Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *T. L. v Canada Employment Insurance Commission*, 2018 SST 1407

Tribunal File Number: GE-17-2875

BETWEEN:

T. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

HEARD ON: February 27, 2018

DATE OF DECISION: March 13, 2018

Canada

REASONS AND DECISION

OVERVIEW

[1] The Appellant made an initial claim for employment insurance benefits and established a benefit period. The Canada Employment Insurance Commission (Commission) learned that the Appellant had voluntarily left his most recent employment and that he had not reported this employment on his initial application. The Commission determined that the Appellant was disqualified from receiving benefits because he had voluntarily left his employment without just cause. Because the Appellant had received benefits, and because the Commission retroactively imposed the disqualification, the decision resulted in an overpayment. The Commission also determined that the Appellant had knowingly made a false statement when he failed to report his most recent employment on his initial application and imposed a monetary penalty. The Appellant requested a reconsideration. The Commission maintained its decision that the Appellant was disqualified from receiving benefits, but determined that the circumstances did not merit a monetary penalty and reduced the sanction to a warning letter. The Appellant appealed the reconsideration decisions to the Social Security Tribunal (Tribunal).

[2] The Tribunal must decide whether the Appellant is disqualified from receiving benefits pursuant to section 30 of the *Employment Insurance Act* (Act) for voluntarily leaving his employment without just cause. The Tribunal must also determine whether the Appellant knowingly made a false or misleading statement when he failed to report his most recent employment on his initial application, and if so, whether the Commission judicially exercised its discretion when it imposed a non-monetary penalty in the form of a warning.

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

a) The information in the file, including the need for additional information.

b) The fact that an interpreter will be present.

c) The fact that the Appellant or other parties are represented.

d) The form of hearing respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

[4] The following people attended the hearing:

a) The Appellant, T. L.;

b) The Appellant's spouse, L. L.;

c) The Appellant's representative, Austin Nguyen;

d) An interpreter, John Philip Posadas.

[5] The Tribunal finds that the Appellant has failed to prove that he had just cause for voluntarily leaving his employment. The Tribunal also finds that the Appellant did not knowingly make a false statement when he failed to report his most recent employment on his initial application. The reasons for this decision follow.

PRELMINARY ISSUES

[6] During the hearing, the Appellant appeared to have comprehension problems. He had difficulty responding to questions, and the Tribunal had to repeat questions several times. The Tribunal was concerned about the quality of the interpretation and so the Tribunal asked the Appellant if he could understand the interpreter. The Appellant stated that he did understand the interpreter, and so the Tribunal continued with the hearing. Neither the representative nor the Appellant's spouse raised concerns about the interpretation.

EVIDENCE

[7] The Appellant submitted an initial claim for employment insurance regular benefits on July 25, 2016. On his application, he stated that he had completed college. He stated that he worked for Employer W and that his last day of work was May 20, 2016. He answered "no" to a question asking if he had any other periods of employment in the last 52 weeks, and stated that

he did not have any assistance in completing his employment insurance application (GD3B-4 to GD3B-14).

[8] The Commission established a benefit period commencing July 24, 2016 and the Appellant collected 35 weeks of benefits (GD3B-17 to GD3B-18).

[9] In February 2017, the Commission received a Record of Employment (ROE) from Employer M stating that the Appellant worked from May 21, 2016 to July 22, 2016 and that he had quit. According to the ROE, the Appellant was paid biweekly. The ROE provided the following details about the Appellant's hours:

a) In the pay period ending May 21, 2016, he worked 7.5 hours.

b) In the pay period ending June 4, 2016, he worked 74.45 hours.

c) In the pay period ending June 18, 2016, he worked 75.05 hours.

d) In the pay period ending July 2, 2016, he worked 79.35 hours.

e) In the pay period ending July 16, 2016, he worked 75 hours.

f) In his final pay period, ending July 30, 2016, he worked 22 hours (GD3B-15).

[10] The Commission contacted Employer M. Employer M stated that the Appellant had worked 32 hours a week as a janitor. The employer stated that the Appellant stopped reporting to work and did not give notice that he was quitting. The employer stated that the Appellant quit because he wanted to travel or go to school (GD3B-19).

