



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. J. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 104

Tribunal File Number: GE-16-4703

BETWEEN:

S. J.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Katherine Wallocha

HEARD ON: June 27, 2017

DATE OF DECISION: July 6, 2017

REASONS AND DECISION

OVERVIEW

[1] The claimant made an initial claim for Employment Insurance (EI) benefits on October 20, 2016. On October 26, 2016, the Canada Employment Insurance Commission (Commission) determined that the claimant did not have enough hours of insurable employment in order to qualify for EI benefits. The claimant requested a reconsideration of this decision, and on November 9, 2016 the Commission maintained its initial decision. The claimant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on December 15, 2016.

[2] The Tribunal must decide whether the claimant has sufficient hours of insured employment to establish a claim pursuant to section 7 of the *Employment Insurance Act* (EI Act).

[3] The hearing was held by Teleconference for the following reasons:

- a) The complexity of the issue under appeal.
- b) The fact that the claimant will be the only party in attendance.
- c) The information in the file, including the need for additional information.

[4] S. J., the claimant, did not attend the hearing scheduled for June 27, 2017. The Tribunal waited for more than a week to hear from the claimant however, the claimant did not contact the Tribunal. Information retrieved from Canada Post indicates that the Notice of Hearing was successful delivered on June 1, 2017 and signed for by the claimant.

[5] Subsection 12(1) of the *Social Security Tribunal Regulations* states that if a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received notice of the hearing.

[6] Based on the information received from Canada Post, the Tribunal is satisfied that the claimant received notice of the hearing.

[7] The Tribunal finds that the claimant has not proven that he had accumulated enough hours of insurable employment in order to qualify for EI benefits. The reasons for this decision follow.

EVIDENCE

[8] The claimant's last day of work was September 2, 2016. He applied for regular EI benefits on October 20, 2016 stating that it was unknown if he would be returning to work for this employer.

[9] The employer submitted a Record of Employment (ROE) dated October 7, 2016 indicating that the claimant began working as a security guard on May 31, 2016 and he was no longer working due to a shortage of work on September 2, 2016 accumulating 624 hours of insurable employment.

[10] The Commission provided the EI Economic Region Unemployment Rate and Benefit Table for the period of October 9, 2016 to November 5, 2016 which indicates that the unemployment rate in the claimant's area where he normally resides was 7.9% requiring that he accumulate 630 hours of insurable employment.

[11] The Commission provided the Attestation Certificate Economic Region, Hours, Rate of Unemployment which indicates that the claimant's benefit period commencement was October 9, 2016 and his qualifying period cut-off date was October 11, 2015.

[12] The Commission sent a letter dated October 26, 2016 informing the claimant that he had 624 hours of insurable employment between October 11, 2015 and October 8, 2016 however he needed 630 hours of insurable employment to qualify for EI benefits.

[13] Following the claimant's Request for Reconsideration he was contacted by the Commission and he confirmed that the address on file was his regular address but stated that while he found this employment in his area of residence, the employer provided transportation to and from Northern Alberta. He stated that his shift pattern was 14 days on and 14 days off and between shifts, the claimant confirmed that he returned to his home in Edmonton, Alberta.

[14] The claimant stated that he did not have any work between working for his former employer which ended on March 31, 2015 and his last employer which ended on September 2, 2016. He confirmed that he had not had any work since his employment ended on September 2, 2016.

[15] The claimant provided a letter from his employer dated May 2016 indicating that he would be deployed to Northern Alberta on May 31, 2016.

SUBMISSIONS

[16] The claimant submitted the following:

- a) He worked the total 624 hours in Northern Alberta where the unemployment rate is more than 12% requiring less than 600 insurable hours of employment to qualify. He requested that his claim for EI benefits be calculated using the unemployment rate of Northern Alberta and that he be provided with EI benefits accordingly.
- b) He became unemployed due to a shortage of work in Northern Alberta and he required less hours in that region to qualify. He was denied EI benefits because he needed 630 hours of insurable employment but only had 624 insurable hours. His survival is very difficult.

