



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. R. v Canada Employment Insurance Commission*, 2018 SST 1415

Tribunal File Number: GE-18-546

BETWEEN:

**R. R.**

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: Leanne Bourassa

HEARD ON: May 8, 2018

DATE OF DECISION: May 30, 2018

## **DECISION**

[1] The appeal is dismissed. The Appellant did not have sufficient hours of insurable employment in her qualifying period to qualify for regular employment insurance benefits.

## **OVERVIEW**

[2] The Appellant's position was abolished and she successfully qualified for sickness benefits. When she had received the maximum weeks of sickness benefits, she asked for her benefits to be converted to regular employment insurance (EI) benefits but was refused because she did not have sufficient hours of insurable employment to qualify for regular EI benefits. The Appellant requested a reconsideration of that refusal, arguing that her employer did not correctly record all the hours she worked. Finding that her employer had provided detailed documentation of the hours she worked and the pay she received, the Respondent maintained its initial decision that the Appellant did not qualify for regular EI benefits.

## **PRELIMINARY MATTERS**

[3] While the hearing was conducted in French, the Appellant confirmed to the Tribunal that she preferred that the written reasons for the decision be provided in English.

[4] At the hearing, the Appellant made reference to a document that she claims was sent to the Tribunal, but it was not found in the Tribunal's file. The Appellant was invited to send the document to the Tribunal within 5 days of the hearing if she wished that the document be submitted as evidence.

[5] The Appellant did provide the Tribunal with additional documents within 5 days of the hearing. The Respondent was provided an opportunity to respond and provide additional comment, but did not do so.

## **ISSUES**

[6] The Tribunal must decide:

Issue 1: When was the Appellant's Qualifying Period?

Issue 2: How many hours of insurable employment did the Appellant need to qualify for regular EI benefits and how many hours did she have?

## **ANALYSIS**

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

[8] In order to qualify for regular EI benefits, a claimant must have had an interruption of earnings and must have had, during their qualifying period at least the number of hours of insurable employment set out in the table found in subsection 7(2) of the *Employment Insurance Act* (Act). The number of hours is determined in relation to the regional rate of employment that applies to the person. No discrepancies to the requirements under the Act are permitted, nor does the Commission have any discretion to vary these requirements. *Canada (Attorney General) v. Levesque*, 2001 FCA 304

### **Issue 1: When was the Appellant's qualifying period?**

[9] I find that the Appellant's qualifying period was from February 14, 2016 to February 11, 2017.

[10] The qualifying period of an insured person is either the 52-week period immediately before the beginning of a benefit period or the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a new benefit period, whichever is shorter. (ss. 8(1) of the Act)

[11] On July 12, 2017 the Appellant asked for a renewal of her benefit period to allow her to receive regular EI benefits. Since the Appellant had received 15 weeks of sickness benefits from February 12, 2017 until June 3, 2017, her qualifying period for regular EI benefits would be the 52 weeks immediately before her sickness benefit period. This is therefore from February 14, 2016 to February 11, 2017.

### **Issue 2: How many hours of insurable employment did the Appellant need to qualify for regular EI benefits and how many hours did she have?**

[12] I find that the Appellant needed 665 hours of insurable employment to qualify for regular EI benefits, but that she only had 605 hours and therefore did not qualify for those benefits.

[13] To qualify for regular EI benefits, the Appellant needed to have an interruption of earnings from employment and, during her qualifying period, the number of hours of insurable employment set out in the table in subsection 7 (2) of the Act.

[14] There is no disagreement between the parties that the Appellant had an interruption of earnings on December 2, 2016, when her position was abolished.

[15] The Respondent has provided its research information demonstrating the following; the Appellant lived in the Montreal Region; the Regional Rate of unemployment at the time of her claim for benefits was 6.7%, and, further to the table in subsection 7(2) of the Act, the Appellant needed 665 hours of insurable employment to qualify for benefits.

[16] The Record of Employment (ROE) on file shows that the Appellant had 605 hours of insurable employment.

