



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. R. v Canada Employment Insurance Commission*, 2019 SST 280

Tribunal File Number: GE-19-123

BETWEEN:

A. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Heather Hamilton

HEARD ON: February 4, 2019

DATE OF DECISION: March 13, 2019

DECISION

[1] The appeal is dismissed. The Tribunal finds that the Appellant did not accumulate enough hours of insurable employment to establish a claim for regular benefits.

OVERVIEW

[2] The Appellant worked for three different employers during the last 52 weeks before he filed for sickness benefits. He established a claim for sickness benefits as he had over the minimum 600 hours of insurable employment required for sickness benefits. At reconsideration, the Appellant made a request for regular benefits. The Respondent, the Canada Employment Insurance Commission (Commission) determined that the Appellant accumulated 695 hours of insurable employment and he was approved for sickness benefits; however, he needed 700 insurable hours to establish a claim for regular benefits and he could not establish a claim for regular benefits. The Appellant appealed to the Social Security Tribunal (Tribunal).

ISSUES

[3] Did the Appellant accumulate sufficient hours of insurable employment to qualify for regular Employment Insurance benefits?

ANALYSIS

[4] Whether a person qualifies for benefits is determined by section 7 of the *Employment Insurance Act* (the Act). Unemployment benefits are payable as provided in this part to an insured person who qualifies to receive them, under subsection 7(1) of the Act. To qualify for benefits, a person must have accumulated, in his or her qualifying period, a minimum number of hours of insurable employment, under subsection 7(2) of the Act.

[5] A qualifying period is the 52 week period immediately before the beginning of the benefit period under section 8 of the Act. His qualifying period was April 30, 2017 to April 28, 2018.

Issue 1: Did the Appellant accumulate sufficient hours of insurable employment to qualify for regular Employment Insurance benefits?

[6] No, the Appellant did not accumulate sufficient hours of insurable employment during his qualifying period to receive regular benefits. The Appellant bears the onus of proof to show that she/he has met the qualifying conditions (*Canada (Attorney General) v. Terrior* 2013 FCA 97).

[7] The Appellant agreed with the hours noted on the Record of Employment (ROE) of 36 insurable hours with X, and 347 insurable hours with X. He disagrees with the 312 insurable hours on the ROE with X. The Appellant testified that he knows he had more hours of insurable employment with his employment with X. The Appellant had a witness at the hearing, who resides with the Appellant, and she confirmed that the Appellant worked long days Monday to Friday for two months. The Appellant stated that he also worked some Saturdays and Sundays so the number of insurable hours of employment should be more than 312 insurable hours.

[8] The Appellant confirmed he did not have all his pay stubs with the records of the number of hours he worked. The Tribunal reminded him that he has the burden of proving he has met the qualifying conditions. He pointed out that the Respondent had tried to contact the employer without success to confirm the exact number of insurable hours of employment.

[9] Since the Respondent had difficulty in contacting X and the Appellant could not prove with evidence that he had more than 312 insurable hours and the total insurable hours from the three employers were 695 insurable hours; the Tribunal requested an insurability ruling from the Canada Revenue Agency (CRA). The Appellant required 700 insurable hours to establish a claim for regular benefits and with only 5 hours of insurable employment difference to qualify for regular benefits, and the particular circumstances, the Tribunal requested an insurability ruling. On March 12, 2019, the Respondent provided the insurability ruling for the Appellant's employment with X. For the period of October 10, 2017 to December 10, 2017 CRA ruled that the Appellant accumulated 315 insurable hours of employment with his employment with X, and not 312 insurable hours of employment. The Canada Revenue Agency (CRA) has the exclusive jurisdiction to determine an insurability ruling (*Canada (Attorney General) v. Didiodato*, 2002 FCA 145).

[10] The Tribunal finds that the total insurable hours of employment from the three employers totaled 698 hours of insurable employment and not 695 hours of insurable employment after the CRA ruling. The Tribunal accepts the evidence from the Respondent that the Appellant required 700 hours of insurable employment to qualify to receive regular benefits and the Appellant did not dispute that he needed 700 hours of insurable employment. There was also no dispute that the Appellant resided in the economic region of Vancouver and the rate of unemployment was 4.1% at the time the claim was established on April 29, 2018. The Tribunal finds the Appellant required 700 hours of insurable employment in his qualifying period to establish a claim for regular benefits. He accumulated 698 hours of insurable employment in his qualifying period and he has not demonstrated that he met the requirement to establish a claim for regular Employment Insurance benefits under the Act.

[11] The Tribunal is sympathetic to the Appellant's situation; however, the Tribunal must apply the statutory requirements and cannot ignore, refashion, circumvent, or re-write the Act or Regulations even in the interest of compassion. Courts have confirmed that the requirements under subsection 7(2) of the Act do not allow any discrepancy and provide no discretion (*Attorney General (Canada) v. Lévesque*, 2001 FCA 304).

CONCLUSION

[12] The appeal is dismissed.

Heather Hamilton

Member, General Division - Employment Insurance Section

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| HEARD ON: | February 4, 2019 |
| METHOD OF PROCEEDING: | Teleconference |
| APPEARANCES: | A. R., Appellant |