



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. P. v Canada Employment Insurance Commission*, 2019 SST 856

Tribunal File Number: GE-19-1025

BETWEEN:

P. P.

Claimant

and

Canada Employment Insurance Commission

Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: March 7, 2019

DATE OF DECISION: March 8, 2019

DECISION

[1] The appeal is dismissed. I cannot waive the requirement for increased hours of insurable employment when a subsequent violation has been issued. The following reasons explain why.

OVERVIEW

[2] The Appellant, P. P., whom I will refer to as the Claimant, had been working at a mining company when he lost his job due to a shortage of work. He submitted an initial claim for regular benefits on December 17, 2018, and his employer issued a Record of Employment (ROE) that lists that he has 750 hours of insurable employment.

[3] The Respondent, who is the Canada Employment Insurance Commission, is referred to as the Commission in this decision. The Commission issued the Claimant a violation on April 29, 2012, and a subsequent violation on October 30, 2014. As a result, the Commission determined that the Claimant required an increased number of hours of insurable employment to establish a claim for benefits. The Commission informed the Claimant of their decision that he does not qualify for benefits, as of December 2, 2018, because he only has 750 of the required 840 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 his ability to provide for his family.

ISSUES

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

[6] If not, can the requirement for the increased number of hours of insurable employment, be waived, once the overpayment is paid or on compassionate grounds?

ANALYSIS

a) Qualifying for Benefits

[7] In cases where the Commission issues the Claimant a subsequent violation in the 5 years (260 weeks) before the Claimant makes their initial claim for benefits, the number of hours that is required to qualify for benefits is increased in relation to the applicable regional rate of unemployment.¹

[8] Once a violation has been issued, the Claimant requires an increased number of hours of insurable employment to qualify for benefits. This requirement is in effect for five years from the date the violation was issued, or until the Claimant is able to qualify for two consecutive initial claims with the increased hours, whichever occurs first.²

[9] There is no dispute that the Commission issued the Claimant a subsequent notice of violation on October 30, 2014. Further, the Claimant does not dispute that he resides in an area which, based on the regional rate of unemployment, requires that, he have 840 hours of insurable employment, in his qualifying period, to qualify for benefits.³ The Claimant did not dispute that he only has 750 hours of insurable employment in his qualifying period, which is from December 3, 2017, to December 1, 2018. He also confirmed that he has no other employment during this period.

[10] The Claimant testified that he did not receive the October 30, 2014, decision letter that included the subsequent violation notice, so he was not aware that the violation would remain in effect this long. He stated that he first learned about the requirement for increased hours when he found out he did not have enough hours to qualify for benefits. While this may be the case, it does not change the facts that the Commission notified him of three previous occasions when he failed to declare his earnings properly on December 9, 2009; May 20, 2010; and May 5, 2012. Nor does it change the fact that this fourth occasion resulted in the Commission issuing the Claimant this subsequent violation on October 30, 2014.

¹ Subsection 7.1(1) of the *Act*

² Subsection 7.1(3) of the *Act*

³ Subsection 7.1(1) of the *Act*

[11] When calculating the the 5-year (260 week) period for the increased hour requirement, it begins with the date on which a notice of violation is **issued** to the Claimant and **not** with the date on which the Claimant is notified of the violation.⁴ Based on the evidence provided by the Commission, they issued the Claimant the subsequent violation on October 30, 2014. Accordingly, I find the requirement for the increased hours of insurable employment remains in effect for 260 weeks ending October 29, 2019; or until the Claimant has submitted two initial claims in which he qualifies for benefits, whichever occurs first.⁵

[12] The Commission provided evidence that the Claimant has only qualified for benefits once since October 30, 2014, when he met the increased hour requirement effective January 8, 2017. Therefore, the increased requirements to qualify for benefits remains in effect until the Claimant is able to qualify for benefits on one more claim, or until October 29, 2019.

b) Can the requirements of section 7.1 of the Act be waived once the overpayment is repaid or on compassionate grounds?

[13] No. I commend the Claimant for paying off the overpayment and I sympathize with him given the financial hardship and personal circumstances he presented during the hearing. However, there are no exceptions and no room for discretion when applying the *Act*. I cannot interpret or rewrite the *Act* in a manner that is contrary to its plain meaning, even in the interest of compassion.⁶

CONCLUSION

[14] The appeal is dismissed.

Linda Bell

Member, General Division - Employment Insurance Section

⁴ *Canada (Attorney General) v. Savard*, 2006 FCA 327

⁵ Subsection 7.1(3) of the *Act*

⁶ *Canada (Attorney General) v. Knee*, 2011 FCA 301

HEARD ON:	March 7, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	P. P., Claimant X, Observer