



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. A. v. Canada Employment Insurance Commission*, 2018 SST 1084

Tribunal File Number: GE-18-2501

BETWEEN:

C. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: October 12, 2018

DATE OF DECISION: October 15, 2018

DECISION

[1] The appeal is dismissed. The Appellant (Claimant) does not have enough hours of insurable employment in her qualifying period to establish a claim for Employment Insurance benefits.

OVERVIEW

[2] The Claimant had been working at a travel agency for over eight months when she lost her employment due to a shortage of work. She submitted an initial claim for regular benefits on May 20, 2018, and her employer issued a Record of Employment (ROE) on May 28, 2018, which lists that she has 721 hours of insurable employment.

[3] The Respondent, who is the Canada Employment Insurance Commission (the Commission), reminded the Claimant that she had previously been issued a violation classified as very serious; therefore, she is required to have an increased number of hours of insurable employment to establish a claim for benefits. The Respondent also informed the Claimant of their decision that they are unable to pay her benefits because she only has 721 of the required 1164 hours of insurable employment.

[4] The Commission maintained their decision upon reconsideration. The Claimant disputes the Commission's decision and argues that the requirement for an increased number of hours of insurable employment has a major impact on her life and her family as she is a single mother with 3 children.

ISSUES

[5] Does the Claimant have enough hours of insurable employment in her qualifying period to qualify for benefits?

[6] If not, can the requirement for an increased number of hours of insurable employment be waived on compassionate grounds?

ANALYSIS

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

a) Qualifying for Benefits

[8] To qualify for benefits the Claimant must have an interruption of earnings and have in her qualifying period, the number of hours of insurable employment relating to the regional rate of unemployment, as set out in the table in subsection 7(2) of the *Employment Insurance Act (Act)*.

[9] In cases where the Claimant has been issued a violation in the 260 weeks before making their initial claim for benefits, the number of hours that is required under section 7 to qualify for benefits is increased in relation to the applicable regional rate of unemployment (subsection 7.1(1) of the *Act*).

[10] Once a violation has been issued, the Claimant requires an increased number of hours of insurable employment to qualify for benefits for the following five years or for her next two initial claims in which she qualifies for benefits, whichever occurs first (subsection 7.1(3) of the *Act*).

[11] There is no dispute that the Commission previously determined that the Claimant had *knowingly* made 10 false representations and issued the Claimant a Notice of Violation classified as being very serious. Further, the Claimant does not dispute that she resides in an area which, based on the regional rate of unemployment, requires that she have 1164 hours of insurable employment in her qualifying period to qualify for benefits, under subsection 7.1(1) of the *Act*. Nor does the Claimant dispute that she only has 721 hours of insurable employment in her qualifying period, which is from May 21, 2017, to May 19, 2018; or that she has no other employment during this period.

[12] The Claimant testified that she has accepted her mistake that she *knowingly* made 10 false statements and she has been paying off the overpayment which resulted. She argued that she was notified of the violation in 2012, and therefore, the increased requirements should only be in effect until 2017.

[13] The Court confirmed that the 260-week period for which the increased requirements resulting from a violation begins with the date on which a notice of violation is issued to the Claimant by the Commission, not with the date on which the Claimant is notified of the violation (*Canada (Attorney General) v. Savard*, 2006 FCA 327).

[14] The Commission provided evidence of their February 6, 2014, decision letter in which they notified the Claimant on May 8, 2012, that they were conducting a review of her previous benefit period. This letter further states that upon completion of that review, the Commission determined the Claimant had *knowingly* made 10 false representations and was being issued a violation classified as being very serious. Therefore, although the Claimant was told of the review in 2012, I accept that the Commission did not issue the Notice of Violation until February 6, 2014, which is when the Commission completed their review.

[15] Based on the evidence set out above, I find the requirement for an increase of hours of insurable employment remains in effect for 260 weeks ending January 26, 2019, or until the Claimant has submitted two initial claims in which she qualifies for benefits, whichever occurs first (subsection 7.1(3) of the *Act*).

b) Can the requirements of section 7.1 of the Act be waived on compassionate grounds?

