



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *W. S. v Canada Employment Insurance Commission*, 2019 SST 1013

Tribunal File Numbers: GE-19-2459 and GE-19-2562

BETWEEN:

**W. S.**

Claimant

and

**Canada Employment Insurance Commission**

Commission

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Audrey Mitchell

HEARD ON: September 10, 2019

DATE OF DECISION: September 20, 2019

## **DECISION**

[1] The appeal is dismissed. The Commission properly calculated the Claimant's weekly benefits rate for his claim for sickness benefits to be \$258. The Claimant does not have sufficient hours of insurable employment to establish a claim for regular benefits.

## **OVERVIEW**

[2] The Claimant first made an application for regular employment insurance benefits, and later made an application for sickness benefits. The Commission denied the Claimant's application for regular benefits because he did not have sufficient hours of insurable employment in his qualifying period to establish a claim for benefits. The Claimant argued that he should be entitled to a percentage of the maximum regular benefits and not zero benefits.

[3] The Commission approved the Claimant's application for sickness benefits. The Claimant disagreed with the way his weekly benefit rate was calculated because it used the economic region in which he lived. He argued that his total insurable earnings should be divided by the number of weeks he worked for his former employer. The Commission determined that they had properly calculated the Claimant's weekly benefit rate.

## **PRELIMINARY MATTERS**

[4] Given the common facts related to the two appeals, and that no injustice is likely to be caused to any party to the appeals, on my own initiative I joined the Claimant's two appeals (section 13, *Social Security Tribunal Regulations*). On August 27, 2019, the Tribunal notified the Claimant that the appeals would be joined.

[5] Because the Claimant argued that the *Employment Insurance Act* discriminates against him as an older worker, the Tribunal gave him an opportunity to file a Charter Argument Notice by August 23, 2019. The Claimant filed the notice on August 26, 2019, after a notice of hearing had already been sent.

[6] At the hearing, I clarified with the Claimant whether or not he intended to pursue a Charter argument, explaining the process, timelines relative to the regular appeal process and identifying legal resources available on the Social Security Tribunal website. The Claimant

decided that he would not pursue a Charter argument, and to proceed with the regular appeal process.

## **ISSUES**

[7] Did the Commission properly calculate the Claimant's rate of weekly benefits?

[8] Did the Claimant have enough insurable hours of employment to qualify for regular benefits?

## **ANALYSIS**

[9] The Tribunal is not permitted to re-write the legislation or interpret it in a manner that is contrary to its plain meaning (*Canada (AG) v. Kneé*, 2011 FCA 301). Neither does the Tribunal have the power to depart from the provisions of the *Employment Insurance Act*, for any reason, no matter how compelling the circumstances (*Granger v. Canada Employment and Immigration Commission*, A-684-85).

### **Issue 1: Did the Commission properly calculate the Claimant's rate of weekly benefits?**

[10] I find that the Commission properly calculated the Claimant's rate of weekly benefits.

[11] The rate of weekly benefits that a claimant may receive is 55% of their weekly insurable earnings (subsection 14(1), *Employment Insurance Act*). A claimant's weekly insurable earnings are their insurable earnings in the calculation period divided by the number of weeks determined by the table, using the applicable regional rate of unemployment (subsection 14(2), *Employment Insurance Act*). The calculation period is the number of weeks determined in accordance with the table, using the applicable regional rate of employment, in the claimant's qualifying period, for which he received the highest insurable earnings (subsection 14(4), *Employment Insurance Act*).

[12] A claimant's benefit rate is based on the weekly insurable earnings, and the method used to calculate the rate of these weekly benefits is the same for all claimants, that is, 55% of the weekly insurable earnings (*Manoli v. Canada (AG)*, 2005 FCA 178).

[13] The Claimant made an application for sickness benefits, and the Commission determined his qualifying period to be from December 24, 2017 to March 30, 2019. The Commission had extended the qualifying period by 14 weeks because the Claimant had been unable to work for medical reasons. The Claimant did not dispute the qualifying period. I find that that because he applied for employment insurance benefits on April 1, 2019, and his benefit period was established on March 31, 2019, the Commission correctly identified the Claimant's qualifying period to be the 52 weeks plus the 14-week extension from December 24, 2017 to March 30, 2019 (paragraph 8(1)(a), *Employment Insurance Act*).

[14] The Claimant argued that since he only worked for the employer for 17 weeks, the Commission should have divided his insurable earnings by 17 instead of 21. He testified that if he had been working in a different province, the Commission would have divided his earnings by 17, and this was not fair. He stated that since his application for benefits was based on an injury and he was not looking for work, the Commission should not have calculated his benefit rate based on the economic region in which he lived.

