



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. H. v Canada Employment Insurance Commission*, 2019 SST 734

Tribunal File Number: GE-19-1880

BETWEEN:

D. H.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent/Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Candace R. Salmon

HEARD ON: June 12, 2019

DATE OF DECISION: June 21, 2019

DECISION

[1] The appeal is dismissed. I find the calculation of the Appellant's maximum number of weeks of employment insurance benefits is correct. The result is that he is not entitled to any further benefits.

OVERVIEW

[2] The Appellant, who I will refer to as the Claimant, worked as a salesperson. He sold recreational vehicles. The Claimant quit his employment, and made a claim for employment insurance (EI) benefits. The Canada Employment Insurance Commission, which I will refer to as the Commission, determined the Claimant qualified for 17 weeks of EI benefits, based on his regional rate of unemployment and hours of insurable employment accumulated. The Claimant requested reconsideration, and the Commission upheld its decision. The Claimant appeals the decision to the Social Security Tribunal (Tribunal), arguing he had more hours of insurable employment which should have been used in calculating his weeks of entitlement.

ISSUE

[3] Is the Claimant entitled to a greater number of weeks of EI benefits in his benefit period?

ANALYSIS

[4] I find the Claimant's appeal must fail because the Commission correctly calculated the number of weeks he is entitled to EI benefits.

[5] The Claimant made a claim for EI benefits on December 13, 2018, effective November 18, 2018. The Commission made a decision on January 7, 2019, finding the Claimant was subject to a violation and required 998 hours of insurable employment to establish a benefit period, but had only 800 hours. The Commission later rescinded the violation, by letter dated February 21, 2019, and determined the Claimant was entitled to 17 weeks of EI benefits. The Commission issued a reconsideration decision on April 4, 2019, upholding its finding that the Claimant was entitled to 17 weeks of EI benefits.

[6] The Claimant's evidence is that he worked on the basis of commission, so was paid based only on sales. He testified that he worked far more than 40 hours per week, because his income related to how many products he sold. The Claimant testified that he did not receive a base salary, and identified instances in the file where the employer gave incorrect information relating to how he was paid.¹ The Claimant submitted that he consistently worked more than 80 hours per week, and his position is that all of his hours should be considered when calculating his entitlement to EI benefits.

[7] I appreciate the Claimant's position but have no jurisdiction over hours of employment, which is in the jurisdiction of the Canada Revenue Agency (CRA).² While I do not question that the Claimant worked more than 40 hours per week in his efforts to sell product and make more money, the CRA is the organization that is able to determine whether the Claimant had more hours of insurable employment than are reflected on his Record of Employment.

[8] In this case, the Commission requested a ruling from the CRA, to confirm the Claimant's insurability. The CRA rendered a decision on March 28, 2019, finding the Claimant was an employee from June 4, 2018, until November 2, 2018, and accumulated 800 hours of insurable employment. I have no jurisdiction to find otherwise.

[9] The Claimant lives in the Moncton region, where the regional rate of unemployment throughout 2018 was between 6 and 7 percent.³ The CRA ruling found the Claimant accumulated 800 hours of insurable employment from June 4, 2018, until November 2, 2018. Based on the

¹ While I generally would consider inconsistent evidence and make a finding of fact, in this case the evidence is not relevant to the decision because there is a Canada Revenue Agency ruling in the file which is determinative to the Claimant's appeal.

² The Federal Court of Appeal has addressed this issue, and found that the CRA has the exclusive jurisdiction to determine the number of hours an insured person has accumulated in an insurable employment. Many cases have confirmed this, including [Canada \(Attorney General\) v. Haberman, A-717-98](#), [The Attorney General of Canada v. Thiara, 2001 FCA 386](#), and [Canada \(Attorney General\) v. Didiolato, 2002 FCA 345](#). This is also stated in the *Employment Insurance Act*, which includes that rulings related to how many hours an insured person has had in insurable employment must be made by the Canada Revenue Agency. This is in the Act at section 90(1)(d) and 90.1.

³ The regional rate of unemployment chart is in the file, at page GD3-106. At the time the benefit period started, the rate was 6.5 percent.

Employment Insurance Act, using the regional unemployment rate and hours of insurable employment identified above, the Claimant was entitled to 17 weeks of EI benefits.⁴

[10] The Claimant gave extensive testimony at the hearing relating to his work, how much time he spent working, and his difficult relationship with a supervisor. He also recounted his experiences with homelessness and poverty, which he related to both the lengthy EI process and his previous employment. I note this, not because it impacts the decision, but because the Claimant took the time to explain a difficult situation and I acknowledge that I heard him and appreciate that I cannot understand how difficult his life was during this time. I am, however, an adjudicator and must make decisions based on the evidence and within the jurisdiction given to me by the law. For the reasons above, I cannot disturb the Commission's decision in this case. Should the Claimant wish to dispute the CRA ruling and its determination that he has 800 hours of insurable employment, he may wish to contact the CRA for further information.⁵

CONCLUSION

[11] The appeal is dismissed. I find the Claimant's weeks of entitlement have been correctly calculated and he is not entitled to further weeks of EI benefits.

Candace R. Salmon

Member, General Division - Employment Insurance Section

HEARD ON:	June 12, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	D. H., Appellant

⁴ *Employment Insurance Act*, Schedule 1. This Schedule includes a Table of Weeks of Benefits, which uses the regional rate of unemployment and the number of hours of insurable employment accumulated to determine the amount of weeks of EI benefits to which a Claimant is entitled.

⁵ The CRA ruling dated March 28, 2019, is included at GD3-97 and GD3-98 of the file. The information in the ruling outlines the method of appealing and the timelines for doing so.