



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. E. v Canada Employment Insurance Commission*, 2019 SST 474

Tribunal File Number: GE-19-1262

BETWEEN:

D. E.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: April 17, 2019

DATE OF DECISION: April 18, 2019

DECISION

[1] The appeal is dismissed. The result is the Claimant is not qualified to receive employment insurance benefits because she did not have an interruption in earnings from employment.

OVERVIEW

[2] The Claimant is employed in two part-time retail jobs. She made an initial claim for regular employment insurance benefits and the Canada Employment Insurance Commission (Commission) determined she did not qualify to receive benefits because she had not had an interruption in earnings from either of her employments for at least seven consecutive days. The Claimant requested a reconsideration of this decision because she had an interruption in one of her employments for six consecutive days. The Commission maintained its decision. The Claimant appeals to the Social Security Tribunal (Tribunal) because a seven day interruption in earnings is difficult to obtain for someone who works multiple part-time jobs.

ISSUES

[3] Did the Claimant have an interruption in earnings from employment?

ANALYSIS

[4] To qualify for benefits, claimants must have experienced an interruption in earnings¹ and have a minimum number of hours of insurable employment in their qualifying period².

[5] An interruption in earnings for benefit purposes occurs when an insured person is separated from an employment and has a period of seven or more consecutive days during which no work is performed for that employer and no earnings arise from that employment.³

¹ This requirement is found at paragraph 7(2)(a) of the *Employment Insurance Act*

² This requirement is found at paragraph 7(2)(b) of the *Employment Insurance Act*

³ The definition of an interruption in earnings is based in subsection 2(1) of the *Employment Insurance Act* as being “an interruption that occurs in the earnings of an insured person at any time and in any circumstances determined by the regulations.” Subsection 14(1) of the *Employment Insurance Regulations* describes the circumstances which are used to determine whether an interruption in earnings has occurred

[6] It is undisputed that the Claimant had sufficient hours of insurable employment to qualify for regular employment insurance benefits. Therefore, the only issue before me is whether she meets the other qualifying condition of having an interruption in earnings from her employment.

Did the Claimant have an interruption in earnings from employment?

[7] No. I find the Claimant did not have an interruption in earnings from employment, as she was not separated from her employment and did not have at least seven consecutive days during which she performed no work for the employer and had no earnings arise from that employment.

[8] The Claimant is employed at two part-time jobs in retail stores. She made an initial claim for regular employment insurance benefits on November 1, 2018. On her application for benefits, she stated that her last day worked at one of the employers was October 20, 2018, and that she was laid off due to shortage of work. The record of employment issued by this employer on October 26, 2018, states that it was issued at the employee's request.

[9] The Commission submits the Claimant did not have an interruption from employment because she did not have seven days without work or earnings and was not laid off. The Commission provided notes of an interview with the Claimant on November 9, 2018, in which she states she is still working for both employers and applied for benefits because she does not have a full-time job. The Commission contacted the employer on December 4, 2018, and the employer confirmed the Claimant had not had seven consecutive days without working, and having earnings, for that employer.

[10] On her request for reconsideration, the Claimant stated that she was advised to make the claim for benefits by agents at the Service Canada centre and was told she would be eligible because she had worked sufficient hours and had not yet found a full-time job. She states that she has reviewed her employment record and found a period of time when she did not work for six consecutive days and requests the Commission review her eligibility on that basis.

[11] The Claimant confirmed at the hearing that she is still employed in both of her part-time jobs and that she had a period of only six consecutive days where she did not work for one of her part-time employers, and did not have earnings from that employment. She stated that both of her part-time jobs guarantee that she will be scheduled from four to twenty hours each week. She

said this sometimes leaves her unable to meet her financial obligations due to fluctuations in her schedule, which are out of her control. She submitted that it is difficult for someone in her employment situation to meet the requirement of having a seven day interruption in her work schedule.

[12] To determine whether an interruption in earnings has occurred, I must examine the three conditions set out in the *Employment Insurance Regulations*.⁴ Namely, the Claimant must have ceased her employment with her employer and not have worked for the employer for seven consecutive days. In addition, there must not be any earnings arising from that employment which are payable during that period.⁵ Each of these conditions must be met for there to be an interruption of earnings for benefit purposes.

[13] It is undisputed that the Claimant was not laid off or separated from her employment, rather she continued to be employed in both of her part-time jobs at the time she made her initial claim for benefits. Further, the Claimant agrees that she did not have a period where she did not work for the employer for at least seven consecutive days and did not have any earnings arising from that employment for that period. As such, I accept the position of both parties that the Claimant does not meet the conditions to determine she had an interruption in earnings from employment.

[14] The requirement to be unemployed arises from that purpose of the employment insurance scheme, which is to meet the needs of those who are without an income because of a period of unemployment.

[15] In the Claimant's case, I recognize that she is not unemployed but rather in the situation of having unstable or insufficient employment because she works two part-time jobs with minimal guaranteed hours. I acknowledge the Claimant's statements that the operation of the legislation exclude her from receiving employment insurance benefits through the circumstances of her part-time employment. I also acknowledge the Claimant's statements that her experience is not unique and is, instead, increasingly common as a result of a changing labour market.

⁴ These conditions are listed in subsection 14(1) of the *Employment Insurance Regulations*

⁵ The Federal Court of Appeal considered the requirements of an interruption in earnings in *Canada (Attorney General) v. Perry*, 2006 FCA 258 and *Canada (Attorney General) v. Enns*, A-559-89

Unfortunately, I must conclude that the Claimant is not qualified to receive employment insurance benefits within the legislative framework that exists now and I am bound to apply the legislation as it is written, no matter how compassionate or unique the circumstances.⁶

CONCLUSION

[16] The appeal is dismissed.

Catherine Shaw

Member, General Division - Employment Insurance Section

HEARD ON:	April 17, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	D. E., Appellant/Claimant

⁶ The Federal Court of Appeal in *Canada (Attorney General) v. Knee*, 2011 FCA 301 determined that an administrative tribunal is bound by the requirements of the law and has no jurisdiction to change the law, nor to interpret it in a manner that is contrary to its plain meaning