[11] The Commission spoke to the Appellant. He stated that he used to be a maintenance person with Employer W, but they laid him off and contracted his job out to Employer M. He stated that he started working with Employer M, but quit this job because he had to work graveyard shifts and it was only part-time. He stated that he did not have the seniority for full-time work or daytime shifts and that the permanent, full-time employees got better shifts. He stated that he found it too hard to work graveyard shifts and so he stopped reporting to work. He stated that he did not speak to the employer about his concerns because the workplace culture

was that you quit if you did not like the conditions. He stated that he did not quit to travel or go to school. He stated that he forgot to report Employer M on his initial application (GD3B-25).

[12] The Appellant also provided written details about his reasons for leaving the job. He stated that he had only been with the company for two months and did not have his "provision." He stated that he was sick of the schedule. He stated that he had not previously mentioned this employment because he did not yet have a "provision" (GD3B-26).

[13] In another letter, the Appellant stated that he had worked full-time for Employer W for more than six years. He restated that Employer M took over the maintenance contract with Employer W and so he tried working for Employer M. He stated that Employer M reduced his hours to part-time, 1:00 a.m. to 7:00 a.m. He stated that he stopped reporting to work. He stated that he had multiple health problems, including diabetes, and the job made him sick. He stated that he did not previously mention the work with Employer M because he did not have his "provision" yet (GD3B-28).

[14] The Appellant submitted a doctor's note, dated May 17, 2017, stating that he was receiving treatment for diabetes. The doctor also noted that the Appellant was looking for work and requested that he be allowed more time to continue looking for work (GD3B-29).

[15] The Commission contacted Employer M. Employer M stated that they took over the cleaning contract for Employer W and so inherited the Appellant as an employee. The employer stated that the Appellant had worked the graveyard shift with Employer W and nothing about his schedule changed when he started with Employer M. The employer stated that the Appellant worked from 11:00 p.m. to 7:00 a.m. The employer stated that they did not have alternate shifts because the job was cleaning retail stores after-hours. The employer stated that the Appellant never asked for a modified work schedule or any other accommodations (GD3B-33).

[16] The Commission determined that the Appellant was disqualified from receiving benefits as of July 24, 2016 because he had voluntarily left his job with Employer M without just cause (GD3B-36 to GD3B-38). The Commission also determined that the Appellant had knowingly made one false statement in relation to a claim for benefits because he had failed to report his job with Employer M on his initial application. The Commission imposed a monetary penalty of

$1263, the maximum permitted by the Act (GD3B-34). The Commission also considered that the Appellant had not identified any mitigating circumstances and so issued a notice of serious violation (GD3B-35).

[17] Because the Appellant had previously received benefits, the decision resulted in an overpayment (GD3B-39).

[18] The Appellant requested a reconsideration. On his reconsideration request, he stated that he left his job for medical reasons (GD3B-40). The Appellant submitted a doctor's note, dated June 22, 2017, stating that he had been diagnosed with hepatitis B (GD3B-43).

[19] The Commission contacted the Appellant. He stated that:

a) He had only worked for Employer M for two months. He did not speak to the employer before he left because he was not "provisioned" yet.

b) His hours with Employer W were 11:00 p.m. to 7:00 a.m., but it was better with Employer W because he could sleep more. Employer M reduced him to part-time and changed his hours to 1:00 a.m. to 7:00 a.m.

c) He saw his doctor before he quit. His doctor did not advise him to leave the job but he left anyways because he was sick too much (GD3B-44 to GD3B-46).

[20] The Commission maintained its decision that the Appellant had voluntarily left his employment without just cause and that he had knowingly made a false statement on his initial application (GD3B-51 to GD3B-52). However, the Commission considered the size of the overpayment, the fact that the Appellant previously earned slightly more than minimum wage, the fact that the Appellant did not speak English as a first language, and his medical evidence. The Commission determined that the circumstances did not merit a monetary penalty and so reduced the penalty to a non-monetary warning letter. The Commission also removed the notice of violation (GD3B-48 to GD3B49, GD3B-50).

