



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. S. v Canada Employment Insurance Commission*, 2019 SST 946

Tribunal File Number: GE-19-2762

BETWEEN:

R. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Christopher Pike

HEARD ON: August 15, 2019

DATE OF DECISION: August 21, 2019

DECISION

[1] The appeal is allowed. The result is that the Appellant (Claimant) has proven that he was unemployed in 2011. These reasons explain why.

OVERVIEW

[2] The Claimant's employer laid him off on December 24, 2010. He decided to start his own business and asked the Canada Employment Insurance Commission (Commission) for advice on collecting benefits while he was self employed. He was told that if he received income over a certain amount it would be deducted from his benefits.

[3] The Claimant registered his business on January 11, 2011. He received employment insurance benefits until November 5, 2011. He reported his income during this time in accordance with his understanding of his obligations.

[4] The Commission decided that the Claimant was self-employed and not entitled to benefits. It claimed an overpayment. The Commission upheld this decision on reconsideration. The Claimant appealed.

ISSUE

[5] The Commission determined that the Claimant was not entitled to receive because he did not prove that he was unemployed as required under section 30 of the *Employment Insurance Regulations*. I have to decide:

- a) if the Claimant was self-employed;
- b) if the Claimant's engagement in self-employment was so minor that a person would not normally rely on that employment as their principal means of livelihood.

ANALYSIS

[6] Employment insurance benefits are not a subsidy for people who are starting a business.¹ Employment insurance benefits are for unemployed people. Claimants can only receive benefits

¹ The Federal Court of Appeal explained this principle in *Canada (Attorney General) v. Jouan*, 1995 CanLII 11053.

during a week of unemployment.² The Commission presumes that a claimant who operates a business is employed, and so they are usually not entitled to receive employment insurance benefits.³ However, a self-employed claimant can receive employment insurance benefits if their self-employment activity is so minor that most people would not rely on that activity as their main source of income.⁴

The Claimant was self-employed

[7] The Claimant has always agreed that he ran a business. He started a small X business and registered a business number with the Canada Revenue Agency on January 11, 2011. He continued to run the business until about 18 months ago. I find that the Claimant was self-employed in 2011.

The Claimant's self-employment was minor in extent

[8] I have to consider six circumstances⁵ to decide if the Claimant's self-employment activity was so minor that he was unemployed:

- a) The time that he spent on his business;
- b) The nature and amount of the capital and resources that he invested in his business;
- c) The financial success or failure of his business;
- d) The continuity of his business;
- e) The nature of his business; and
- f) His intention and willingness to seek and immediately accept alternate employment.

[9] Documents filed by the Commission show that it paid benefits to the Claimant until November 5, 2011. The Claimant testified that all of his business record were lost when his computer was stolen in 2014. He asked the Canada Revenue Agency for copies of his business's

² Section 9 of the *Employment Insurance Act* explains this principle.

³ Section 30(1) of the *Employment Insurance Regulations* explains this principle.

⁴ Section 30(2) of the *Employment Insurance Regulations* explains this principle.

⁵ Section 30(3) of the *Employment Insurance Regulations* lists these six circumstances/

The financial success or failure of the business

[13] The Claimant told a Commission agent on June 25, 2019 that he was “making a go” of his business. He testified that 2011, his first year, was “crappy”. Considering this evidence and the evidence of the business’s gross sales income shown in its 2011 HST returns, I find that the Claimant’s business was far from successful in 2011.

The continuity of the business

[14] The Claimant was the business’s only employee. I find that the continuity of the Claimant’s business was entirely dependent on his efforts to develop and grow it.

The nature of the business

[15] The Appellant’s evidence indicates that he worked as an X. I find that the Claimant’s expertise and skills were essential to the nature of his business.

The Appellant’s intention & willingness to seek and immediately accept alternate employment

[16] The Claimant testified that after he started his business in 2011, he made enquiries about returning to work with several former employers. He said they were not hiring. He also said that he did not look for employment elsewhere. I find that the Claimant has shown some intention and willingness to accept alternate employment.

[17] The time that the Claimant spent on his business activity and his willingness to seek other employment are the most important circumstances for me to consider as I assess if the Claimant’s self-employment activity is minor.⁶

[18] The evidence establishes that on average the Claimant spent less than 10 hours weekly on his business. He made no investment in tools or equipment to start his business. During his first year in business, he explored opportunities to abandon it by asking former employers if they had work for him. The HST records he submitted show that his business grossed around \$9,000 during the time he received employment insurance benefits in 2011 and \$13,869 over the 50 weeks that it operated that year.

⁶ *Charbonneau v. The Attorney General of Canada*, 2004 FCA 61 explains this principle.

[19] Considering all of these circumstances I find that the Claimant's self-employment activity in 2011 was not consistent with the effort a person would normally put into employment intended to be his principal means of livelihood. This means the Claimant has proven that his self-employment activity was so minor in 2011 that he was unemployed.

CONCLUSION

[20] The appeal is allowed.

Christopher Pike
Member, General Division - Employment Insurance Section

HEARD ON:	August 15, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. S., Appellant