[16] No. Although I sympathize with the Claimant's circumstances of being a single mother of three children, I 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).

CONCLUSION

[17] The appeal is dismissed.

Linda Bell
Member, General Division - Employment Insurance Section

HEARD ON:	October 12, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. A., Appellant

ANNEX

THE LAW

Employment Insurance Act

7.1 (1) The number of hours that an insured person requires under section 7 to qualify for benefits is increased to the number set out in the following table in relation to the applicable regional rate of unemployment if the insured person accumulates one or more violations in the 260 weeks before making their initial claim for benefit.

TABLE / TABLEAU

Regional Rate of Unemployment / <i>Taux régional de chômage</i>	<i>Violation</i>			
	<i>minor / mineure</i>	<i>serious / grave</i>	<i>very serious / très grave</i>	<i>subsequent / subséquente</i>
6% and under/ <i>6 % et moins</i>	875	1050	1225	1400
more than 6% but not more than 7%/ <i>plus de 6 % mais au plus 7 %</i>	831	998	1164	1330
more than 7% but not more than 8%/ <i>plus de 7 % mais au plus 8 %</i>	788	945	1103	1260
more than 8% but not more than 9%/ <i>plus de 8 % mais au plus 9 %</i>	744	893	1041	1190
more than 9% but not more than 10%/ <i>plus de 9 % mais au plus 10 %</i>	700	840	980	1120
more than 10% but not more than 11%/ <i>plus de 10 % mais au plus 11 %</i>	656	788	919	1050
more than 11% but not more than 12%/ <i>plus de 11 % mais au plus 12 %</i>	613	735	858	980
more than 12% but not more than 13%/ <i>plus de 12 % mais au plus 13 %</i>	569	683	796	910
more than 13%/ <i>plus de 13 %</i>	525	630	735	840

(2) [Repealed, 2016, c. 7, s. 210]

(2.1) A violation accumulated by an individual under section 152.07 is deemed to be a violation accumulated by the individual under this section on the day on which the notice of violation was given to the individual.

(3) A violation may not be taken into account under subsection (1) in more than two initial claims for benefits under this Act by an individual if the individual who accumulated the violation qualified for benefits in each of those two initial claims, taking into account subsection (1), subparagraph 152.07(1)(d)(ii) or regulations made under Part VIII, as the case may be.

(4) An insured person accumulates a violation if in any of the following circumstances the Commission issues a notice of violation to the person:

(a) one or more penalties are imposed on the person under section 38, 39, 41.1 or 65.1, as

a result of acts or omissions mentioned in section 38, 39 or 65.1;

(b) the person is found guilty of one or more offences under section 135 or 136 as a result of acts or omissions mentioned in those sections; or

(c) the person is found guilty of one or more offences under the *Criminal Code* as a result of acts or omissions relating to the application of this Act.

(5) Except for violations for which a warning was imposed, each violation is classified as a minor, serious, very serious or subsequent violation as follows:

(a) if the value of the violation is

(i) less than \$1,000, it is a minor violation,

(ii) \$1,000 or more, but less than \$5,000, it is a serious violation, or

(iii) \$5,000 or more, it is a very serious violation; and

(b) if the notice of violation is issued within 260 weeks after the person accumulates another violation, it is a subsequent violation, even if the acts or omissions on which it is based occurred before the person accumulated the other violation.

(6) The value of a violation is the total of

(a) the amount of the overpayment of benefits resulting from the acts or omissions on which the violation is based, and

(b) if the claimant is disqualified or disentitled from receiving benefits, or the act or omission on which the violation is based relates to qualification requirements under section 7, the amount determined, subject to subsection (7), by multiplying the claimant's weekly rate of benefit by the average number of weeks of regular benefits, as determined under the regulations.

(7) The maximum amount to be determined under paragraph (6)(b) is the amount of benefits that could have been paid to the claimant if the claimant had not been disentitled or disqualified or had met the qualification requirements under section 7.