[21] The Appellant appealed to the Tribunal. On his notice of appeal, he stated that he tried to work with Employer M, but they changed his hours to part-time and changed his schedule to graveyard shifts. He stated that he got sick because of the graveyard shifts and so left the job. He

stated that he did not mention the job on his application because he was not "provisionary." He stated that he had worked for Employer W for more than six years (GD2-3).

[22] At the hearing, the Appellant stated that he received about two months' notice that Employer M would be taking over the cleaning contract from Employer W.

[23] The Appellant stated that he worked from 11:00 p.m. to 7:00 a.m. with Employer W and worked 38 hours a week. He stated that the first month with Employer M was under the same working conditions. He stated that, in the second month, Employer M reduced his hours to six hours a shift and reduced the number of cleaning staff, but still expected the same amount of work. He stated that these changes put more pressure on him.

[24] The Appellant stated that he saw a doctor about his health. The Tribunal asked if he saw the doctor before he quit his job, but the Appellant did not appear to understand the question. He stated that he saw a doctor and referred to the medical notes he submitted to the Commission. He stated that his doctor told him he could not do strenuous work anymore. The Tribunal asked again if the Appellant saw a doctor before he quit, and the Appellant stated that he saw a doctor in July 2016. He stated that he could not remember why he never provided the Commission with a note from his doctor verifying that he had to quit his job.

[25] The Appellant stated that he did not speak to his employer about his health problems because he was ashamed of the stigma of having hepatitis. He stated that he did not give any reason for quitting to his boss. He stated that he did not look for other work before he quit because he was too sick to work.

[26] The Appellant stated that his 18 year old son helped him complete his initial application. He stated that he did not read English well and that they completed the application at home. He stated that he did not remember the question asking if he had any additional periods of employment. He stated that his son did not read out each of the questions. He stated that he did not remember the question asking if anyone helped him complete the application.

[27] He stated that he did not report his work with Employer M on his application because he was still under probation.

SUBMISSIONS

[28] The Appellant submitted that:

a) He worked graveyard shifts with Employer W for six years even though he had hepatitis and diabetes. However, Employer W allowed him to take breaks to rest and take his medication. When he started working for Employer M, they promised the same working conditions, but after a month, they changed his start time, reduced his hours, and expected him to complete more work in a shorter amount of time. He no longer had time to rest and so his health deteriorated.

b) He could not explain why the ROE did not show the reduction in hours.

c) He passed out in the bathroom at work and so he knew that he could not continue in the job. He worried that his health would deteriorate to the point that he would die, so he had no reasonable alternative but to leave his employment. His doctor told him that he could no longer do any strenuous work.

d) He did not speak to his employer about his health problems because he was ashamed of the stigma associated with hepatitis. He did not look for other work before he quit because his poor health made it difficult to find work.

e) He did not knowingly make a false statement when he failed to report Employer M on his initial application. He did not speak English well. The application was not simple and he needed his son’s help with it. Furthermore, the Appellant was seriously ill.

[29] The Commission submitted that:

a) Section 30 of the Act provides for an indefinite disqualification when a claimant voluntarily leaves employment without just cause. The test to be applied, having regard to all the circumstances, is whether the claimant had a reasonable alternative to leaving his employment when he did.

b) In this case, the Appellant worked graveyard shifts with Employer W and by his own admission, continued to work graveyard shifts with Employer M. Furthermore, the ROE

from Employer M states that he worked an average of 37.5 hours a week, so there is no evidence that his hours decreased with Employer M.

c) While he may have seen a doctor before he quit, he has not submitted any medical evidence stating that his doctor advised him to quit. The only doctor's notes on file are from a year after his last day of work and do not state that he had to quit his job.

d) There were reasonable alternatives to quitting. He could have continued working until he found another job. He could have sought advice from his doctor or he could have asked for a medical leave of absence from his employer.

e) The Appellant knowingly made a false statement on his application when he failed to report his employment with Employer M. He submitted his application on July 25, 2016, and so he would have known that he had just stopped working for Employer M on July 22, 2016. Considering that he had a college education and he did not have any assistance with the application, he had subjective knowledge that his statement on the application was false.

f) The Commission judicially exercised its discretion when it imposed a non-monetary penalty in the form of a warning. It also judicially exercised its discretion when it determined that the circumstances did not merit a notice of violation. The Commission considered the size of the overpayment, the Appellant's financial circumstances, and his health conditions.

