



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. M. v. Canada Employment Insurance Commission*, 2018 SST 337

Tribunal File Number: GE-17-3664

BETWEEN:

S. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Candace R. Salmon

HEARD ON: March 22, 2018

DATE OF DECISION: April 11, 2018

DECISION

[1] The appeal is dismissed because the Appellant did not have sufficient hours of insurable employment in his qualifying period to establish an Employment Insurance (EI) benefit period and the corresponding overpayment was lawfully assessed.

OVERVIEW

[2] The Appellant was a university student at the time he applied for EI benefits, working for the summer at a temporary full time job. He applied for EI benefits at the end of his contract term, but had insufficient hours of insurable employment to qualify. An error was made in the file when the Canada Employment Insurance Commission (Respondent) created an interim Record of Employment (ROE) and subsequently received the actual ROE and omitted to delete the interim document. This resulted in doubling the amount of hours of insurable employment from what the Appellant actually obtained, and caused his initial claim to be allowed and EI benefits paid from September 2016-April 2017. The Appellant was notified in September 2017 that he should not have qualified and was subsequently advised of an overpayment of approximately \$12,000.00. On reconsideration the Respondent upheld its decision on the overpayment, though it has subsequently reduced the amount to approximately \$9,000.00. The Appellant seeks a decision overturning the Respondent's assessment of an overpayment as it was not his fault nor due to his error that he was paid benefits to which he was not entitled.

ISSUES

[3] Did the Appellant qualify for EI benefits?

[4] Does the Appellant have to repay the regular benefits to which he was not entitled?

ANALYSIS

[5] Employment insurance benefits will be paid to those insured persons who are qualified to receive them (s. 7(1), *Employment Insurance Act* (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 (s. 7(2), Act). The hours required vary depending on the regional rate of unemployment. Claimants for EI

benefits have the burden of proving their entitlement (*Canada (Attorney General) v. Terrion*, 2013 FCA 97). The term “burden” is used to describe which party must provide sufficient proof of its position to overcome the legal test. The burden of proof in this case is a balance of probabilities, which means it is “more likely than not” that the claimant is entitled to benefits.

Issue #1 – Did the Appellant qualify for EI benefits?

[6] 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 region and the unemployment rate for the region was 15.5%. Therefore, the Appellant needed at least 420 hours of insurable employment during the qualifying period to establish a benefit period (para 7(2)(b), Act).

[7] The Appellant’s earnings were interrupted. He was employed on a contract from June 14, 2016-August 26, 2016 through part of a government program for students. The Appellant testified that he requested a Record of Employment (ROE) immediately but due to problems at the employer’s pay centre, the request was not processed for several weeks. In the interim, the Appellant submitted his offer letter to the Respondent as evidence of his hours worked. The letter confirmed the dates of employment, and that the Appellant would work 37.5 hours per week at \$12.77 per hour. Using this information, the Respondent created an interim ROE for the purposes of adjudicating the Appellant’s claim for EI benefits and determined he had 405 hours of insurable employment. Prior to calculating the claim, the actual ROE was received from the employer and entered into the system. The ROE confirmed the insurable hours as 405 hours.

[8] Unfortunately, the duplication of the interim and real ROE’s led to the claim being adjudicated based on 810 hours—double what the Appellant actually had. When the claim was calculated, the Respondent did not notice that when the real ROE was received, the interim ROE was not deleted from the system. Benefits were paid to the Appellant from September 11, 2016 until April 22, 2017, however as he had only 405 hours of insurable employment the Appellant instead of the required 420, he should not have qualified for EI benefits at all. This has created an overpayment.

[9] The Appellant agreed that the hours identified on the ROE were correct, thus he had only 405 hours in the qualifying period. However, the Appellant stated that it was not his fault and he did not misrepresent himself in any way. He submitted that it was not just for the Respondent to demand the return of benefits which he was paid and to which he thought he was entitled. The Appellant submitted the overpayment was a significant financial hardship for him.

Issue #2 – Does the Appellant have to repay regular benefits that he received to which he was not entitled?

[10] A claimant is liable to repay any amount paid by the Respondent as benefits if the claimant was not entitled to the payment (s. 43, Act). These amounts described in s. 43, the overpayment in this case, are debts to the Crown and are recoverable in Federal Court subject to a 72 month limitation period (s. 47, Act). If the Respondent determines that a person has received benefit monies which he was not qualified to receive, it must calculate the amount and notify the claimant (s. 52(2), Act). Amounts payable under s. 43, such as this overpayment, may be written off by the Respondent if it considers that, having regard to all circumstances, the repayment of the amount would result in undue hardship to the claimant (s.56(1)(f), *Employment Insurance Regulations* (Regulations)).

[11] There is no dispute that the Appellant did not have enough hours to establish a benefit period, and that he was approved for EI benefits based on the Respondent's error. The Tribunal accepts that the Appellant has been paid benefits to which he is not entitled and the Respondent properly assessed an overpayment based on s. 43 of the Act.

[12] At the hearing of this matter, the Appellant submitted an article regarding the employer's pay centre and the problems it has experienced. The article states that the employer has halted recovery of overpayments until employees' are paid the monies they are owed, at which point they will be liable to repay the employer. He submitted that the delay in receiving his ROE caused the duplication in his initial claim, and wondered if the employer's policy on overpayments could assist in this appeal. The Tribunal has considered this evidence and submission, and decided that it is not relevant to the Appellant's appeal, because the employer's internal overpayment issues relating to a compensation program are entirely separate from the EI process.

[13] The Tribunal finds that the Appellant is required to repay the regular benefits he received based on sections 43 and 47 Act, though it does not find this an equitable result. The Act states that the Respondent must calculate an overpayment where it discovers that a claimant has been paid benefits to which he was not entitled, and notify the Appellant of the amount. The Appellant agreed that the Respondent met this test, as he was notified of the debt owing and subsequently requested and received reconsideration. The Act also states that claimants are required to repay amounts paid to them as benefits to which they were not entitled (43(b), Act). Therefore, the Appellant is required to repay the overpayment of regular benefits.

[14] The Regulations give the Respondent discretion to decide when to write-off overpayments. The Tribunal does not have jurisdiction to write-off these amounts or review these decisions, as the matter is for the Commission alone (*Prevost v. Canada Employment Insurance Commission*, (1980), 36 C.B.R. (N.S.)). The Tribunal empathizes with the Appellant given the circumstances he presented during the hearing. However, this does not change the fact that the Appellant was in receipt of benefits he was not entitled to receive, nor does it change the repayment requirements stipulated by paragraph 43(b) of the Act.

CONCLUSION

[15] The appeal is dismissed. While the Tribunal understands the Appellant received the EI benefits through no fault of his own and the overpayment resulted from a mistake on the Respondent's part, according to the Act the Appellant is required to repay the EI benefits that he was not entitled to receive. The Tribunal does not have the jurisdiction to apply the principles of equity and must interpret and apply the provisions of the Act as they are set out. The Appellant does not have sufficient hours of insurable employment to qualify for EI benefits and the overpayment was lawfully assessed.

Candace R. Salmon
Member, General Division - Employment Insurance Section

METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. M., 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.

Employment Insurance Regulations