



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. P. v Canada Employment Insurance Commission*, 2019 SST 954

Tribunal File Number: GE-19-2810

BETWEEN:

G. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

HEARD ON: August 27, 2019

DATE OF DECISION: August 30, 2019

DECISION

[1] I am dismissing the appeal. I do not have the power to review the Canada Revenue Agency (CRA)'s decision about whether the Claimant's employment was insurable. The Claimant does not have enough insurable hours to qualify for employment insurance benefits.

OVERVIEW

[2] The Claimant applied for employment insurance maternity and parental benefits in 2013. She gave the Commission a Record of Employment (ROE) saying that she had over 1000 hours from a job at an X. The Commission investigated the Claimant's employment insurance claim three years later. The Commission decided that the Claimant had not really worked at the X. The Commission asked the CRA to decide whether the Claimant's job was insurable. The CRA decided that the Claimant's job was not insurable. The Commission cancelled the Claimant's benefit period and asked her to repay the benefits she had received. The Claimant asked the Commission to review its decision. The Commission did not change its decision. The Claimant appealed to the Tribunal.

[3] I am dismissing the Claimant's appeal. It was reasonable for the Commission to come to the opinion that the Claimant had made false statements about her employment insurance claim. The Commission had a reasonable basis to extend the reconsideration period to 72 months. The CRA decided that the Claimant's job was not insurable. I do not have the authority to review the CRA's decision. The Claimant does not have enough insurable hours to qualify for employment insurance benefits.

ISSUES

[4] Issue 1 – Did the Commission have the authority to extend the reconsideration period to 72 months?

[5] Issue 2 – Do I have the authority to hear an appeal of the CRA's decision that the employment was not insurable?

[6] Issue 3 – Does the Claimant have enough hours of insurable employment to qualify for employment insurance benefits?

ANALYSIS

[7] The Commission can reconsider any claim for employment insurance benefits. However, the Commission must obey time limits. Usually, the Commission has 36 months to reconsider a claim for benefits.¹ If the Commission decides that a claimant received benefits that they were not entitled to receive, the claimant has to repay those benefits.²

[8] If the Commission has the opinion that someone has made false or misleading statements about a claim for benefits, then the Commission can extend the reconsideration period. The Commission can take up to 72 months to reconsider a claim if the Commission has the opinion that someone made a false or misleading statement about a claim.³

[9] The Commission's power to extend the reconsideration period to 72 months is an exceptional power. The Commission must exercise this power carefully. The Commission has to prove that it has a reasonable basis for its opinion that someone made a false or misleading statement. The Commission should tell a claimant why it thinks there is a false statement.⁴

Issue 1: Did the Commission have the authority to extend the reconsideration period to 72 months?

[10] The Commission had the authority to extend the reconsideration period to 72 months. The Commission believed the Claimant had made false or misleading statements about her employment insurance claim. It was reasonable for the Commission to have this opinion.

[11] The Commission interviewed the Claimant as part of a larger investigation. The Claimant told the Commission that she worked as a receptionist at an X. She said she worked at the office from 9:00 a.m. until 4:00 or 5:00 p.m., Monday to Friday. She said that she sat at the reception desk, answered the phone, and took messages.

[12] The Commission interviewed five of the X's clients. The Commission showed the clients a photograph of the Claimant. None of the clients recognized the Claimant as an employee of the

¹ Section 52(1) of the *Employment Insurance Act*.

² Section 52(3) of the *Employment Insurance Act*.

³ Section 53(5) of the *Employment Insurance Act*.

⁴ The Federal Court of Appeal says this in *Canada (Attorney General) v. Langelier*, 2002 FCA 157).

X. The clients told the Commission that they had never seen a woman working at the reception desk of the X. Several of the clients said that they had never spoken to a woman on the phone when they called the X.

[13] Because none of the clients recognized the Claimant and because none of the clients saw a woman working at the reception desk, the Commission came to the opinion that the Claimant had made false or misleading statements about her employment insurance claim. The Commission's opinion was that the Claimant made false statements because she had not actually worked for the employer. Given the conflict between the Claimant's statements and the clients' statements, it was reasonable for the Commission to come to the opinion that the Claimant had made a false statement.

[14] The Commission told the Claimant about the client statements. The Commission told the Claimant that it did not believe that she worked at the X. The Commission explained to the Claimant why it came to its opinion that she had made a false statement.

[15] The Commission has proven that it had a reasonable basis to extend the reconsideration period to 72 months.

Issue 2: Do I have the authority to hear an appeal of the CRA's decision that the employment was not insurable?

[16] I do not have the authority to hear an appeal on the CRA's decision about the insurability of the Claimant's employment. I do not have the power to review the CRA's decisions about insurability.

[17] The CRA ruled that the Claimant's employment was not insurable. The Claimant appealed the CRA's decision, but the CRA did not change its decision. The Claimant argues that the CRA's decision was arbitrary because the CRA did not speak to her before it made its decision.

[18] At the hearing, the Claimant said that she wants me to decide whether she could use the hours from her job to qualify for employment insurance benefits. In other words, the Claimant wants me to make a decision about whether her hours are insurable.

[19] The CRA makes decisions about insurable employment. Neither the Commission nor the Tribunal has the power to review the CRA's decisions.⁵ Neither the Commission nor the Tribunal has the power to make decisions about how many insurable hours a person has.⁶ This means that I cannot hear an appeal on the issue of whether the Claimant's hours are insurable. The Claimant may pursue her appeal further with the CRA or the Tax Court of Canada, but I do not have the authority to make a decision about whether her hours are insurable.

Issue 3: Does the Claimant have enough hours of insurable employment to qualify for employment insurance benefits?

[20] The Claimant has not proven that she has enough insurable hours to qualify for employment insurance benefits.

[21] At the hearing, the Claimant said that she could not remember if she worked for any other employers in 2012 or 2013. She could not remember if she had any other ROEs from 2012 or 2013.

[22] The Commission argues that the Claimant has zero hours because the hours from the X are not insurable. The Commission argues that the Claimant does not qualify for benefits because she has zero hours.

[23] It is impossible for anyone to qualify for employment insurance benefits if they have zero hours of insurable employment. This is because everyone needs at least 420 hours of insurable employment to qualify for benefits, even in areas with very high unemployment rates.⁷

[24] The CRA has already decided that the Claimant's hours from the X job are not insurable. The Claimant cannot use these hours to qualify for employment insurance benefits. The law says that you can only use insurable hours to qualify for employment insurance.⁸

⁵ The Federal Court of Appeal says this at paragraph 11 of its decision *Sandhu v. Canada (Attorney General)*, 2004 FCA 147.

⁶ The Federal Court of Appeal says this at paragraph 8 of its decision *Canada (Attorney General) v. Romano*, 2008 FCA 117.

⁷ Section 7(2) of the *Employment Insurance Act* has a table describing how many insurable hours claimants need to qualify for benefits. Claimants need a minimum of 420 hours to qualify for benefits.

⁸ Section 7(2) of the *Employment Insurance Act* says that claimants need insurable hours to qualify for benefits.

[25] The Claimant has not proven that she worked for any other employers. She has not proven that she has enough insurable hours to qualify for benefits.

CONCLUSION

[26] I am dismissing the appeal. I do not have the power to review the CRA's decision about whether the Claimant's employment was insurable. The Claimant does not have enough insurable hours to qualify for employment insurance benefits.

Amanda Pezzutto

Member, General Division - Employment Insurance Section

HEARD ON:	August 27, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	G. P., Appellant