



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. S. v Canada Employment Insurance Commission*, 2018 SST 1360

Tribunal File Number: GE-18-2882

BETWEEN:

**R. S.**

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: Linda Bell

HEARD ON: October 29, 2018

DATE OF DECISION: November 1, 2018

## **DECISION**

[1] The appeal is dismissed.

## **OVERVIEW**

[2] The Claimant had established a benefit period effective May 1, 2016, and was paid regular benefits from May 15, 2016, to September 24, 2016, and from October 2, 2016, to December 3, 2016. The Commission, who is the Canada Employment Insurance Commission (the Commission), conducted a review and requested an insurability ruling from the Canada Revenue Agency (CRA) regarding the Claimant's employment with X.

[3] CRA determined that the Claimant's employment with X was not insurable for the period from September 14, 2015, and January 29, 2016, because he was not dealing at arm's length with his employer. The Commission informed the Claimant that because his employment with X was not insurable, he did not have enough hours of insurable employment to qualify for the benefits he had been paid. The Claimant's benefit period was cancelled which created an overpayment of benefits in the amount of \$14,301.00. The Commission also determined that the Claimant had *knowingly* made 16 misrepresentations and imposed a \$5,000 penalty and a violation classified as very serious.

[4] Upon reconsideration, the Commission rescinded the penalty and violation but maintained their decision to cancel the benefit period because the Claimant did not have enough hours of insurable employment. The Claimant disputes the Commission's decision and argues that he thought they were doing everything correctly and that his employment with X was insurable.

## **ISSUE**

[5] Do I have the authority to hear an appeal regarding a CRA insurability ruling?

## **ANALYSIS**

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

[7] Paragraph 5(2)(i) of the *Employment Insurance Act (Act)* states that insurable employment does not include employment if the employer and employee are not dealing with each other at arm's length.

[8] There is no dispute that CRA issued the Claimant an insurability ruling on May 11, 2018, in which they determined that his employment with X from September 14, 2015, to January 29, 2016, was not insurable because they determined he was not dealing at arm's length with his employer (paragraph 5(2)(i) of the *Act*). This ruling further states that if the Claimant disagrees with the ruling he has 90 days from the date of the letter to appeal to the Chief of Appeals at CRA.

[9] The Commission submits that it had originally accepted the ROE from X at the time it was received and had used it, along with the Claimant's ROE from his other employment, to establish his benefit period. However, during the Commission's investigation, new information came to light which initiated the request for an insurability ruling, which found that the Claimant's employment with X was not insurable. As a result the Claimant no longer had the required number of insurable hours to qualify for benefits.

[10] During the hearing, the Claimant confirmed that he does not dispute that the 621 hours of insurable employment he acquired from his employment with X, was not enough hours to establish a benefit period as of May 1, 2016. Rather, the Claimant stated that he is disputing CRA's finding that his employment with X was not insurable.

[11] The Federal Court of Appeal (FCA) has reaffirmed that Canada Revenue Agency (CRA) has exclusive jurisdiction to determine the number of insured hours a person has in insurable employment, pursuant to section 90.1 of the *Act* (*Romano* 2008 FCA 117; *Didiodato* 2002 FCA 345).

[12] As explained to the Claimant and his representative during the hearing, I do not have authority to determine whether his employment with X for the period from September 14, 2015, to January 29, 2016, was insurable, as this must be determined by CRA, as set out above. If the Claimant disagrees with CRA's ruling he must file an appeal to CRA as per the instructions listed on the notice of ruling. Based on the foregoing, this appeal has no merit.

**CONCLUSION**

[13] The appeal is dismissed.

Linda Bell

Member, General Division - Employment Insurance Section

HEARD ON:	October 29, 2018
METHOD OF PROCEEDING:	In person
APPEARANCES:	R. S., Appellant (Claimant) N. B., Representative for the Appellant (Claimant) H. S., Interpreter

**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.

**48 (1)** No benefit period shall be established for a person unless the person makes an initial claim for benefits in accordance with section 50 and the regulations and proves that the person is qualified to receive benefits.

**(2)** No benefit period shall be established unless the claimant supplies information in the form and manner directed by the Commission, giving the claimant's employment circumstances and the circumstances pertaining to any interruption of earnings, and such other information as the Commission may require.

**(3)** On receiving an initial claim for benefits, the Commission shall decide whether the claimant

is qualified to receive benefits and notify the claimant of its decision.

**49 (1)** A person is not entitled to receive benefits for a week of unemployment until the person makes a claim for benefits for that week in accordance with section 50 and the regulations and proves that

(a) the person meets the requirements for receiving benefits; and

(b) no circumstances or conditions exist that have the effect of disentitling or disqualifying the person from receiving benefits.

(2) The Commission shall give the benefit of the doubt to the claimant on the issue of whether any circumstances or conditions exist that have the effect of disqualifying the claimant under section 30 or disentitling the claimant under section 31, 32 or 33, if the evidence on each side of the issue is equally balanced.

(3) On receiving a claim for benefits, the Commission shall decide whether benefits are payable to the claimant for that week and notify the claimant of its decision.

### ***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 or 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.