ANALYSIS

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

Did the Appellant voluntarily leave his employment with Employer M?

[31] Employer M stated, on the ROE and in conversation with the Commission, that the Appellant quit. The employer stated that the Appellant stopped reporting to work. The Appellant has also consistently stated that he quit this job. In particular, the Tribunal notes that the Appellant submitted a letter to the Commission stating that he simply stopped reporting to work.

[32] Given that the Appellant does not appear to dispute the employer's statement that he quit, the Tribunal is satisfied that the Appellant voluntarily left his employment.

Did the Appellant have reasonable alternatives to leaving his employment with Employer M, having regard to the circumstances?

[33] The Tribunal finds that the Appellant has failed to prove that he had no reasonable alternative but to voluntarily leave his employment with Employer M.

[34] The Appellant stated that he quit his job with Employer M because the employer changed his usual start time from 11:00 p.m. to 1:00 a.m. He stated that Employer M reduced his hours to part-time.

[35] The Tribunal notes that Employer M stated that the Appellant's hours of work remained the same and that his start time was always 11:00 p.m. The Tribunal also notes that, according to the ROE, the Appellant generally worked 75 hours over a biweekly pay period and that his hours did not notably change over his employment tenure. The Tribunal asked the Appellant to explain why the hours on the ROE did not change, and the Appellant was unable to provide an explanation.

[36] The Tribunal finds that the Appellant has failed to provide a satisfactory explanation of why the hours reported on the ROE indicate that he worked full-time, and so the Tribunal finds that the Appellant is not credible when he states that Employer M reduced his hours. Given the Appellant's lack of credibility on the number of hours he worked for Employer M, the Tribunal finds, on a balance of probabilities, that Employer M's statement that the Appellant's start time remained the same is credible.

[37] Accordingly, the Tribunal finds that the Appellant has failed to submit convincing evidence demonstrating that his schedule changed while he was working for Employer M.

[38] The Appellant also stated that he quit his job for health reasons. He stated that Employer M did not give him enough time to rest and so his health deteriorated significantly in his two months of employment. The Appellant submitted doctors' notes stating that he had hepatitis and diabetes.

[39] The Tribunal accepts that the Appellant has diabetes and hepatitis. The Tribunal also accepts that the Appellant's health conditions may have required him to take breaks while working.

[40] However, the Tribunal notes that the Appellant has not submitted any doctor's notes suggesting that his doctor advised him to quit. Indeed, the Tribunal notes that one of the notes refers to the Appellant's job search and states that he needs more time to keep looking for work. The Tribunal finds that it is implausible that a doctor would advise a patient to stop working for health reasons, but also prepare a note stating that the patient needed more time to look for work. The Tribunal also notes that the Appellant initially stated to the Commission that his doctor did not advise him to quit. Accordingly, the Tribunal finds, on a balance of probabilities, that the Appellant did not have a doctor's recommendation to quit.

[41] More importantly, however, the Tribunal finds that the Appellant failed to speak to his employer to seek accommodations for his health conditions. The Tribunal accepts that the Appellant may have needed breaks during work because of his medical conditions. However, the Appellant has not submitted any evidence suggesting that he spoke to his employer to request any adjustments to his working conditions. In fact, the Tribunal notes that the Appellant testified that he did not speak to his employer about his health at all because he was ashamed of the stigma associated with hepatitis.

[42] Furthermore, the Tribunal notes that the Appellant stated that he did not look for other work before he quit, and that he simply stopped reporting to work.

[43] The Tribunal refers to *Canada (Attorney General) v. Laughland*, 2003 FCA 129, where the Federal Court of Appeal held that the question to consider is not whether it was reasonable for the Appellant to leave his employment, but rather, whether "leaving the employment was the only reasonable course of action open to him, having regard to all the circumstances." The Tribunal also refers to *Canada (Attorney General) v. Hernandez*, 2007 FCA 320 where the Federal Court of Appeal held that there was no just cause when the claimant did not discuss his working conditions with the employer before he quit.

