Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *C. M. v Canada Employment Insurance Commission*, 2019 SST 1675

Tribunal File Number: GE-19-2539

BETWEEN:

C. M.

Claimant

and

Canada Employment Insurance Commission

Commission

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Audrey Mitchell

DATE OF DECISION: October 4, 2019

REASONS AND DECISION

INTRODUCTION

[1] The Claimant applied for employment insurance regular benefits. The Commission notified the Claimant that it was unable to pay him employment insurance benefits because he had 694 hours of insurable employment, but needed 700 hours of insurable employment to qualify for benefits. The Claimant requested a reconsideration of the Commission's decision. The Commission maintained its initial decision, after which the Claimant filed an appeal with the Social Security Tribunal (Tribunal) on July 5, 2019.

[2] After the Canada Revenue Agency issued an insurability ruling that the Claimant had 699 hours of insurable employment for the period under review, the Tribunal sent a letter to the Claimant advising that it was considering summarily dismissing the appeal and inviting written submissions explaining why his appeal has a reasonable chance of success.

ISSUE

[3] I must decide whether I should summarily dismiss the Claimant's appeal.

THE LAW

[4] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[5] Section 22 of the *Social Security Tribunal Regulations* states that before summarily dismissing an appeal, the General Division must give notice in writing to the Claimant and allow the Claimant a reasonable period to make submissions.

[6] Subsection 7(1) of the *Employment Insurance Act* (EI Act) states that unemployment benefits are payable as provided in this Part to an insured person who qualifies to receive them.

[7] Paragraph 7(2)(b) of the EI Act states that an insured person qualifies if the person has had during their qualifying period at least the number of hours of insurable employment set out in the following table in relation to the regional rate of unemployment that applies to the person.

TABLE

Regional Rate of Unemployment	Required Number of Hours of Insurable Employment in Qualifying Period
6% and under	700
more than 6% but not more than 7%	665
more than 7% but not more than 8%	630
more than 8% but not more than 9%	595
more than 9% but not more than 10%	560
more than 10% but not more than 11%	525
more than 11% but not more than 12%	490
more than 12% but not more than 13%	455
more than 13%	420

EVIDENCE

[8] On March 12, 2018, the employer issued a record of employment indicating that from November 13, 2017 to February 28, 2018, the Claimant accumulated 694 hours of insurable employment.

[9] On November 2, 2018, the Claimant applied for employment insurance regular benefits.

[10] The Commission used the Claimant's postal code to determine that the Claimant lived in the economic region of London. They printed a report that shows that for the period October 7, 2018 to November 3, 2018, the unemployment rate was 5.3%, and the number of insurable hours of employment required to qualify for regular benefits was 700.

[11] On November 7, 2018, the Commission notified the Claimant that they were unable to pay him employment insurance benefits because he had accumulated 694 hours of insurable

employment between October 29, 2017 and October 27, 2018, but he required 700 hours of insurable employment to qualify for benefits.

[12] The Claimant sent a request for reconsideration to the Commission dated December 2018. In his request, the Claimant stated that he was working an average of 60-hour weeks, but the employer put 44 hours each week because they do not pay overtime.

[13] On January 24, 2019, the Claimant told the Commission that between April 12, 2016 and November 13, 2017, he was self-employed in employment that was not insurable. He said that his former employer took over his business and he became an employee, and was no longer the owner. He said that he was a salaried employee and usually worked more than 88 hours bi-weekly, but the employer advised him that because he was a salaried employee, they could not pay him overtime so the additional hours would not be shown on the ROE.

[14] On January 24, 2019, the Commission notified the Claimant that it was maintaining its decision made on November 7, 2018.

[15] The Claimant filed a notice of appeal with the Tribunal on July 5, 2019.

[16] On August 26, 2019, the Canada Revenue Agency issued an insurability ruling for the period November 13, 2017 to February 28, 2018, when the Claimant worked for his former employer. The CRA ruled that the Claimant accumulated 699 hours of insurable employment.

SUBMISSIONS

[17] The Claimant submitted that his former employer had him working an average of 60 hours per week illegally without overtime payment. He said that he should have 900 plus hours. The Claimant stated that he has a claim under investigation for additional insurable hours that he believes will be successful.

[18] The Commission submitted the Claimant's qualifying period was established from October 29, 2017 to October 27, 2018, pursuant to paragraph 8(1)(a) of the EI Act, and that the Claimant required 700 hours of insurable employment to qualify to receive employment insurance benefits based on the 5.3% rate of unemployment in the region where he resided. The Commission submitted that the Claimant had accumulated only 699 hours of insurable

employment in his qualifying period, and that he has failed to demonstrate that he qualified to receive employment insurance benefits pursuant to subsection 7(2) of the EI Act.

ANALYSIS

[19] I must summarily dismiss an appeal if it has no reasonable chance of success.

[20] The Commission determined the Claimant's qualifying period to be the 52-week period immediately before the benefit period, under paragraph 8(1)(a) of the EI Act, namely from October 29, 2017 to October 27, 2018, and that as a resident of the economic region of London, the Claimant required 700 hours of insurable employment to qualify for benefits. The employer issued an ROE for the Claimant that shows that he accumulated 694 hours of insurable employment from November 13, 2017 to February 28, 2018. The Claimant stated that he was self-employed after he left his last job in 2016 and before November 13, 2017.

[21] In response to a request for a ruling on insurable hours, the Canada Revenue Agency ruled that for the period from November 13, 2017 to February 28, 2018, the Claimant accumulated 699 insurable hours of employment.

[22] The EI Act is very clear concerning the requirements to qualify for benefits. Specifically, paragraph 7(2)(b) of the EI Act requires that a person has had during their qualifying period at least the number of insurable hours of employment set out in the table in relation to the regional rate of unemployment that applies to the person. Furthermore, the Federal Court of Appeal has stated that the number of hours required by subsection 7(2) of the EI Act does not allow any discrepancy and provides no discretion.

Canada (AG) v. Lévesque, 2001 FCA 304; *Pannu v. Canada (AG)*, 2004 FCA 90

[23] I am persuaded by the reasoning of the Appeal Division concerning the meaning of "no reasonable chance of success" in the context of the summary dismissal of appeals pursuant to subsection 53(1) of the DESD Act. The Appeal Division, as guided by the Federal Court of Appeal decisions in *Lessard-Gauvin v. Canada (AG)*, 2013 FCA 147, *Sellathurai v. Canada (Minister of Public Safety and Emergency Preparedness)*, 2011 FCA 1, and *Breslaw v. Canada (AG)*, 2004 FCA 264, has said that an appeal that has no reasonable chance of success is one in

which it is plain and obvious on the face of the record that the appeal is bound to fail, regardless of the evidence or arguments that could be presented at a hearing.

> *J. S. v. Canada Employment Insurance Commission*, 2015 SSTAD 1132; C. D. v. *Canada Employment Insurance Commission*, 2015 SSTAD 594

[24] The EI Act requires that a person have the required number of hours of insurable employment to qualify for benefits. In this case, the Claimant has only 699 hours of insurable employment whereas the required number is 700 hours; therefore, I find that it is plain and obvious on the face of the record that his appeal is bound to fail.

CONCLUSION

[25] I find that the appeal has no reasonable chance of success; therefore the appeal is summarily dismissed.

Audrey Mitchell
Member, General Division - Employment Insurance Section