



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. L. v Canada Employment Insurance Commission*, 2019 SST 249

Tribunal File Number: GE-19-596

BETWEEN:

N. L.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent/Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Candace R. Salmon

HEARD ON: February 12, 2019

DATE OF DECISION: February 15, 2019

DECISION

[1] The appeal is dismissed. The result is that the Claimant cannot be paid sickness benefits. The Claimant did not have enough hours of insurable employment in the qualifying period to establish a benefit period, for either regular or special employment insurance (EI) benefits, and does not qualify for a further extension to the qualifying period. These reasons explain why.

OVERVIEW

[2] The Claimant made a claim for EI special benefits for sickness, after having to leave her employment due to a spinal condition. The Commission determined the Claimant did not have enough hours of insurable employment in her qualifying period to establish a benefit period for EI sickness benefits. The Claimant requested reconsideration, and the Commission amended its decision to extend the Claimant's qualifying period by three weeks. With the extension, the Commission determined the Claimant still had insufficient hours of insurable employment to establish a benefit period. The Claimant appeals the decision to the Social Security Tribunal (Tribunal).

ISSUE

[3] **Issue #1:** Did the Claimant accumulate enough hours of insurable employment in the qualifying period to establish a regular benefit period?

[4] **Issue #2:** Did the Claimant accumulate enough hours of insurable employment in the qualifying period to establish a benefit period for sickness benefits?

ANALYSIS

[5] Employment insurance benefits will be paid to those insured persons who are qualified to receive them (*Employment Insurance Act* (Act), subsection 7(1)). An insured person qualifies if there has been an interruption in earnings from employment and if the individual has, during their qualifying period, accumulated at least the minimum number of hours of insurable employment (Act, subsection 7(2)). The hours required vary depending on the Claimant's economic region and the regional rate of unemployment.

[6] A claimant's qualifying period is the shorter of the 52 weeks before the beginning of her benefit period or the period of time from the end of the last benefit period to the beginning of the current benefit period. A benefit period is the period of time in which a qualified person can claim EI benefits.

[7] Claimants for EI benefits have the burden of proving they are entitled (*Canada (Attorney General) v. Terrion*, 2013 FCA 97). The burden of proof is a balance of probabilities, which means it is more likely than not that the claimant is entitled to benefits.

Issue #1: Did the Claimant accumulate enough hours of insurable employment in the qualifying period to establish a regular benefit period?

[8] The Claimant's qualifying period was initially determined to be from November 12, 2017, until November 10, 2018. The Claimant had 434 hours of insurable employment in this qualifying period. The Commission later determined the Claimant was eligible for an extension to her qualifying period because she was off of work for three weeks during the initial qualifying period due to her spinal condition. The Commission extended the Claimant's qualifying period by three weeks, to be from October 22, 2017, until November 10, 2018. The Claimant accumulated 450 hours of insurable employment in this extended qualifying period.

[9] The Claimant needed 665 hours to qualify for regular benefits because she lived in the Toronto region, with an unemployment rate of 6.3%. The Claimant accumulated only 450 hours. Accordingly, I find the Claimant does not qualify for regular EI benefits because, although she had an interruption in earnings, she has not accumulated, in her qualifying period, at least the minimum number of insurable hours in relation to the regional rate of unemployment that applied to her.

Issue #2: Did the Claimant accumulate enough hours of insurable employment in the qualifying period to establish a benefit period for sickness benefits?

[10] I find the Claimant does not qualify for special benefits. She required 600 hours of insurable employment and only had 450 hours in her qualifying period.

[11] As the Claimant sought EI sickness benefits, a form of special benefit, subsection 93(1) of the *Employment Insurance Regulations* (Regulations) applies as an alternate access to special

benefits. The Regulations state an insured person who does not qualify to receive benefits under the regular provisions of the Act and who is claiming special benefits qualifies to receive special benefits if the person has had an interruption of earnings and has 600 or more hours of insurable employment in the qualifying period. Therefore, the Claimant needed at least 600 hours of insurable employment during the qualifying period to establish a benefit period for sickness benefits (para 7(2)(b), Act). The Claimant obtained 450 hours of insurable employment in the extended qualifying period. She does not qualify for EI special benefits for sickness.