[44] In this case, the Tribunal accepts that the Appellant had medical conditions and that he may have needed accommodation. However, the Tribunal finds that a reasonable alternative to quitting would have been to first speak to his employer to request some accommodation. Alternatively, the Appellant could have requested sick leave, or he could have sought other work before quitting. However, by simply failing to report to work without first speaking to the employer about the working conditions, the Tribunal finds that the Appellant made no effort to consider reasonable alternatives before he quit.

[45] As a result, the Tribunal finds that the Appellant has failed to prove that he had just cause for voluntarily leaving his employment.

Is the Appellant subject to an indefinite disqualification?

[46] Having found that the Appellant has failed to prove that he had just cause for voluntarily leaving his employment, the Tribunal finds that section 30 of the Act requires an indefinite disqualification from receiving benefits.

[47] The Tribunal acknowledges that, as the Appellant previously received benefits, the indefinite disqualification results in a substantial overpayment. However, the Tribunal finds that the provisions of the Act are clear, and so the Tribunal finds that the Appellant must be disqualified from receiving benefits.

Did the Appellant knowingly make a false statement on his initial claim when he failed to report his employment with Employer M?

[48] The Tribunal finds, on a balance of probabilities, that the Appellant did not knowingly make a false statement on his initial claim for benefits when he failed to report his employment with Employer M on his application.

[49] The Tribunal acknowledges that, on the application, the Appellant stated that he had a college education and that he did not have any assistance when he completed the application. The Tribunal also acknowledges that the Appellant stated that he did not report his employment with Employer M because he was still in his probationary period when he quit. Furthermore, the

Tribunal acknowledges that the question on the application asking if he had any other periods of employment in the past 52 weeks is a simple and unambiguous question.

[50] However, the Tribunal also notes that, during the hearing, the Appellant testified that his son helped him with the application and that his son did not read out all of the questions. He testified that he did not remember the question on the application asking if he had any other periods of employment in the past 52 weeks. The Tribunal acknowledges that the Appellant only noted his son's help with the application during the hearing; he did not provide this explanation to the Commission. However, the Tribunal notes that the Appellant's first language is not English and so the Tribunal finds that it is plausible that he did not complete the application by himself. Accordingly, the Tribunal accepts that the Appellant likely did not complete the application by himself.

[51] Furthermore, the Tribunal notes that, even with the assistance of an interpreter during the hearing, the Appellant appeared to have difficulty understanding simple questions. He had difficulty responding to the Tribunal's questions, and often provided answers that were inconsistent with the questions asked.

[52] The Federal Court of Appeal has held that, in order for a false statement to be knowingly made, the claimant must have subjective knowledge that he is providing false information (*Mootoo v. Canada (Minister of Human Resources Development)*, 2003 FCA 206).

[53] The Tribunal gives significant weight to the Appellant's demeanour during the hearing. In particular, the Tribunal considers the Appellant's evident difficulty in understanding and responding to questions, even with the assistance of a representative and an interpreter. As a result, the Tribunal finds that it is credible that the Appellant did not read or understand the question on the application asking if he had additional periods of employment. The Tribunal also considers the fact that English is not the Appellant's first language and accepts that he likely had help from his son when he completed the application.

[54] Given these factors, the Tribunal finds, on a balance of probabilities, that the Appellant did not have subjective knowledge that he had made a false statement when he failed to report his employment with Employer M on his initial application.

[55] As a result, the Tribunal finds that the warning letter is not merited in this case.

CONCLUSION

[56] On the issue of voluntary leaving, the appeal is dismissed. On the issue of false statements, the appeal is allowed.

