



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. S. v Canada Employment Insurance Commission*, 2018 SST 1370

Tribunal File Number: GE-18-3025

BETWEEN:

G. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Gerry McCarthy

HEARD ON: December 20, 2018

DATE OF DECISION: December 20, 2018

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant applied for regular Employment Insurance benefits (EI benefits) on September 14, 2018. The Appellant's previous claim was exhausted the week of September 9, 2018. The Appellant worked for X and accumulated 304 hours of insurable employment from April 9, 2018, to May 9, 2018. The Appellant also worked for X from May 18, 2017, to October 3, 2017. The Appellant's regional rate of unemployment was 6.4 percent. The Respondent determined that the Appellant had insufficient hours of insurable hours to qualify for EI benefits, because he had 423 hours of insurable employment between September 17, 2017, and September 15, 2018, and required 665 hours to qualify. The Appellant submitted that all the insurable hours from his employment with X should have been used in the calculation of his claim. The Appellant further submitted that his previous claim ran out on September 9, 2018, so he filed another claim. I find the Appellant did not have sufficient insurable hours to qualify for EI benefits.

ISSUE

[3] The Tribunal must decide the following issue:

Did the Appellant have sufficient hours of insured employment to qualify for EI benefits?

ANALYSIS

[4] Section 7(2) of the *Act Employment Insurance Act* (EI Act) states that in order to qualify for EI benefits an insured person must

(a) must have experienced an interruption of earnings from employment, and

(b) must also have acquired, in his or her qualifying period, at least the number of hours of insurable employment set out in the table within that subsection, in relation to the regional rate of unemployment where the person normally resides.

Did the Appellant have sufficient hours of insured employment to qualify for EI benefits?

[5] I find the Appellant did not have sufficient insurable hours to qualify for EI benefits, because he required 665 hours of insurable employment in his qualifying period between September 17, 2017, and September 15, 2018, and only accumulated 423 hours in that period. I realize the Appellant submitted that all his hours working for X should have been used in the calculation of his claim. Nevertheless, only some of the insurable hours the Appellant accumulated from X could be used in the calculation of his claim while the other insurable hours were outside his 52-week qualifying period. On this matter, I wish to emphasize that the Federal Court of Appeal has confirmed the principle that hours accumulated outside the qualifying period cannot be used to qualify the claimant for EI benefits (*Haile v. Attorney General of Canada*, 2008 FCA 19).

[6] I do recognize the Appellant was frustrated about not qualifying for EI benefits on this claim. I further realize the Appellant indicated that his previous claim ran out on September 9, 2018, and he thought he could not stop the claim earlier. Nevertheless, I must apply the EI Act to the evidence in this case. In other words: I cannot ignore, re-fashion, circumvent or re-write the EI Act even in the interest of fairness (*Knee v. Attorney General of Canada*, 2011 FCA 301).

[7] I further recognize the Appellant indicated that he had been actively looking for work and it was not right that all his insurable hours from X could not be used in the calculation of his claim. Nevertheless, the EI Act and case law does stipulate that hours accumulated outside the qualifying period cannot be used to qualify a claimant for benefits. Furthermore, I must apply the EI legislation and cannot ignore, re-fashion, or circumvent the law.

[8] In summary: I find the Appellant did not have sufficient insurable hours to qualify for EI benefits under section 7(2) of the EI Act.

CONCLUSION

[9] The appeal is dismissed.

Gerry McCarthy

Member, General Division - Employment Insurance Section

HEARD ON:	December 20, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	G. S., Appellant