[12] The Claimant stated in the Notice of Appeal that she was not able to complete 600 hours of insurable employment in the qualifying period due to her medical condition, and reiterated that it is unfair that she paid into EI for 40 years and is now unable to access the benefits when she is off of work due to a medical condition beyond her control. At the hearing, the Claimant argued that a person's health is not black and white, like the legislation, and that the law should consider the variable of *why* she was not able to complete 600 hours. The Claimant submitted it was unfair to deny her benefits due to her inability to accumulate sufficient hours of insurable employment due to her medical condition.

[13] The Claimant testified that she used to work four days per week, but over the past few years had to decrease her hours due to her medical condition. Eventually, she was unable to work due to numbness in her lower body, which directly impacted her ability to perform the tasks of her job. The Claimant testified that while she took three full weeks off from work due to illness, in the initial qualifying period, there were many other days where she was unable to work due to illness and those were not counted by the Commission. For example, the Claimant submitted that she was only able to work one day per week at the end of her employment, and had originally worked four days per week, so those three days each week she lost due to her illness should have been counted towards extending her qualifying period. The Claimant submitted that considering only full weeks does not accurately capture the time lost from work during the qualifying period due to illness.

[14] With respect to the Claimant's argument that the Commission only considered full weeks' where she was off of work in the qualifying period due to illness, not the accumulation of

individual days she was off of work, the Act states that only full weeks will be considered in extending the qualifying period. The Act states:

8(2) A qualifying period...is extended by the **aggregate of any weeks** during the qualifying period for which the person proves, in such manner as the Commission may direct, that throughout the week the person was not employed in insurable employment because the person was

a) incapable of work because of a prescribed illness, injury, quarantine or pregnancy (**emphasis added**).

This language means the Commission can extend the qualifying period by the full weeks the Claimant was off of work due to illness in the qualifying period, but cannot extend the qualifying period by individual days or hours.

[15] While I am sympathetic to the Claimant's position, the decision as to whether the Claimant has enough hours of insurable employment in her qualifying period is not a discretionary one. Courts have dealt with cases where a claimant was short only an hour from having enough hours of insurable employment to establish a benefit period, and found that the claimant could not qualify as the requirement of having a certain number of hours does not allow for "any discrepancy and provides no discretion" (*Canada (Attorney General) v. Levesque*, 2001 FCA 304). I have no discretion to consider other factors aside from those outlined in the Act—the interruption of earnings and the hours of insurable employment in the qualifying period. The legislation requires that I apply the minimum requirements to all Claimants who make a claim for EI benefits. Because the Claimant did not obtain 600 hours of insurable employment in the qualifying period, a benefit period cannot be established.

[16] With respect to the Claimant's submission that she has paid into the EI program for many years and it is unfair that she cannot collect benefits when she needs them, I note that even though the Claimant made contributions to the EI program this does not automatically entitle her to receive benefits during a period of unemployment. The Act is an insurance plan and, like other insurance plans, claimants must meet the conditions of the plan to obtain benefits (*Pannu v. Canada (Attorney General)*, 2004 FCA 90).

[17] In dealing with cases where the resulting decision may seem unfair on its face, the Federal Court of Appeal has found:

...rigid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme. However, tempting as it may be in such cases (and this may well be one), adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning (*Canada (Attorney General) v. Knee*, 2011 FCA 301).

While the result may be harsh, I must follow the law and render decisions based on the relevant Act, Regulations, and precedents set by the courts.

CONCLUSION

[18] The appeal is dismissed. The Claimant did not have enough hours of insurable employment in the qualifying period to establish a benefit period, for either regular or special EI benefits, and does not qualify for a further extension to the qualifying period.

Candace R. Salmon

Member, General Division - Employment Insurance Section

HEARD ON:	February 12, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	N. L., Appellant