[15] At the hearing, the Claimant confirmed the Commission's evidence that he earned \$9,700.08 from September 26, 2018 to January 14, 2019, and that he did not have any earnings other than with his former employer during his qualifying period.

[16] The Claimant confirmed that he continues to live at the postal code that the Commission used to determine that he lives in the economic Region of Eastern Ontario. The Commission noted that the rate of unemployment for the Region of Eastern Ontario at the time that the Claimant made his application for benefits was 6.3%.

[17] In spite of the Claimant's argument concerning the Commission's use of the economic region in which he lived and associated unemployment rate and number of weeks by which they divided his earnings, I do not have the authority to re-write the legislation. I find that the Commission correctly identified that the Claimant's insurable earnings were to be divided by 21 weeks (subsections 14(2) and 14(4), *Employment Insurance Act*).

[18] The Commission calculated the weekly benefit rate as follows: \$9,700.08 (total insurable earnings) ÷ 21 weeks = \$461.91 weekly insurable earnings X 55% = \$254.00 weekly benefit rate (rounded).

[19] I find that the Commission properly calculated the Claimant's weekly benefit rate.

**Issue 2: Did the Claimant have enough insurable hours of employment to qualify for regular benefits?**

[20] I find that the Claimant does not have enough insurable hours of employment to qualify for regular benefits.

[21] In order to qualify for benefits, a claimant must have the required number of hours of insurable employment that relate to the regional rate of employment (paragraph 7(2)(b), *Employment Insurance Act*). The number of hours required by subsection 7(2) of the *Employment Insurance Act* does not allow any discrepancy and provides no discretion (*Canada (Attorney General) v. Lévesque*, 2001 FCA 304).

[22] The Commission used the Claimant's postal code to determine the economic region in which he lived on February 1, 2019, when he applied for regular benefits. The Commission printed an unemployment rate and benefit table for the date on which the Claimant applied for benefits. It shows that the unemployment rate in the economic region in which he lived was 6.9% and that he required 665 hours of insurable employment to qualify for regular benefits.

[23] Based on the Claimant's argument that he had been unable to work because he had surgery, from approximately April 22, 2018 to June 23, 2018, the Commission extended his qualifying period by nine weeks, resulting in a qualifying period from November 19, 2017 to January 19, 2019. The Claimant told the Commission that he did not have any other periods of illness. The Commission submitted that the Claimant did not have additional hours of insurable employment in this period.

[24] At the hearing, the Claimant suggested that he might have underestimated the time that he was unable to work. Because the Claimant told the Commission that he did not have any other periods of illness other than during the dates that he identified, I give more weight to his

initial statement, particularly since he gave specific dates. I find, therefore, that the Commission correctly determined the Claimant's qualifying period to be the 52-week period before his benefit period, plus the nine-week extension, namely November 19, 2017 to January 19, 2019.

[25] The Claimant testified that he last worked from October 8, 2017 to November 2, 2017, and that he accumulated 51 hours of insurable employment with this employer. Because the Claimant accumulated these hours outside his qualifying period, I do not find that the 51 hours can be used to determine whether he qualifies for regular benefits.

[26] The employer issued a record of employment for the Claimant that shows that he accumulated 604 hours of insurable employment between September 26, 2018 and January 14, 2019. The Claimant did not dispute that he had accumulated only 604 hours of insurable hours of employment, but needed 665 hours to qualify for benefits. However, he argued that because he has 92% of the required hours, he should be entitled to 92% of the normal maximum benefits and not zero.

[27] Unfortunately, in spite of the Claimant's argument, I do not have the authority to re-write the legislation or interpret it a manner that is contrary to its plain meaning. In addition, I cannot depart from the provisions of the *Employment Insurance Act* for any reason, no matter how compelling the circumstances.

[28] I find that the Claimant accumulated 604 hours of insurable employment in his qualifying period. Because the Claimant requires 665 hours of insurable employment to establish a claim for benefits, I find that he has failed to demonstrate that he has sufficient hours of insurable employment to establish a claim for benefits.

[29] I find that the Commission correctly calculated the weekly benefit rate to be \$254.00. I also find that the Claimant does not have sufficient hours of insurable employment to establish a claim for regular benefits.

**CONCLUSION**

[30] The appeal is dismissed.

Audrey Mitchell  
Member, General Division - Employment Insurance Section

HEARD ON:	September 10, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	W. S., Claimant