Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *A. J. v Canada Employment Insurance Commission*, 2019 SST 45

Tribunal File Number: GE-18-632

BETWEEN:

A. J.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Bernadette Syverin

HEARD ON: December 12, 2018

DATE OF DECISION: January 15, 2019

DECISION

[1] The appeal is dismissed. The Tribunal finds that the Appellant did not accumulate the number of insurable hours required to receive benefits.

OVERVIEW

[2] The Appellant applied for Employment Insurance benefits, and the Canada Employment Insurance Commission (Commission) determined that the Appellant was not entitled to benefits because he had accumulated only 420 hours of insurable employment but needed 700 for entitlement. This decision was upheld on reconsideration, leading to the appeal before the Tribunal.

ISSUE

[3] Did the Appellant accumulate the insurable number of hours required to be entitled to Employment Insurance benefits?

PRELIMINARY MATTERS

[4] Before analyzing the issue, the Tribunal would like to address the Appellant's allegations concerning a supposed plot orchestrated by the Tribunal against him. The Tribunal considers them to be very serious allegations; however, they are not supported by evidence, which will be shown below.

[5] The Appellant filed his notice of appeal in February 2018. Since the Tribunal does not have jurisdiction to decide on the number of insurable hours that a claimant has accumulated during their qualifying period, the Tribunal member assigned to the file asked the designated authority, the Canada Revenue Agency (CRA), for a decision, in accordance with section 90(1) of the *Employment Insurance Act* (Act). The CRA's decisions were given on May 15, 2018 (GD9-2 to 13). According to those decisions, the Appellant had 90 days as of the date he received the decisions to appeal them to the CRA. The Tribunal member therefore decided to hold a hearing on November 1, 2018, to respect that period so that the Appellant could appeal the CRA's decisions if needed.

[6] The Appellant did not attend the hearing scheduled for November 1, 2018. However, a few hours after the hearing, the Appellant requested an adjournment of the hearing for the following reasons: his representative had decided not to represent him anymore, and his representative misled him about the date of the hearing. However, the evidence on file shows that the Appellant was aware that the hearing would take place on November 1, 2018, because he received the notice of hearing on June 28, 2018. What is more, the Appellant contacted the Tribunal on October 24, 2018, to find out how to send documents in preparation for the hearing. Despite all of the above, the Tribunal granted the adjournment request, and at the Appellant's request, a new hearing was scheduled for November 30 from 5:30 p.m. to 6:30 p.m., outside office hours.

[7] The November 30, 2018, hearing did not take place because of technical difficulties with the teleconference system, but the Tribunal adjourned that hearing, and it resumed on December 12, 2018, once again outside office hours out of consideration for the Appellant's request.

[8] During the December 12, 2018, hearing, the Appellant was of the view that the fact that the November 30, 2018, hearing was adjourned following technical difficulties constitutes a plot by the Tribunal to deny his claim for benefits. However, as shown above, the Tribunal not only obtained decisions from the CRA to decide on the issue, but it also adjourned the hearing twice so that the Appellant could make his case. For that reason, the Appellant cannot claim that the Tribunal was involved in any plot to deny him benefits.

[9] The Appellant also claims that the plot's existence is proven by the fact that the documents sent to the Tribunal so that he could make his case were not placed in the file. The Tribunal agrees that on October 26, 2018, the Appellant sent the Tribunal an email to which documents were attached, but on October 29, 2018, that email was returned to the Appellant with the message: [translation] "Please note that the Tribunal does not accept information/documents from shared drives (i.e., Dropbox or OneDrive) or from internet links. As a result, the Tribunal cannot open the attachment you provided with your email. Please resend your documents as scanned attachments in .pdf or Word.doc format to our email address. If your document is too

large, you can also submit it in multiple emails (for example, email 1 of 3, email 2 of 3). You can also choose to submit your documents at one of the following contact points: [...].”

[10] On December 12, 2018, the date of the hearing, the Appellant had not followed up on that email, and during the hearing, the Tribunal allowed the Appellant to submit his documents after the hearing. The documents were received on December 24, 2018 (GD15-1 to 55). The Tribunal would like to note that the Appellant referred to those documents during his testimony.

[11] The Tribunal determines that the allegations of a plot by the Tribunal against the Appellant are not supported by the evidence on file. In reality, the Tribunal has a duty of fairness to the parties. This means that the parties must know the information against them and have an opportunity to dispute it and to present their own cases (*Singh v Minister of Employment and Immigration*, [1986] 1 SCR 177). In this case, despite the technical difficulties associated with the teleconference system and the late receipt of the Appellant’s documents, this duty of fairness to the parties was satisfied because the hearing was adjourned twice. And, when the hearing did take place, it lasted 1 hour and 51 minutes, although it was scheduled to take 1 hour. Therefore, contrary to the Appellant’s claims, he had ample time to make his case, and he provided no evidence to support his claim of a plot by the Tribunal against him.

ANALYSIS

Did the Appellant accumulate the insurable number of hours required to be entitled to Employment Insurance benefits?

[12] For the reasons below, the Tribunal has determined that the Appellant did not accumulate the number of insurable hours required to receive benefits.

