



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *G. L. v. Canada Employment Insurance Commission*, 2018 SST 1116

Tribunal File Number: GE-18-52

BETWEEN:

**G. L.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Yoan Marier

HEARD ON: April 24, 2018

DATE OF DECISION: May 14, 2018

## **DECISION AND REASONS**

### **DECISION**

[1] The appeal is dismissed. The Appellant does not meet the necessary criteria for receiving Employment Insurance benefits because he did not have an interruption of earnings.

### **OVERVIEW**

[2] The Appellant has worked as a security guard at X for a number of years. He has a permanent position, and his normal work schedule with the employer consists of seven night shifts and seven consecutive days off over a 14-day period.

[3] In September 2017, the Appellant filed a claim for Employment Insurance benefits. He submits that the seven consecutive days off in his schedule constitute an “interruption of earnings” within the meaning of the [Employment Insurance] Act and Regulations, making it possible for him to receive benefits during certain weeks. After reviewing this claim, the Commission determined that the Appellant did not meet the necessary criteria for receiving benefits because he did not have an interruption of earnings from employment.

### **ISSUE**

[4] Did the Appellant have an interruption of earnings while he was off work for seven consecutive days when this period was part of his normal schedule?

### **ANALYSIS**

[5] The relevant statutory provisions appear in the annex of this decision.

#### **Did the Appellant have an interruption of earnings from employment?**

[6] The Tribunal finds that the Appellant did not have an interruption of earnings because he was not laid off or separated from his employment.

[7] To be eligible for Employment Insurance benefits, a claimant must meet certain criteria described in section 7 of the *Employment Insurance Act* (Act). One of these conditions is that the

claimant must have had an interruption of earnings from employment (section 7(2)(a) of the Act).

[8] A claimant has an interruption of their earnings if they are laid off or separated from their employment and have a period of seven or more consecutive days during which no work is performed for their employer and no earnings are received (section 14(1) of the *Employment Insurance Regulations* (Regulations)).

[9] The Appellant is employed as a security guard and has worked the same schedule for a number of years. His normal schedule is seven days of work and seven consecutive days off in a 14-day period.

[10] The Appellant considers each period of seven days off to be an interruption of earnings within the meaning of the Act, which makes it possible for him to receive Employment Insurance benefits during certain weeks. The Appellant also argues that his position is considered part-time because he works for 54.25 hours (seven shifts, each 7 hours and 45 minutes long) during each 14-day schedule.

[11] Sample work schedules on file show that the Appellant normally has seven days off each schedule (GD3-22 to 25).

[12] It is clear to the Tribunal that these periods of seven consecutive days off are not periods where the Appellant is unemployed or without earnings. In fact, these periods are included in his normal work schedule, which includes a rotation of days off and days of work. As a result, his earnings are based on this fixed schedule, which includes seven days of work and seven days off. The Record of Employment issued by the employer at the Appellant's request confirms the regular nature of his schedule and the fact he did not have an interruption of earnings or employment in the last year (GD3-17).

[13] The first criterion stated in section 14(1) of the Regulations mentions that the person who is claiming benefits must have been laid off or separated from their employment. The Tribunal notes that the Appellant has not been laid off or separated from his employment because he held (and still holds) the same position on an uninterrupted rotating schedule.

[14] Therefore, even though the Appellant was clearly off work for seven consecutive days numerous times in 2017, these periods cannot be considered interruptions of earnings within the meaning of section 14(1) of the Regulations because the Appellant was not in a separation or lay-off situation; he was just following his normal work schedule.

[15] As the Federal Court of Appeal mentioned, to be entitled to regular benefits, a claimant must have stopped their employment with their employer and not have worked for the employer for seven consecutive days. The Employment Insurance scheme is meant to meet the needs of those who are temporarily unemployed and without an income because of a period of unemployment (*Canada (Attorney General) v Cloutier*, 2014 FCA 177).

[16] Since the Appellant's situation does not meet the definition of an "interruption of earnings" in the Regulations, the Tribunal must find that the Appellant has not had the interruption of earnings required by section 7(2)(a) of the Act, an essential condition for receiving Employment Insurance benefits. For that reason, the Tribunal finds that the Appellant is not entitled to benefits.