[17] The Appellant argued that she had additional hours of employment that were not included in her ROE but that her Employer refuses to correct the document. She further argues that the employer's time stamp machine was faulty and that she had brought the issue of her missing hours to her employer's attention on several occasions.

[18] The Respondent's notes show they communicated with the employer on several occasions to see if a change to the ROE was necessary. The employer explained, on 3 separate occasions, that the ROE is correct and does not need modification. Furthermore, the employer supplied the Respondent with copies of time stamp records and pay stubs reflecting the hours worked by the Appellant and the pay she received. Having reviewed this documentation, I find it compelling and complete. This documentation demonstrates that the Appellant was paid for 605 hours, as stated on the ROE.

[19] The Appellant testified before the Tribunal that there were many hours that she worked that were not recorded by her employer. Having reviewed the time stamp records and the pay stubs provided by both the Appellant and the employer, I note that the Appellant's pay stubs represent payment for 49 more hours than the time stamp records total and a separate payment was made to her in September 2016 referring to "heures manquantes- prob. poinçon" (*missing hours- time stamp issue*), demonstrating that a correction was made. These additional hours were also included in the total number of hours calculated for the ROE.

[20] At the hearing, the Appellant was asked why, if she believed she had not been paid for hours she worked in August 2016, she did not resolve the situation with her employer before January 2017. She responded that she did speak to her direct superior and was told it would be corrected on her next pay but she feels it was not sufficient. She did not want to be troublesome and expected everything would be resolved at the end of her employment. After she received her ROE, she spoke with the employer several times but they would not help her.

[21] Following the hearing, the Appellant sent the Tribunal a document and photo that she claims proves she worked extra hours that were not paid. Unfortunately, these documents do not clearly relate to any date or time and do not convince me to accept the Appellant's claims that there were hours she worked that her employer did not acknowledge. Although the Appellant has submitted various pay stubs with handwritten notes and has alleged that her employer has falsified its records, I find that the documents submitted by the employer are more coherent and credible than those supplied by the Appellant. Furthermore, the Respondent did speak with the employer on several occasions and their evidence has not varied, leading me to accept that the information provided by the employer stating that the Appellant worked 605 hours of insurable employment is accurate.

**CONCLUSION**

[22] Since the Appellant was required to have 665 hours of insurable employment in order to qualify for regular employment insurance benefits and I find that she only had 605 hours, the Appellant did not qualify for regular employment insurance benefits.

[23] The appeal is dismissed.

Leanne Bourassa

Member, General Division - Employment Insurance Section

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|-----------------------|------------------|
| HEARD ON:             | May 8, 2018      |
| METHOD OF PROCEEDING: | Teleconference   |
| APPEARANCES:          | R. R., 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.

**8 (1)** Subject to subsections (2) to (7), the qualifying period of an insured person is the shorter of

**(a)** the 52-week period immediately before the beginning of a benefit period under subsection 10(1), and

**(b)** the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period under subsection 10(1).

**(2)** A qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission

may direct, that throughout the week the person was not employed in insurable employment because the person was

- (a) incapable of work because of a prescribed illness, injury, quarantine or pregnancy;
- (b) confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the person was being held or any other offence arising out of the same transaction;
- (c) receiving assistance under employment benefits; or
- (d) receiving payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the person, her unborn child or a child whom she was breast-feeding.

(3) A qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission may direct, that

- (a) earnings paid because of the complete severance of their relationship with their former employer have been allocated to weeks in accordance with the regulations; and
- (b) the allocation has prevented them from establishing an interruption of earnings.

(4) A qualifying period is further extended by the aggregate of any weeks during an extension for which the person proves, in such manner as the Commission may direct, that

- (a) in the case of an extension under subsection (2), the person was not employed in insurable employment because of a reason specified in that subsection; or
- (b) in the case of an extension under subsection (3), the person had earnings paid to them because of the complete severance of their relationship with their former employer.

(5) For the purposes of subsections (2) to (4), a week during which the person was in receipt of benefits does not count.

(6) For the purposes of subsection (3) and paragraph (4)(b), a week during which the person was employed in insurable employment does not count.

(7) No extension under any of subsections (2) to (4) may result in a qualifying period of more than 104 weeks.