



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *R. C. v Canada Employment Insurance Commission*, 2019 SST 939

Tribunal File Numbers: **GE-19-2573**
GE-19-2574
GE-19-2575
GE-19-2576
GE-19-2577
GE-19-2578

BETWEEN:

R. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Josée Langlois

HEARD ON: August 21, 2019

DATE OF DECISION: August 23, 2019

DECISION

[1] The appeal is dismissed. I find that a benefit period cannot be established in the Appellant's favour in each of the six files because he is not entitled to benefits as of October 27, 2013; November 2, 2014; November 15, 2015; November 13, 2016; November 12, 2017; and November 11, 2018.

OVERVIEW

[2] The Appellant filed six consecutive claims for benefits on October 27, 2013; November 2, 2014; November 15, 2015; November 13, 2016; November 12, 2017; and November 11, 2018. On June 17, 2019, the Canada Employment Insurance Commission (Commission) informed the Appellant that it could not pay him benefits during those six periods because there was no interruption of earnings for seven consecutive days. The Commission explained that the Appellant was receiving non-monetary earnings by using the cellphone provided to him by the employer. This situation resulted in an overpayment of nearly \$75,000. The Appellant does not deny that he was using the cellphone provided by the employer, but he claims that, if he had known, he would have left the cellphone in a drawer at work during the periods he was off work. I must determine whether the Appellant is entitled to benefits and whether a benefit period can be established for each of the Appellant's files.

ISSUE

[3] Was there an interruption in the Appellant's earnings for seven consecutive days for the periods beginning on October 27, 2013; November 2, 2014; November 15, 2015; November 13, 2016; November 12, 2017; and November 11, 2018?

PRELIMINARY MATTER

[4] At the hearing, I combined the Appellant's six files—GE-19-2573, GE-19-2574, GE-19-2575, GE-19-2576, GE-19-2577, and GE-19-2578—because the appeals raise a common question of law or fact and because no injustice is likely to be caused to any party.

ANALYSIS

[5] To be eligible for benefits and to establish a benefit period, the Appellant must be entitled, and one of the conditions of this entitlement is an interruption of earnings for seven consecutive days.¹

[6] An interruption of earnings occurs where, following a period of employment, an insured person is laid off or separated from that employment and has a period of seven or more consecutive days during which no work is performed for that employer and in respect of which no earnings that arise from that employment, other than earnings paid in respect of a holiday, are payable or allocated.²

[7] The Appellant stated to the Commission that he owned one third of the business X. Each year, he stops that employment due to a shortage of work. He returns the company credit card but keeps the cellphone during the periods he is off work.

[8] The Appellant explained that he keeps the cellphone so the employer can contact him, but he submits that he does not work during this period because it is the off-season. The Appellant confirmed that the employer paid for the cellphone and that he also uses it for personal purposes.³ He explained that using the cellphone allows the employer to reach him if necessary.

[9] The Appellant also stated that the telephone number on the business cards given to clients is the number of the cellphone he has. At the hearing, he noted that new clients called the office directly and that the business cards with his cellphone number were given only to clients for whom he had already worked. As the Appellant is familiar with jobs that have been done, if clients have questions or repair requests, they contact him directly. The Appellant stated to the Commission that, if there were repair requests, he informed the clients that these repairs would be done in the spring. The Appellant also stated that he could make quotes, but that it was very rare.

¹ *Employment Insurance Act* ([Act](#)), s 7.

² *Employment Insurance Regulations* (Regulations), s 14.

³ GD3-17 and GD3-20.

[10] In his notice of appeal, the Appellant noted that the use of the cellphone allowed him to provide customer service, respond to complaints and warranty claims, make himself available to suppliers in the pre-season, and receive the list of prices, discounts, and so on.

