



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B.S. v. Canada Employment Insurance Commission*, 2018 SST 344

Tribunal File Number: GE-17-2781

BETWEEN:

B. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

TELECONFERENCE HEARD ON: March 15, 2018

DATE OF DECISION: April 15, 2018

REASONS AND DECISION

DECISION

[1] The appeal is dismissed. The Appellant does not have sufficient hours of insurable employment to qualify for employment insurance benefits.

OVERVIEW

[2] The Appellant established a benefit period benefits effective May 1, 2016, to April 29, 2017. The Appellant worked for Sears Canada Inc. and accumulated 428 hours of insurable employment from April 10, 2016, to April 26, 2017. The Appellant resides in the X region and the rate of unemployment in this region is 6.4%. The Canada Employment Insurance Commission (Respondent) notified the Appellant he failed to qualify to receive employment insurance benefits because he is required to have 665 hours in his benefit period between May 1, 2017, to April 29, 2017, to qualify and he had only accumulated 420 insurable hours. The Appellant argues that he should have applied earlier and has requested copies of records of employment to prove he would qualify for benefits.

PRELIMINARY ISSUES

[3] The Appellant did not have his docket with him but agreed to proceed without it. The Appellant confirmed that issue before the Tribunal was whether he had enough hours to qualify for benefits.

ISSUE

[4] Does the Appellant have sufficient hours of insurable employment to qualify for benefits?

ANALYSIS

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

Issue: Does the Appellant have sufficient hours of insurable employment to qualify for benefits?

[6] Subsection 7(2) of the *Employment Insurance Act* (Act) states in order to qualify for employment insurance benefits, an insured person must (a) have experienced an interruption of earnings from employment, and (b) must also have acquired, in her qualifying period, at least the number of hours of insurable employment set out in the table within that subsection, in relations to the regional rate of unemployment, where the person normally resides.

[7] The onus is on the Appellant to provide proof that he meets the qualifying conditions.

[8] The Tribunal finds that the Appellant did have an interruption of earnings when he lost his employment on April 26, 2017, due to a shortage of work. However he does not have sufficient hours to qualify for benefits nor does he qualify for an extension of his benefit period.

[9] The Appellant argues that he should have applied earlier and believes he would have qualified at that time. He stated that he had worked part-time since 1997. He explained that since 2015, his hours of work declined. He stated that he applied for employment insurance in April 2016 and had asked for a record of employment at that time but he did not qualify for benefits at that time because he did not have sufficient hours.

[10] The Tribunal finds that the Appellant applied for employment insurance benefits and established a benefit period from May 1, 2016, to April 29, 2017, pursuant to paragraph 8(1)(a) of the Act and did not meet any of the criteria to extent the qualifying period because the Appellant conceded that he did not meet any of the enumerated grounds of illness, injury, quarantine, pregnancy or confined in jail, penitentiary or similar institutions that prevented him from being in insurable employment.

[11] The Appellant stated that he was laid off on August 1, 2016, but was paid a salary continuance until April 26, 2017. He never worked after August 1, 2016, and conceded he does not have any other records of employment or any other hours of insurable employment to submit.

[12] According to the Table in subsection 7(2) of the Act, the minimum requirement for the claimant to qualify to receive employment insurance benefits was 665 hours based on the rate of unemployment of 6.4% in the region where he resided. Unfortunately, the Tribunal finds the Appellant had accumulated only 420 hours of insurable employment in his qualifying period.

[13] The Tribunal sympathies with the Appellant's circumstances. However, the Tribunal must apply the statutory requirements and cannot ignore, refashion, circumvent or rewrite the Act, even in the interest of compassion (*Canada (Attorney General) v. Knee*, 2011 FCA 301).

[14] There is no flexibility or room for interpretation in the applicable legislative provisions that would allow the Appellant to be entitled to benefits beyond what is provided in the Act.

CONCLUSION

[15] The appeal is dismissed.

Teresa Jaenen
Member, General Division - Employment Insurance Section

APPERANCES:	B. S., Appellant
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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