Amanda Pezzutto
Member, General Division - Employment Insurance Section

ANNEX

THE LAW

Employment Insurance Act

29 For the purposes of sections 30 to 33,

(a) *employment* refers to any employment of the claimant within their qualifying period or their benefit period;

(b) loss of employment includes a suspension from employment, but does not include loss of, or suspension from, employment on account of membership in, or lawful activity connected with, an association, organization or union of workers;

(b.1) voluntarily leaving an employment includes

(i) the refusal of employment offered as an alternative to an anticipated loss of employment, in which case the voluntary leaving occurs when the loss of employment occurs,

(ii) the refusal to resume an employment, in which case the voluntary leaving occurs when the employment is supposed to be resumed, and

(iii) the refusal to continue in an employment after the work, undertaking or business of the employer is transferred to another employer, in which case the voluntary leaving occurs when the work, undertaking or business is transferred; and

(c) just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following:

(i) sexual or other harassment,

(ii) obligation to accompany a spouse, common-law partner or dependent child to another residence,

(iii) discrimination on a prohibited ground of discrimination within the meaning of the *Canadian Human Rights Act*,

(iv) working conditions that constitute a danger to health or safety,

(v) obligation to care for a child or a member of the immediate family,

(vi) reasonable assurance of another employment in the immediate future,

(vii) significant modification of terms and conditions respecting wages or salary,

(viii) excessive overtime work or refusal to pay for overtime work,

(ix) significant changes in work duties,

(x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism,

(xi) practices of an employer that are contrary to law,

(xii) discrimination with regard to employment because of membership in an association, organization or union of workers,

(xiii) undue pressure by an employer on the claimant to leave their employment, and

(xiv) any other reasonable circumstances that are prescribed.

30 (1) A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless

(a) the claimant has, since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 or 7.1 to qualify to receive benefits; or

(b) the claimant is disentitled under sections 31 to 33 in relation to the employment.

(2) The disqualification is for each week of the claimant's benefit period following the waiting period and, for greater certainty, the length of the disqualification is not affected by any subsequent loss of employment by the claimant during the benefit period.

(3) If the event giving rise to the disqualification occurs during a benefit period of the claimant, the disqualification does not include any week in that benefit period before the week in which the event occurs.

(4) Notwithstanding subsection (6), the disqualification is suspended during any week for which the claimant is otherwise entitled to special benefits.

(5) If a claimant who has lost or left an employment as described in subsection (1) makes an initial claim for benefits, the following hours may not be used to qualify under section 7 or 7.1 to receive benefits:

(a) hours of insurable employment from that or any other employment before the employment was lost or left; and

(b) hours of insurable employment in any employment that the claimant subsequently loses or leaves, as described in subsection (1).

(6) No hours of insurable employment in any employment that a claimant loses or leaves, as described in subsection (1), may be used for the purpose of determining the maximum number of weeks of benefits under subsection 12(2) or the claimant's rate of weekly benefits under section 14.

(7) For greater certainty, but subject to paragraph (1)(a), a claimant may be disqualified under subsection (1) even if the claimant's last employment before their claim for benefits was not lost or left as described in that subsection and regardless of whether their claim is an initial claim for benefits.

38 (1) The Commission may impose on a claimant, or any other person acting for a claimant, a penalty for each of the following acts or omissions if the Commission becomes aware of facts that in its opinion establish that the claimant or other person has

> **(a)** in relation to a claim for benefits, made a representation that the claimant or other person knew was false or misleading;
>
> **(b)** being required under this Act or the regulations to provide information, provided information or made a representation that the claimant or other person knew was false or misleading;
>
> **(c)** knowingly failed to declare to the Commission all or some of the claimant's earnings for a period determined under the regulations for which the claimant claimed benefits;
>
> **(d)** made a claim or declaration that the claimant or other person knew was false or misleading because of the non-disclosure of facts;
>
> **(e)** being the payee of a special warrant, knowingly negotiated or attempted to negotiate it for benefits to which the claimant was not entitled;
>
> **(f)** knowingly failed to return a special warrant or the amount of the warrant or any excess amount, as required by section 44;
>
> **(g)** imported or exported a document issued by the Commission, or had it imported or exported, for the purpose of defrauding or deceiving the Commission; or
>
> **(h)** participated in, assented to or acquiesced in an act or omission mentioned in paragraphs (a) to (g).