[17] In closing, it would be appropriate to discuss a final element raised by the Appellant at the hearing. He mentioned that he has had the same work schedule since 2013 and that he made a number of claims for Employment Insurance benefits in recent years. According to the Appellant, the Commission accepted all of those claims. As a result, the Appellant wanted to know why the Commission suddenly changed its mind when reviewing his latest claim. Unfortunately, the Tribunal is not able to answer the Appellant's question. The Tribunal cannot decide on the validity of the decisions the Commission has issued in the past, simply because they are not currently at issue. In this appeal, the Tribunal can address only the Commission decision currently being contested: the decision rendered on November 22, 2017.

**CONCLUSION**

[18] The appeal is dismissed. The Appellant did not have an interruption of earnings. He does not meet the criteria for receiving Employment Insurance benefits.

Yoan Marier

Member, General Division – Employment Insurance Section

HEARD ON:	April 24, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	G. L., 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.

**11 (1)** A week of unemployment for a claimant is a week in which the claimant does not work a full working week.

**(2)** A week during which a claimant's contract of service continues and in respect of which the claimant receives or will receive their usual remuneration for a full working week is not a week of unemployment, even though the claimant may be excused from performing their normal duties or does not have any duties to perform at that time.

**(3)** A week or part of a week during a period of leave from employment is not a week of

unemployment if the employee

- (a) takes the period of leave under an agreement with their employer;
- (b) continues to be an employee of the employer during the period; and
- (c) receives remuneration that was set aside during a period of work, regardless of when it is paid.

(4) An insured person is deemed to have worked a full working week during each week that falls wholly or partly in a period of leave if

- (a) in each week the insured person regularly works a greater number of hours, days or shifts than are normally worked in a week by persons employed in full-time employment; and
- (b) the person is entitled to the period of leave under an employment agreement to compensate for the extra time worked.

### ***Employment Insurance Regulations***

**14 (1)** Subject to subsections (2) to (7), an interruption of earnings occurs where, following a period of employment with an employer, an insured person is laid off or separated from that employment and has a period of seven or more consecutive days during which no work is performed for that employer and in respect of which no earnings that arise from that employment, other than earnings described in subsection 36(13), are payable or allocated.

(2) An interruption of earnings from an employment occurs in respect of an insured person at the beginning of a week in which a reduction in earnings that is more than 40% of the insured person's normal weekly earnings occurs because the insured person ceases to work in that employment by reason of illness, injury or quarantine, pregnancy, the need to care for a child or children referred to in subsection 23(1) of the Act or the need to provide care or support to a family member referred to in subsection 23.1(2) of the Act, to a critically ill child.

(3) A period of leave referred to in subsection 11(4) of the Act does not constitute an interruption of earnings, regardless of whether the person is remunerated for that period of leave.

(4) Where an insured person is employed under a contract of employment under which the usual remuneration is payable in respect of a period greater than a week, no interruption of earnings occurs during that period, regardless of the amount of work performed in the period and regardless of the time at which or the manner in which the remuneration is paid.

(5) An interruption of earnings in respect of an insured person occurs

**(a)** in the case of an insured person who is employed in the sale or purchase of real estate on a commission basis and holds a licence to sell real estate issued by a provincial authority, when

**(i)** the licence of the insured person is surrendered, suspended or revoked, or

**(ii)** the insured person ceases to work in that employment by reason of a circumstance referred to in subsection (2); and

**(b)** in the case of an insured person who is employed under a contract of employment and whose earnings from that employment consist mainly of commissions, when

**(i)** the insured person's contract of employment is terminated, or

**(ii)** the insured person ceases to work in that employment by reason of a circumstance referred to in subsection (2).

**(6)** A period of leave referred to in subsection 11(3) of the Act does not constitute an interruption of earnings, regardless of the time at which or the manner in which remuneration is paid.

**(7)** Where an insured person accepts less remunerative work with their employer and as a consequence receives a wage supplement under a provincial law intended to provide indemnity payments where the continuation of a person's work represents a physical danger to them, to their unborn child or to the child they are breast-feeding, an interruption of earnings occurs on the insured person's last day of work before the beginning of the less remunerative work.