



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *D. L. v Canada Employment Insurance Commission*, 2019 SST 1430

Tribunal File Number: GE-19-1330

BETWEEN:

D. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Lucie Leduc

HEARD ON: May 15, 2019

DATE OF DECISION: June 13, 2019

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant worked as a digital machine operator for the same company, X (X), for 28 years. He stopped working in September 2007 because of a medical condition. He received Employment Insurance sickness benefits until January 2018. The Appellant states that he went to a Service Canada office to find out his options because he had no income and that he was advised to file a claim because he was entitled to benefits while he waited for his group insurance case to be settled. The Appellant states that his case was somewhat delayed and that he finally filed a new claim in July 2018. His claim was accepted, and he received Employment Insurance benefits.

[3] In November 2018, the Employment Insurance Commission (Commission) realized that the Appellant should never have received benefits because he did not have enough insurable hours of employment in his qualifying period to qualify. The Commission apparently calculated the Appellant's insurable hours of employment as of March 2017, when it should have started his qualifying period in July 2017. It informed the Appellant and issued him a notice of debt for \$3,136.

ISSUE

[4] The Tribunal must determine whether the Appellant accumulated enough hours of insurable employment to be entitled to Employment Insurance benefits.

ANALYSIS

[5] To be entitled to Employment Insurance benefits, a claimant must meet the entitlement conditions set out in section 7 of the *Employment Insurance Act* (Act). Notably, the Act stipulates that a certain number of hours of insurable employment is required to establish a benefit period.

Issue: Did the Appellant accumulate enough hours of insurable employment to be entitled to Employment Insurance benefits?

[6] In this case, I find that the Appellant did not accumulate enough hours to be entitled to Employment Insurance benefits.

[7] The equation for determining whether the Appellant established a benefit period is relatively simple according to section 7 of the Act. The facts are that the Appellant lives in the economic region of Central Quebec, where the unemployment rate was 5.2% in July 2018, when he applied for benefits. Based on the table in section 7(2) of the Act, the Tribunal notes that, with the 5.2% unemployment rate in the region where the Appellant lives, he must have accumulated at least 700 hours of insurable employment during his qualifying period.

[8] In this case, the Appellant's qualifying period was established from July 2, 2017, to July 21, 2018, in accordance with section 8(1) of the Act. However, the Appellant accumulated 470 hours of insurable employment during that period. He therefore did not have the required number of hours of insurable employment to qualify to receive benefits. Despite that, the Commission paid him benefits. The Commission acknowledged that it made a calculation error and that the Appellant should not have received benefits after his July 2018 claim. The Commission's error was calculating that the Appellant's qualifying period began in March 2017 instead of July 2017. The recalculation created an overpayment of \$3,136 to the Appellant.

[9] The Appellant does not dispute the Commission's new calculation, but he believed he was eligible, received his benefits, and finds it unfair that he is now being asked to repay this large sum of money.

[10] For my part, I must find that the Commission applied the legal rule properly. The qualifying period includes hours of insurable employment that establish a benefit period. Section 8(1)(a) of the Act does state the parameters of the qualifying period. It sets out that the qualifying period is the equivalent of the 52 weeks before the beginning of the benefit period. In this case, the benefit period was established when the Appellant filed his claim in July 2018, and the Commission needed to go back 52 weeks to verify the Appellant's number of hours. In doing this exercise, we see that, the Appellant had 470 hours, but he needed 700. Unfortunately, the

Appellant's 470 hours of insurable employment are not enough for him to qualify for benefits. I find that the Commission applied the Act correctly when it corrected itself. First, it had used March 2017 to calculate the Appellant's hours, which was not in line with the legislation because there were more than 52 weeks in the qualifying period the Commission used.

[11] I have much sympathy for the Appellant's situation. Not being wealthy to begin with, he found himself unemployed for medical reasons in 2017 and has gone through considerable hardship. His employer's group insurance did not recognize his illness, and as a result, he did not receive any benefits from it. Employment Insurance benefits are therefore last-resort benefits for him that just helped him survive. He even claimed social assistance, which barely covers the minimum needed to live. However, that does not change the fact that the Act must be applied to everyone in the same way. The Tribunal does not have the power to change the Act, but to make sure that it is applied correctly. The Tribunal does not have discretion to give decisions on humanitarian grounds. In this case, the Appellant's qualifying period was corrected and properly set to begin on July 2, 2017, which resulted in it not including any hours of insurable employment. I must therefore find that the Appellant did not have the hours and conditions required for him to be entitled to Employment Insurance benefits. Despite all my sympathy, I do not have the power to exempt him from his obligations under the Act.

[12] However, I can respectfully suggest to the Commission that it has the discretion to write off or reduce a debt to consider this issue, given its error [*sic*]. The Appellant argues that the Commission's agents encouraged him to apply, even though they knew that the Appellant had not worked because of his medical condition since September 2017. He is extremely confused about what could have made the Commission give him such advice. Furthermore, since the Appellant is in an extremely precarious situation, it will be very difficult for him to repay his debt to the Employment Insurance fund. The Appellant may also submit the same request to the Commission on his own initiative. I note from the documentary evidence that the Commission admitted that the incorrect calculation resulted from a [translation] "known but not publicized" system error caused by the system's inability to check whether the qualifying period is correct. This failing of the computer system is unfortunate.

CONCLUSION

[13] The appeal is dismissed.

Lucie Leduc
Member, General Division – Employment Insurance Section

HEARD ON:	May 15, 2019
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	D. L., Appellant Renaud Blanchette, Representative for the Appellant