[13] To receive benefits, a claimant must satisfy a number of conditions including accumulating a set number of hours of insurable employment during the qualifying period (section 7 of the Act). The qualifying period is the 52-week period immediately before the beginning of the benefit period (section 8(1) of the Act). The number of required insurable hours is determined based on the regional rate of unemployment that applies to the claimant (section 7(2) of the Act).

[14] The Appellant applied for benefits on October 21, 2017, so his qualifying period is from October 23, 2016, to October 21, 2017. Based on the unemployment rate of 4.9% in the Oshawa area where the Appellant lived, 700 insurable hours were required to be entitled to benefits. The Commission determined that the Appellant had not accumulated the number of insurable hours required to receive benefits because he had accumulated only 420 hours of insurable employment when he needed 700.

[15] On May 15, 2018, the CRA determined in four separate decisions that the Appellant had accumulated 188 hours of insurable employment during the period from September 19 to October 28, 2016 (GD9-12); 174 hours during the period from June 12 to July 17, 2017 (GD9-9); 210 hours from July 27 to September 11, 2017 (GD9-6); and finally 57 hours of insurable employment during the period from October 8 to 19, 2017 (GD9-3). In short, the CRA found that the Appellant had accumulated 629 insurable hours of employment during the period from September 19, 2016, to October 19, 2017. However, the Appellant's qualifying period extends from October 23, 2016, to October 21, 2017, therefore the insurable hours accumulated before October 23, 2016, cannot be considered in the calculation of the number of insurable hours accumulated during the qualifying period. The Tribunal therefore accepts the Commission's position that the Appellant accumulated 470 insurable hours, and the Appellant has not disputed this fact.

[16] During the hearing, the Appellant did not want to move ahead on the number of insurable hours he had accumulated, but he maintained that he accumulated the number of insurable hours required to receive benefits.

[17] In essence, the Appellant claimed that he worked as an automotive technician paid by piece rate and that this form of payment does not take into consideration the actual time worked. To support this claim, the Appellant gave a long testimony on his work history with various dealers in the automotive industry, explained his tasks, and stated that sometimes he could spend nine hours on one task but that the employer might acknowledge only one and a half hours of work. It appears that documents the Appellant produced after the hearing provided details on his employment contracts, client invoices, fees paid for his uniforms, and magazine articles

concerning the automotive industry (GD15-1 to 55). The Tribunal assigns little weight to those documents for the following reasons.

[18] The CRA is the designated authority for establishing the number of insurable hours that a claimant accumulated during their qualifying period (section 90(1) of the Act), and the CRA gave four decisions (GD9) indicating the number of insurable hours that the Appellant accumulated during his qualifying period. According to the Appellant's testimony, the CRA contacted him before giving those decisions so that he could be involved in determining the number of insurable hours accumulated during the qualifying period. The Appellant testified that he refused to take part because the CRA's representative spoke to him in English and because the Appellant did not consider the CRA's representative to be credible; he found the exercise ridiculous, and he did not see the relevance of determining the number of insurable hours he had accumulated. The Appellant therefore had the opportunity to cooperate with the CRA so that the CRA could consider his arguments, but he refused to do so. The Tribunal notes that the Appellant refused to cooperate with the CRA, which is the only designated authority that can determine the number of insurable hours that the Appellant accumulated during his qualifying period.

[19] What is more, the CRA's decisions were given on May 15, 2018, and they indicate that the Appellant had 90 days to appeal them. Seven months passed between the date the CRA gave the decision in May 2018 and the hearing date in December 2018, but the Appellant decided not to appeal the CRA's decisions.

[20] The Appellant testified that the CRA's decisions were written by a civil servant who is paid between $80,000 and $90,000 a year to do nothing, and the decisions are not understandable and refer to nothing, so, in the Appellant's view, they mean nothing. Furthermore, in the Appellant's view, the decisions indicate that nothing can be done. The Tribunal agrees with the Appellant that, based on the evidence on file, the CRA sent the decisions to the Commission (Service Canada) with a cover page indicating that the decisions were sent for information and that no action was required (GD9-2, 5, 8, and 11). However, the decisions that the CRA sent to the Appellant clearly indicate the number of insurable hours that the Appellant accumulated from four different employers, and they clearly indicate that, if the Appellant disagreed, he could

appeal within 90 days (GD9-3, 4, 6, 7, 9, 10, 12, and 13). The Appellant chose not to appeal the CRA's decisions, and according to his testimony, he has no intention of appealing them.

[21] In light of the above, the Tribunal finds that the Appellant has not met the entitlement criteria in section 7(2) of the Act. The Appellant needed to have accumulated 700 insurable hours of employment to be entitled to benefits. After the hours accumulated were calculated following the receipt of the CRA's decisions, the Appellant had accumulated only 470 hours of employment during his qualifying period, while he needed 700 hours.

[22] The Act does not allow any discrepancy and gives the Tribunal no discretion to entitle the Appellant to benefits in a case like this one (*Canada (Attorney General) v Lévesque*, 2001 FCA 304).

CONCLUSION

[23] The appeal is dismissed.

Bernadette Syverin
Member, General Division – Employment Insurance Section

HEARD ON:	December 12, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	A. J., Appellant