



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. C. v Canada Employment Insurance Commission*, 2018 SST 1173

Tribunal File Number: GE-17-3304

BETWEEN:

G. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Katherine Wallocha

HEARD ON: September 26, 2018

DATE OF DECISION: October 3, 2018

DECISION

[1] The appeal is dismissed. The Appellant (Claimant) has not proven that he was unemployed because he was working the same number of hours in a week for his employer as are normally worked by other full-time employees of that employer. However, the disentitlement is removed effective August 18, 2017, when the Claimant stopped working for this employer.

OVERVIEW

[2] The Claimant was in receipt of EI benefits when he found a job as a commissioned car salesman. The Respondent, the Canada Employment Insurance Commission (Commission) determined that the Claimant was not unemployed and stopped his EI benefits. The Claimant appealed to the Social Security Tribunal (Tribunal) seeking to continue receiving EI benefits because he was not working full-time hours.

PRELIMINARY MATTERS

[3] If a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received notice of the hearing according to subsection 12(1) of the *Social Security Tribunal Regulations* (SST Regulations).

[4] The Claimant did not attend the hearing scheduled for July 4, 2018. The Tribunal was not satisfied that the Claimant received the Notice of Hearing because it was returned to the Tribunal unclaimed. The hearing was adjourned and rescheduled for August 9, 2018. The Tribunal contacted the Claimant by telephone on July 11, 2018, and a message was left informing him about the new date of his hearing. However, the Claimant did not attend the hearing scheduled on August 9, 2018, and the Notice of Hearing was returned to the Tribunal on August 13, 2018. The hearing was again adjourned and rescheduled for September 26, 2018.

[5] The Notice of Hearing was sent to the Claimant via regular mail on August 17, 2018. Any document sent by regular mail to the Claimant from the Tribunal is deemed to have been sent 10 days after the day it was mailed to the party under subsection 19(2) of the SST Regulations.

[6] The Claimant did not attend the hearing scheduled for September 26, 2018. The Tribunal is satisfied that that the Claimant received notice of the hearing because it was sent via regular mail, it was not returned, and more than 10 days have passed. Accordingly, the Tribunal proceeded with the hearing in the Claimant's absence.

ISSUE

[7] Was the Claimant working a full working week while employed as a commissioned car salesman?

ANALYSIS

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

[9] When an insured person makes an initial claim for benefits, section 9 of the *Employment Insurance Act* (EI Act) requires the establishment of a benefit period and mandates the payment of benefits to the Claimant for each week of unemployment that falls within the benefit period.

[10] A week of unemployment for a Claimant is a week in which that Claimant does not work a full working week according to subsection 11(1) of the EI Act. A full working week is the number of hours, days or shifts normally worked in a calendar week by persons in the Claimant's grade, class or shift at the premises where the Claimant was employed according to subsection 31(1) of the *Employment Insurance Regulations* (Regulations).

[11] The Tribunal finds that the Claimant worked full working weeks starting from July 3, 2017, when he began training as a car salesman. The Claimant contacted the Commission on July 21, 2017, and reported that he is working and asked how he should complete his reports. He was told to include his hours and income. He said the moment he filled out his report, he got locked out of the system. On July 31, 2017, the Claimant informed the Commission that this is his job now but he has not stopped looking for work. The Commission contacted the employer and payroll confirmed that the Claimant started working on July 3, 2017, and he was employed full-time. The Claimant's manager confirmed that the Claimant was a full-time auto salesman being paid 100% commission based salary.

[12] The Claimant argues that he was not working full-time and he should be allowed to continue his claim for EI benefits until his hours become full time or his wages exceed the maximum as anything else is considered inequitable, unfair, and without lawful basis. He said the Labour Code says full-time hours are eight-hour days and 40 hours per week but he is not working 40 hours per week, so he is working part-time hours. He further stated that he needed to be trained and licensed to sell vehicles and he was not licensed until July 14, 2017. The first three weeks were unpaid training. He stated that he works 30.5 hours in one week, and 39 hours in the next week.

[13] The Tribunal accepts the Claimant's statement that he was considered an employee during the period that he was in training. The Tribunal further accepts the employer's statement that the Claimant was a full-time employee working 30.5 hours one week and 39 hours the next week and this schedule is the company schedule; they only work every second Friday. From this, the Tribunal finds that the Claimant worked full working weeks during his employment as a car salesman because the Claimant worked the same number of hours, days or shifts normally worked in a calendar week by persons at the premises where the Claimant was employed. The Tribunal finds that it is not relevant whether the Claimant was working full time in accordance with the Labour Code. The Tribunal and the Commission are bound to apply the EI Act, and while the Labour Code is recognized, the EI Act defines a full working week differently.

[14] The Claimant further argues that he has paid into the system for 40 years and he could have easily just lied and collected benefits. He is being penalized for being honest. The Tribunal finds that this argument has no merit. The Claimant was disentitled from EI benefits because he was working. The EI Act is designed to support those who are not working. While the Claimant was paid only a commissioned based salary and had to undergo unpaid training and licensing, this information was known to him at the time he accepted the job. The fact that the Claimant was not earning an income does not change the fact that he was working full-working weeks. Additionally, had the Claimant lied to the Commission, there is a high likelihood that he would have been caught and then he would have been required to repay the EI benefits he received while working and he would have been imposed a penalty. The Tribunal respects that the Claimant has contributed to the system for 40 years; however, simply paying into the EI program

is not a guarantee that EI benefits will be payable. Claimants are still required to meet the eligibility requirements set out in the EI Act.

[15] The employer submitted a Record of Employment dated August 19, 2017, indicating that the Claimant's last day of work August 19, 2017. The Commission recommended that the disentitlement for working full working weeks be terminated as of August 18, 2017. Given that the Claimant was no longer working for this employer, the Tribunal agrees with the Commission that the disentitlement should be removed effective August 18, 2017, because he was no longer working full working weeks.

CONCLUSION

[16] The Tribunal concludes that the Claimant has not proven that he was unemployed from July 3 to August 18, 2017, under sections 9 and 11 of the EI Act and section 31(1) of the Regulations. The Tribunal agrees that the disentitlement be terminated effective August 18, 2017.

[17] The appeal is dismissed.

K. Wallocha

Member, General Division - Employment Insurance Section

HEARD ON:	September 26, 2018
METHOD OF PROCEEDING:	Teleconference

ANNEX

THE LAW

Employment Insurance Act

9 When an insured person who qualifies under section 7 or 7.1 makes an initial claim for benefits, a benefit period shall be established and, once it is established, benefits are payable to the person in accordance with this Part for each week of unemployment that falls in the benefit period.

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

31 (1) A full working week of a claimant, other than a claimant referred to in section 29 or 30, is the number of hours, days or shifts normally worked in a calendar week by persons in the claimant's grade, class or shift at the factory, workshop or other premises at which the claimant is or was employed.

(2) When the number of hours, days or shifts referred to in subsection (1) is the number that is normally worked by persons in part-time employment and is less than the number of hours, days or shifts normally worked in a calendar week by persons employed in full-time employment in the employment that is closest in nature to the claimant's employment, the claimant is considered to have worked a full working week when the claimant has worked the number of hours, days or shifts that are normally worked by a person in full-time employment.

(3) The full working week of a claimant, other than a claimant referred to in section 29 or 30, who is remunerated on a piece, mileage or other unit rate is the number of days normally worked in a calendar week by persons in the claimant's grade, class or shift at the factory, workshop or other premises at which the claimant is or was employed.