[11] The Commission submits that the cellphone provided by the employer constitutes earnings because its use, even if the amount is not significant, represents a cost that is paid by the employer, X. Since the Appellant stated that he kept the business cellphone to provide customer service, respond to complaints and warranty claims, receive the list of prices, and make himself available to suppliers in the pre-season, the Commission submits that this situation shows that the Appellant did not have a period of seven or more consecutive days where no earnings were received. Even if regular earnings had stopped, the Commission argues that the Appellant kept the business cellphone to ensure continuity, in case clients or suppliers needed services.

[12] I am of the same view. Although I understand the Appellant's explanations and that the overpayment amount has a significant financial impact on him, the evidence shows that the Appellant has had a cellphone paid for by the business since at least 2013 and that he uses it during the periods he is off work.

[13] The evidence shows that the Appellant's cellphone use is connected or related to his work, unlike the personal telephone that he has at home and that he pays for. In other words, there is a clear connection between the Appellant's employment and the benefits he receives during the period he is off work. The Appellant's statements show that he used the cellphone provided by the business for personal purposes, but also for work for during the period he was off work.

[14] In this sense, benefits received from an employment are considered earnings.⁴ The Appellant continued to benefit from earnings during each of the periods he was off work as of October 27, 2013.

⁴ Regulations, s 35(10)(d).

[15] Even if the amount related to the cellphone service was insignificant, it still represents a cost paid for by the employer. For there to be an interruption of earnings, the employee must not benefit from advantages of daily value to that employee.

[16] The employer's decision, for economic reasons, not to suspend cellphone service during the periods the Appellant is off work does not change the fact that the Appellant still has access to a cellphone paid for by the employer throughout the year.

[17] I have heard the Appellant's arguments and I understand that the Commission's decisions have a significant financial impact on him. However, as I explained at the hearing, I must apply the law even if I understand that the Appellant made the effort to travel on numerous occasions to the New Richmond Service Canada Centre, and that, if he had known that the cellphone use would prevent him from receiving benefits, he would have left it in a drawer at work. The facts show that a cellphone was provided to him at all times and that he used it for both personal and professional purposes. Even if the Appellant submits that he rarely worked during the periods he was off work and even if, when he answered the telephone, it was to inform clients that repairs would only be done in the spring, the Appellant used the cellphone provided by the business to ensure constant follow-up with clients and suppliers.

[18] I also heard the claims about the notices of debt the Commission sent. Based on his interpretation of one of those notices, the balance due is entered at zero, and the Appellant submits that he does not need to dispute that notice of debt. Similarly, he asks that the amounts previously repaid for those benefit periods for other reasons be considered.

[19] As I explained to the Appellant at the hearing, I am responsible for hearing the six files in relation to the Commission's reconsideration decision—not the notices of debt sent by the Commission. I must determine whether there was an interruption of earnings for seven consecutive days for each of the Appellant's six files. According to the Commission's records, the overpayment totals \$14,585 for the benefit period beginning on October 27, 2013; \$12,855 for the benefit period beginning on November 2, 2014; \$16,172 for the benefit period beginning on November 15, 2015; \$14,472 for the benefit period beginning on November 13, 2016; and \$16,237 for the benefit period beginning on November 12, 2017. For the benefit period

beginning on November 11, 2018, no benefits were paid and no overpayment was generated. However, it would be useful for the Appellant to receive a detailed and complete notice of debt for each of the six benefit periods, including the payments that he has already made, if any. The Appellant understands that he must make this request to the Commission.

[20] While I understand the Appellant's disappointment about his disentitlement to benefits, the [Act](#) clearly indicates that neither the Commission nor the Tribunal or a court has the authority to exempt a claimant from the qualifying provisions of the [Act](#), no matter how sympathetic or unusual the circumstances.

[21] I find that the Appellant did not have an interruption of earnings for seven consecutive days for each of the six benefit periods and that a benefit period therefore cannot be established in each of the files.

CONCLUSION

[22] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section

HEARD ON:	August 21, 2019
METHOD OF PROCEEDING:	In person
APPEARANCE:	R. C., Appellant