



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. P. v Canada Employment Insurance Commission*, 2019 SST 1305

Tribunal File Number: GE-19-2827

BETWEEN:

J. P.

Appellant (Claimant)

and

Canada Employment Insurance Commission

Respondent (Commission)

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: August 27, 2019, and October 22, 2019

DATE OF DECISION: October 23, 2019

DECISION

[1] The appeal is dismissed with modification, increasing the total insurable hours from 746 to 759.

OVERVIEW

[2] When the Claimant's employment ended, she applied for Employment Insurance (EI) benefits. The Commission determined that the Claimant is entitled to 14 weeks of regular benefits because she has 718 hours of insurable employment in her qualifying period and resides in an area that has a regional rate of unemployment (RRU) of 5.4%.

[3] Upon reconsideration, the Commission contacted the employer and obtained the actual dates and hours, the Claimant worked within the qualifying period. The Commission determined that the Claimant actually had 746 hours of insurable employment in her qualifying period; however, this did not increase the number of entitlement weeks.

[4] The Claimant appeals to the Social Security Tribunal and disputes the calculation of her weeks of entitlement and her total insurable hours. She argues that the calculation is not equal for claimants who work part-time, and entitlement should be based on weeks worked not hours of insurable employment. The Commission states that the legislation does not allow for the Claimant's approach to the calculation of entitlement weeks. The legislation that is in effect at the time the Claimant applies for benefits is what governs her entitlement.

ISSUE

[5] I must determine the number of weeks of benefits the Claimant is entitled to receive. To do this, I must determine the RRU in the Claimant's area, her qualifying period, and consider the hours of insurable employment that fall within her qualifying period.

ANALYSIS

The Claimant's RRU

[6] The parties do not dispute that, at the time the Claimant submitted her application for benefits, she was living in an area that had a RRU of 5.4%. I see no evidence to dispute this; therefore, the RRU is 5.4%.

The Qualifying Period

[7] The law says that the qualifying period is the 52-week period immediately before the beginning of the benefit period.¹

[8] The Claimant confirmed that she is not disputing that her qualifying period is from April 29, 2018, until April 27, 2019, and there are no conditions to allow an extension. There is no evidence before me that disputes this.

Hours of Insurable Employment

[9] The law states that the Canada Revenue Agency (CRA) has exclusive jurisdiction to determine the number of hours a person has in insurable employment.² If a question arises regarding the number of hours an insured person has had in insurable employment, a ruling must be obtained from CRA.³

[10] The Commission submitted evidence that the employer provided a detailed listing of the Claimant's hours of insurable employment and the actual weeks in which she worked. Based on these actual dates worked, the Commission determined that the Claimant had 746 hours of insurable employment in her qualifying period.

[11] The Claimant disputes the calculation of her insurable hours. She argues that her vacation pay and statutory holiday pay should increase her total hours of insurable employment.

[12] An insurability ruling was requested and on October 9, 2019, CRA issued their ruling for the period under review from April 29, 2018, to April 27, 2019 (the qualifying period). CRA determined that the Claimant has 759 hours of insurable employment in her qualifying period.

¹ In cases where the claimant has not had a previous benefit period in the preceding year, the qualifying period is the 52-week period immediately before the start of their benefit period as per Subsection 8(1) of the *Employment Insurance Act (Act)*.

² *Romano* 2008 FCA 117; *Didiodato* 2002 FCA 345

³ Section 90.1 of the *Act*

Weeks of Entitlement to Benefits

[13] The law says that the calculation of the weeks of entitlement to benefits is purely mathematical and not discretionary.⁴

[14] The maximum number of weeks for which benefits may be paid in a benefit period shall be determined in accordance with the table in Schedule I; based on the Claimant's RRU and the number of hours of insurable employment in her qualifying period.⁵

[15] The Claimant testified that she does not dispute that the table in Schedule I must be used to determine her entitlement to benefits. As set out above, the undisputed facts are that the Claimant's RRU is 5.4% and CRA determined that she has 759 hours of insurable employment in her qualifying period. Schedule I clearly states that in the range of 735-769 hours of insurable employment, with a RRU of 6% and under, the Claimant is entitled to 14 weeks of benefits, which is the same entitlement previously determined by the Commission.⁶ Therefore, I find the Claimant's appeal is dismissed, with modification to the total number of insurable hours, increasing them to 759 hours, as determined in CRA's insurable ruling.

[16] The Claimant testified that she is disputing the number of insurable hours as determined by CRA. As explained during both hearings and as set out above, CRA has exclusive jurisdiction to determine the number of hours a person has in insurable employment. Therefore, if the Claimant disagrees with the ruling, she must submit an appeal to the Chief of Appeals at the Canada Revenue Agency within their specified period, as stated in CRA's October 9, 2019, ruling letter.

[17] The Claimant argued that the current method for determining entitlement to benefits is not equal for claimants who work part-time, compared to those who work full-time. She asserts that entitlement to benefits should be based on weeks worked and not hours of insurable

⁴ CUB 63948

⁵ Subsection 12(1) of the *Act*

⁶ As provided in the version of the *Act* that was in effect at the time the Claimant submitted her application for benefits on May 3, 2019.

employment. As explained during both hearings, entitlement to benefits must be determined based on the legislation that is in effect at the time she applied for benefits.

[18] Although the Claimant may perceive this as an unjust result, my decision is not based on fairness; rather, my decision is based on the facts before me and the application of the *Act*. There are no exceptions and no room for discretion. I cannot interpret or rewrite the *Act* in a manner that is contrary to its plain meaning, even in the interest of compassion.⁷

CONCLUSION

[19] The appeal is dismissed with modification. The Claimant has 759 hours of insurable employment in the period from April 29, 2018, to April 27, 2019.

[20] If the Claimant wishes to pursue an appeal of CRA's insurability ruling, she must submit an appeal to the Chief of Appeals at the Canada Revenue Agency.

Linda Bell

Member, General Division - Employment Insurance Section

HEARD ON:	August 27, 2019, and October 22, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	
August 27, 2019 and October 22, 2019	J. P., Appellant (Claimant) J. P., Appellant (Claimant)

⁷ *Canada (Attorney General) v Kneé*, 2011 FCA 301