(2) The Commission may set the amount of the penalty for each act or omission at not more than

> **(a)** three times the claimant's rate of weekly benefits;
>
> **(b)** if the penalty is imposed under paragraph (1)(c),
>
> > **(i)** three times the amount of the deduction from the claimant's benefits under subsection 19(3), and

(ii) three times the benefits that would have been paid to the claimant for the period mentioned in that paragraph if the deduction had not been made under subsection 19(3) or the claimant had not been disentitled or disqualified from receiving benefits; or

(c) three times the maximum rate of weekly benefits in effect when the act or omission occurred, if no benefit period was established.

(3) For greater certainty, weeks of regular benefits that are repaid as a result of an act or omission mentioned in subsection (1) are deemed to be weeks of regular benefits paid for the purposes of the application of subsection 145(2).

7.1 (1) The number of hours that an insured person requires under section 7 to qualify for benefits is increased to the number set out in the following table in relation to the applicable regional rate of unemployment if the insured person accumulates one or more violations in the 260 weeks before making their initial claim for benefit.

TABLE / *TABLEAU*

Regional Rate of Unemployment / *Taux régional de chômage*	*Violation*			
	minor / *mineure*	serious / *grave*	very serious / *très grave*	subsequent / *subséquente*
6% and under/ *6 % et moins*	875	1050	1225	1400
more than 6% but not more than 7%/ *plus de 6 % mais au plus 7 %*	831	998	1164	1330
more than 7% but not more than 8%/ *plus de 7 % mais au plus 8 %*	788	945	1103	1260
more than 8% but not more than 9%/ *plus de 8 % mais au plus 9 %*	744	893	1041	1190
more than 9% but not more than 10%/ *plus de 9 % mais au plus 10 %*	700	840	980	1120
more than 10% but not more than 11%/ *plus de 10 % mais au plus 11 %*	656	788	919	1050
more than 11% but not more than 12%/ *plus de 11 % mais au plus 12 %*	613	735	858	980
more than 12% but not more than 13%/ *plus de 12 % mais au plus 13 %*	569	683	796	910
more than 13%/ *plus de 13 %*	525	630	735	840

(2) [Repealed, 2016, c. 7, s. 210]

(2.1) A violation accumulated by an individual under section 152.07 is deemed to be a violation accumulated by the individual under this section on the day on which the notice of violation was given to the individual.

(3) A violation may not be taken into account under subsection (1) in more than two initial claims for benefits under this Act by an individual if the individual who accumulated the violation qualified for benefits in each of those two initial claims, taking into account subsection (1), subparagraph 152.07(1)(d)(ii) or regulations made under Part VIII, as the case may be.

(4) An insured person accumulates a violation if in any of the following circumstances the Commission issues a notice of violation to the person:

(a) one or more penalties are imposed on the person under section 38, 39, 41.1 or 65.1, as a result of acts or omissions mentioned in section 38, 39 or 65.1;

(b) the person is found guilty of one or more offences under section 135 or 136 as a result of acts or omissions mentioned in those sections; or

(c) the person is found guilty of one or more offences under the *Criminal Code* as a result of acts or omissions relating to the application of this Act.

(5) Except for violations for which a warning was imposed, each violation is classified as a minor, serious, very serious or subsequent violation as follows:

(a) if the value of the violation is

(i) less than $1,000, it is a minor violation,

(ii) $1,000 or more, but less than $5,000, it is a serious violation, or

(iii) $5,000 or more, it is a very serious violation; and

(b) if the notice of violation is issued within 260 weeks after the person accumulates another violation, it is a subsequent violation, even if the acts or omissions on which it is based occurred before the person accumulated the other violation.

(6) The value of a violation is the total of

(a) the amount of the overpayment of benefits resulting from the acts or omissions on which the violation is based, and

(b) if the claimant is disqualified or disentitled from receiving benefits, or the act or omission on which the violation is based relates to qualification requirements under section 7, the amount determined, subject to subsection (7), by multiplying the claimant's weekly rate of benefit by the average number of weeks of regular benefits, as determined under the regulations.

(7) The maximum amount to be determined under paragraph (6)(b) is the amount of benefits that could have been paid to the claimant if the claimant had not been disentitled or disqualified or had met the qualification requirements under section 7.