[17] The Commission submitted the following:

- a) The claimant's qualifying period was established from October 11, 2015 to October 8, 2016 pursuant to paragraph 8(1)(a) of the EI Act. The claimant argued that the unemployment rate in his region (Edmonton, Alberta) requires that he have more insurable hours to qualify for EI benefits and he wants his claim to be considered based on the area where he worked and accumulated his insurable hours (Northern Alberta) as he would have sufficient hours to qualify.
- b) However, according to the table in subsection 7(2) of the EI Act, the minimum requirement for the claimant to qualify to receive EI benefits was 630 hours which is based on the regional rate of unemployment (7.9%) at the time he filed his claim.

- c) The claimant clearly advised on his application for benefits that his ordinary residence is Edmonton, Alberta therefore; his claim has been established using the correct regional rate of unemployment at the time he filed his claim. Even though the expression "ordinarily resident" is not defined in the legislation, in taking the meaning of the word "resident," it refers to the place in which a claimant has settled and in this case it is Edmonton, Alberta and not Fort McMurray, Alberta.
- d) Therefore, according to the Table in subsection 7(2) of the EI Act, the minimum requirement for the claimant to qualify to receive EI benefits was 630 insured hours of employment based on the rate of unemployment of 7.9% in the region where he resided. However, the evidence shows that the claimant had accumulated only 624 hours of insurable employment in his qualifying period.
- e) Consequently, the claimant failed to demonstrate that he qualified to receive EI benefits pursuant to subsection 7(2) of the EI Act.

ANALYSIS

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

[19] In order to establish a benefit period, the claimant must have accumulated the required number of insurable hours of employment in the applicable qualifying period (*Canada (Attorney General) v. Terrion*, 2013 FCA 97).

[20] The Tribunal accepts that the claimant lives in Edmonton, Alberta but found work in Northern Alberta accumulating 624 hours of insurable employment during his qualifying period from October 11, 2015 to October 8, 2016. The Tribunal further accepts the Commission's evidence that the claimant required 630 hours of insurable employment in order to qualify for EI benefits.

[21] The Federal Court of Appeal has affirmed that neither the Commission nor the Tribunal or Court has authority to exempt a claimant from the qualifying provisions of the Act, no matter how sympathetic or unusual the circumstances (*Canada (Attorney General) v. Lévesque*, 2001 FCA 304).

[22] The Tribunal finds that the claimant has not accumulated enough hours of insurable employment in order to qualify for EI benefits under subsection 7(2) of the EI Act because he had accumulated 624 hours of insurable employment but required 630 hours. Although the Tribunal recognizes that the claimant became unemployed through no fault of his own and his survival is very difficult, the requirements of the EI Act are clear and do not provide any exceptions or allow for any discretion.

[23] The claimant argued that he worked up north and if the regional rate of unemployment from Northern Alberta were used instead of from Edmonton, Alberta, he would be able to qualify for EI benefits.

[24] However, paragraph 17(1.1)(a) of the Regulations states that the regional rate of unemployment for the purposes of section 7 of the EI Act is the rate produced for the region in which the claimant was, during the week referred to in subsection 10(1) of the EI Act, ordinarily resident. Subsection 10(1) of the EI Act states that a benefit period begins on the Sunday of the week in which the interruption of earnings occurred or the Sunday of the week in which the initial claim for benefits is made.

[25] CUB 64683 established that the test of where one is “ordinarily resident” involves a consideration of both subjective and objective facts. This term means the residence that is the most important for the claimant because he habitually, regularly and consistently chooses it.

[26] The Tribunal respects the claimant’s argument that he worked up north however, according to the EI Act and its case law, the regional rate of unemployment that must be used in the calculation of his entitlement to EI benefits is the rate where the claimant is ordinarily resident. While the claimant may have worked up north during periods of employment, the Tribunal accepts the claimant’s statements that on his days off he returned to his home in Edmonton. Therefore, the Tribunal can only conclude that the Edmonton, Alberta area is where the claimant is ordinarily resident.

[27] Therefore, the Tribunal concludes that the claimant does not have sufficient hours of insured employment to establish a claim for EI benefits pursuant to subsection 7(2) of the EI Act.

CONCLUSION

[28] The appeal is dismissed.

K. Wallocha

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.