invoking, as a reason, the fact that he was waiting for a decision by the *Commission des normes et de la sécurité du travail* (CSST) ([translation]: Occupational Safety and Standards Commission), and that he has no income left (GD3-18).

[15] On August 25, 2016, the Commission upheld the August 2, 2016, decision (GD3-25).

[16] In his notice of appeal filed with the Tribunal, the Appellant's representative argued that the Commission's decision was unfounded in fact and in law (GD2-1 to GD2-4).

[17] In accordance with subsection 22(1) of the *Social Security Tribunal Regulations*, on January 30, 2017, in a letter sent by priority mail, the Tribunal notified the parties and the Appellant's representative of its intention to summarily dismiss the appeal, because the appeal had no reasonable chance of success. In that same letter, the Tribunal invited the parties to provide, March 1, 2017, additional submissions explaining why the appeal had a reasonable chance of success (GD-5).

[18] The Proof of delivery of that letter specifies that the post office left, at the Appellant's address, two notices specifying where and when the letter could be picked up. The Appellant did not pick up the letter at the post office, and that letter was returned to the Tribunal on March 1, 2017. However, the Appellant's representative acknowledged receipt of the letter on February 9, 2017. Yet, at the time this decision was drafted, the Appellant had not provided any additional submissions explaining why his appeal had a reasonable chance of success.

[19] Given that the time frame for providing submissions expired on March 1, 2017, the Tribunal must render its decision without delay, in accordance with subsection 22(2) of the *Social Security Tribunal Regulations*.

PARTIES' ARGUMENTS

[20] The Appellant asserts that the decision rendered by the Commission is unfounded in fact and in law.

[21] The Commission has submitted that:

- a) Subsection 93(1) of the *Employment Insurance Regulations* stipulates that a claimant may receive special benefits if: (a) there is an interruption of earnings from employment; and (b) they have acquired, during their qualifying period, at least 600 hours of insurable employment. In this case, the Claimant's qualifying period was established as being from February 21 to June 18, 2016, pursuant to paragraph 8(1)(b)

of the Act, because a prior benefit period effective February 21, 2016, had already been established.

b) The Commission argues that the Claimant failed to show that he qualified for Employment Insurance special benefits under section 93 of the Regulations, since he had not accumulated any hours of insurable employment in his qualifying period.

c) Subsection 7(2) of the Act states that an insured person meets the requirements necessary for receiving Employment Insurance benefits if there is an interruption of earnings and if, during their qualifying period, that person held insurable employment for at least the number of hours indicated in the table in that subsection, based on the regional rate of unemployment applicable to that person. According to the table in subsection 7(2) of the Act and based on the unemployment rate of 8.2% in the region where the Claimant was living, the minimum was 595 hours. The Appellant did not accumulate any insurable hours over the course of his qualifying period and, therefore, did not show that he would have qualified for regular benefits in accordance with section 7 of the Act.

ANALYSIS

[22] Subsection 53(1) of the DESD Act states that “[t]he General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.”

[23] The Respondent recognizes that “no reasonable chance of success” is not defined in the DESD Act. However, the case law has established that an appeal has no reasonable chance of success if it is not plain and obvious on the face of the record that the appeal is bound to fail, regardless of the evidence or arguments that could be presented at a hearing (*Lessard-Gauvin v. Canada (Attorney General)*, 2013 FCA 147) ; *Sellathurai v. Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 1).

[24] The Tribunal reviewed the docket and found that, despite the evidence or arguments that could be submitted at the hearing, the appeal was bound to fail, for the reasons that follow.

[25] The evidence from the docket shows that the Appellant did not accumulate any insurable hours in the course of his qualifying period between February 21 and June 18, 2016, when he needed 600 insurable hours to qualify for benefits.

[26] The Appellant has argued, without providing more details, that the decision is unfounded in fact and in law. Yet, as the Commission has pointed out, according to the Act, the claimants must have accumulated at least the required number of insurable hours to qualify for benefits.

[27] In accordance with section 22 of the *Social Security Tribunal Regulations*, the Appellant was notified in writing of the Tribunal's intent to summarily dismiss the appeal. The Tribunal granted the Appellant a reasonable time frame in which to present submissions, but the Appellant did not send any additional submissions.

[28] The Tribunal finds that the appeal has no reasonable chance of success. The law is clear that neither the Commission, nor the Tribunal, nor the 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).

CONCLUSION

[29] The Tribunal acknowledges that subsection 53(1) of the DESDA requires the General Division to summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[30] For the reasons outlined above, the Tribunal finds that the appeal has no reasonable chance of success.

[31] The appeal is summarily dismissed.

Bernadette Syverin
Member, General Division—Employment Insurance Section