



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. M. v Canada Employment Insurance Commission*, 2019 SST 858

Tribunal File Number: GE-19-1009

BETWEEN:

E. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: April 16, 2019

DATE OF DECISION: April 17, 2019

DECISION

[1] The appeal is dismissed. The Appellant E. M., whom I will refer to as the Claimant, does not have the required number of hours of insurable employment to qualify for regular Employment Insurance benefits.

OVERVIEW

[2] The Claimant initially applied for regular benefits on November 26, 2018, and the Respondent, who is the Canada Employment Insurance Commission (Commission), told him that he did not have enough hours of insurable employment to qualify for regular benefits. The Claimant returned to work and then applied for regular benefits a second time on December 10, 2018, at which time the Commission told him that he still did not have enough hours of insurable hours to qualify for regular benefits.

[3] Upon reconsideration, the Commission maintained their decisions that the Claimant does not qualify for regular benefits on either claim. The Claimant appeals to the Social Security Tribunal (Tribunal) and argues that he should not be denied benefits based on the number of insurable hours because he resides in an area where there is a high rate of unemployment.

PRELIMINARY MATTERS

[4] Neither party appeared at the teleconference hearing, although duly notified. I am satisfied that the Commission received the Notice of Hearing that was electronically sent on March 29, 2019, as there is no indication that this communication failed.

[5] I am also satisfied the Claimant was notified of the scheduled teleconference hearing that was sent to him via FedEx on March 29, 2019; as it was signed received by the Appellant on April 3, 2019, at 9:35 a.m. There is no indication that either party contacted the Tribunal to advise they were unable to attend on the scheduled date or were unable to dial into the teleconference hearing on April 16, 2019.

[6] I must conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.¹ I have also considered that there is no evidence before me to support there were exceptional circumstances preventing the Claimant from attending the April 16, 2019, teleconference hearing. Further, The Notice of Hearing states if a party does not attend the hearing, the Tribunal Member may proceed in the absence of the party, if the Member is satisfied that the party received the Notice of Hearing.

[7] As I am satisfied that each party was notified of the teleconference hearing scheduled for April 16, 2019, as set out above, I proceeded to determine the merits of this appeal in the absence of both parties.²

ISSUES

[8] Does the Claimant have the required number of hours to qualify for benefits on November 26, 2018?

[9] If not, does the Claimant have the required number of hours to qualify for benefits on December 10, 2018?

ANALYSIS

[10] To qualify for regular benefits the Claimant must have an interruption of earnings and have the number of hours of insurable employment relating to the regional rate of unemployment, in his qualifying period.³

[11] There is no dispute that the Claimant established a previous benefit period on January 14, 2018. Nor is there any dispute that the Claimant's subsequent qualifying period commences on January 14, 2018.⁴

¹ Paragraph 3(1)(a) of the *Social Security Tribunal Regulations*

² Subsection 12(1), of the *Social Security Tribunal Regulations*

³ As set out in the table in subsection 7(2) of the *Employment Insurance Act (Act)*

⁴ Section 8 of the *Act*

[12] For the Claimant's initial claim filed November 26, 2018, the qualifying period is January 14, 2018 until November 25, 2018, during which he acquired 624 hours of insurable employment, as per the Records of Employment on file.

[13] Although the Claimant disagrees with how the regional rate of unemployment (RRU) is determined, the fact remains that he resides in an area where the RRU on November 26, 2018, was 7.2%. Therefore, the Claimant requires 630 hours of insurable employment to qualify for benefits.⁵ Based on the ROE evidence on file, the Claimant has only 624 hours of insurable employment January 14, 2018 until November 25, 2018; therefore, he does not qualify for benefits as of November 26, 2018.

[14] The qualifying period for the initial claim filed on December 10, 2018, is from January 14, 2018, until December 9, 2018, during which the Claimant acquired 635 hours of insurable employment, based on the CRA ruling.⁶

[15] As stated above, although the Claimant argued that he disagrees with how the RRU is determined, the fact remains that he resides in an area where the RRU on December 9, 2018, was 6.4%, and he requires 665 hours of insurable employment to qualify for benefits.⁷ The Claimant only has 635 hours of insurable employment January 14, 2018, until December 9, 2018, and therefore he does not qualify for benefits as of December 10, 2018.

[16] As the Claimant was disputing whether he qualified for benefits based on the calculation of his insurable hours, a ruling was requested from the Canada Revenue Agency (CRA). The CRA issued an insurability ruling on March 28, 2019, in which they determined that for the period from August 15, 2018, until December 8, 2018, the Claimant had 635 hours of insurable employment. This ruling further states that if the Claimant disagrees with the ruling he has 90 days from the date of the letter to appeal to the Chief of Appeals at CRA.

[17] The Federal Court of Appeal (FCA) has reaffirmed that CRA has exclusive jurisdiction to determine the number of insured hours a person has in insurable employment, pursuant to section

⁵ Section 7 of the *Act*

⁶ Section 8 of the *Act*

⁷ Section 7 of the *Act*

90.1 of the *Act*.⁸ As such, I do not have authority to alter CRA's determination that the Claimant only has 635 hours of insurable employment from August 15, 2018, until December 8, 2018. If the Claimant disagrees with CRA's ruling, he must file an appeal to CRA as per the instructions listed on the notice of ruling. Based on the foregoing, this appeal has no merit.

[18] I sympathize with the Claimant given the circumstances presented; however, there is no discretion and no exceptions when determining whether he has enough hours of insurable employment to qualify for benefits. I cannot interpret or rewrite the *Act* in a manner that is contrary to its plain meaning, even in the interest of compassion.⁹

CONCLUSION

[19] The appeal is dismissed.

Linda Bell

Member, General Division - Employment Insurance Section

HEARD ON:	April 16, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	None

⁸ *Romano* 2008 FCA 117; *Didiodato* 2002 FCA 345

⁹ *Canada (Attorney General) v. Knee*, 2011 FCA 301