



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. H. v. Canada Employment Insurance Commission*, 2018 SST 319

Tribunal File Number: GE-18-105

BETWEEN:

C. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Candace Salmon

HEARD ON: March 15, 2018

DATE OF DECISION: March 27, 2018

DECISION

[1] The appeal is dismissed as the Appellant did not have sufficient hours of insurable employment in her qualifying period to establish a benefit period.

OVERVIEW

[2] The Appellant was employed on a probationary basis, when her employment was terminated by the employer without cause. The Appellant applied for Employment Insurance (EI) regular benefits, and the Canada Employment Insurance Commission (Respondent) subsequently informed her that she did not have enough hours of insurable employment accumulated to qualify for regular or special benefits. The Appellant sought Reconsideration, and the decision was upheld. The Tribunal must decide whether the Appellant had sufficient hours of insurable employment to establish a benefit period and to qualify for EI benefits.

ISSUE

[3] Does the Appellant have enough hours of insurable employment in her qualifying period to establish a benefit period?

ANALYSIS

[4] Employment insurance benefits will be paid to those insured persons who are qualified to receive them (*Employment Insurance Act*, s. 7(1)) (Act). An insured person qualifies if there has been an interruption of earnings from employment and if the individual has, during their qualifying period, at least the minimum number of hours of insurable employment (Act, s. 7(2)). The hours required vary depending on the regional rate of unemployment.

[5] The Appellant's earnings were interrupted. She was employed from May 23, 2017 until July 20, 2017, when her employment was terminated. A Record of Employment (ROE) was filed showing the Appellant was paid until August 3, 2017, an additional 2 weeks of pay after the last day worked. The first element of the test is met (Act, para. 7(2)(a)).

[6] The Appellant does not have sufficient hours of insurable employment in her qualifying period, between October 30, 2016 and October 28, 2017, to establish a regular or sickness EI

benefit period. The ROE shows the Appellant had 392 hours of insurable employment in her qualifying period. At the hearing, the Appellant agreed that the start and end dates of her employment were correct as listed on the ROE, and agreed with the number of hours of insurable employment, being 392.

[7] The minimum number of hours of insurable employment is determined by the regional rate of unemployment. At the relevant time, the Appellant resided in the X-X-X X region and the unemployment rate for the region was 5.9%. Therefore, the Appellant needed at least 700 hours of insurable employment during the qualifying period to establish a benefit period (para 7(2)(b), Act). Based on the Act, the minimum number of hours of insurable employment is derived from the regional rate of unemployment that applies to the insured person. Therefore, she does not have sufficient hours to establish the benefit period.

[8] The Appellant admitted that she did not obtain sufficient hours of insurable employment because her employment was terminated before she worked enough to meet the requirements. She argued she was illegally fired and provided documents that showed the matter is currently before the provincial human rights commission. Though the Appellant recounted a number of problems with her working environment and the termination process, it is not for this Tribunal to make determinations on whether the dismissal was wrongful. Courts have confirmed the test in the Act, whether a claimant has sufficient hours of insurable employment during the qualifying period to establish a benefit period, and stated that a worker's eligibility for employment insurance benefits is determined by reference to the number of hours of insurable employment the worker accrued during the applicable qualifying period (*Canada (Attorney General) v. Terrion*, 2013 FCA 97).

[9] Courts have also dealt with cases where a claimant was short only an hour from having enough hours of insurable employment to establish a benefit period, and found that the claimant could not qualify as the requirement of having a certain number of hours does not allow for “any discrepancy and provides no discretion” (*Canada (Attorney General) v. Levesque*, 2001 FCA 304). In these cases, the Tribunal has no discretion to consider other factors aside from those outlined in the Act—the interruption of earnings and the hours of insurable employment in the qualifying period.

CONCLUSION

[10] The appeal is dismissed because the Appellant does not have sufficient hours of insurable employment to qualify for EI benefits.

Candace R. Salmon

Member, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. H., Appellant

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.