



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. R. v Canada Employment Insurance Commission*, 2020 SST 79

Tribunal File Number: GE-19-4225

BETWEEN:

A. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Charlotte McQuade

HEARD ON: January 8, 2020

DATE OF DECISION: January 9, 2020

DECISION

[1] The appeal is dismissed. A. R. (the “Claimant”) does not have the minimum required number of hours of insurable employment to qualify for regular Employment Insurance (EI) benefits.

OVERVIEW

[2] The Claimant applied for regular EI benefits on August 12, 2019 and noted an address in Saskatoon, Saskatchewan on his application as his residential and mailing address. The Canada Employment Insurance Commission (the “Commission”) relied on that address to determine the number of insurable hours the Claimant required to qualify for benefits. The Commission says the Claimant does not qualify for regular benefits because he needed a minimum of 700 hours of insurable employment in his qualifying period (the 52 week period before his benefit period would begin) but he only had 643 hours. The Claimant says that he moved to X, Saskatchewan, which is in the Northern Saskatchewan EI economic region in September 2019. He says, however, that he is “ordinarily resident” in the X area. He argues he only requires 420 hours of insurable employment in the X area so he has enough insurable hours to qualify for benefits.

[3] The minimum required number of hours of insurable employment depends on the regional rate of unemployment in the EI Economic region where the Claimant was ordinarily resident during the week of the commencement of the benefit period.¹ That rate of unemployment is then correlated to a chart in the *Employment Insurance Act*, which provides the minimum hours of insurable employment that relates to that regional rate of unemployment.²

[4] The Claimant’s benefit period was to begin the week of August 18, 2019. I find the Claimant was ordinarily resident in EI Economic region of Saskatoon, Saskatchewan that week so the regional rate of unemployment must be determined with reference to that region. The Claimant requires 700 hours of insurable employment to qualify for benefits. He only has 643 hours so he does not qualify.

¹ Subsection 17(1.1)(a) and Schedule I of the *Employment Insurance Regulations*.

² Subsection 7(2) of the *Employment Insurance Act*.

PRELIMINARY MATTERS

[5] The Claimant raised a *Charter* argument in his Notice of Appeal. A Pre-Hearing Conference was held on December 24, 2019 to inform the Claimant of the required process to raise a constitutional argument before the Tribunal. The Claimant confirmed at the Pre-Hearing conference that he did not wish to pursue the *Charter* argument. I told him that his appeal would continue then as a regular appeal without consideration of the *Charter* issue. This was confirmed to the Claimant by letter dated December 24, 2019.

[6] The Claimant made an initial claim for benefits on August 12, 2019. The Claimant had filed a subsequent initial claim for benefits on November 4, 2019, noting a new address in X, Saskatchewan. The Commission says in its Representations to the Tribunal that the Claimant was again found ineligible for benefits due to insufficient hours of insurable employment but the Claimant did not request a reconsideration of its decision. At the Pre-Hearing conference, the Claimant asked me to review the denial of his November 4, 2019 application for benefits as part of this appeal. He confirmed that he had not requested a reconsideration of the Commission's decision. I advised the Claimant that I could not review the Commission's initial decision regarding his November 4, 2019 application, as my jurisdiction was limited to reviewing reconsideration decisions made by the Commission.³ I told the Claimant that if he wished the Commission to reconsider its decision, he would have to request that of the Commission.

[7] At the Claimant's hearing, he asked me to review another decision made by the Commission. The Claimant said that, before the application he made on August 12, 2019, which is the subject of this appeal, he had made a prior application for benefits. The Claimant said the Commission also denied that prior claim for benefits for reason he had insufficient hours of insurable employment. The Claimant said he had requested a reconsideration of that decision in August 2018 and had gotten back a letter from the Commission on January 6, 2019. The Claimant had not filed the reconsideration decision from that prior claim with the Tribunal prior to the hearing, nor had the Commission. I told the Claimant I would not be reviewing that matter as part of this appeal. I have no information at all before me about that prior claim. I told the Claimant that if a reconsideration decision had been made by the Commission concerning his

³ Section 113 of the *Employment Insurance Act*.

prior claim and he wished to appeal that decision, he would have to file another appeal to the Tribunal concerning that reconsideration decision.

ISSUE

[8] Does the Claimant have sufficient hours of insurable employment in his qualifying period to establish a claim for regular benefits?

ANALYSIS

Does the Claimant have sufficient hours of insurable employment in his qualifying period to establish a claim for regular benefits?

[9] No. The Claimant required 700 hours and he only has 643 hours of insurable employment in his qualifying period.

[10] To qualify for benefits, an insured person must have accumulated, in his or her qualifying period, a minimum number of hours of insurable employment.⁴

[11] Hours of insurable employment that are outside of a qualifying period cannot be used by a claimant to qualify for benefits.⁵

[12] The burden is on claimants to prove that they qualify for benefits.⁶

Qualifying Period

[13] The qualifying period is the shorter of (a) the 52-week period immediately before the beginning of a benefit period and (b) the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period.⁷

⁴ Subsection 7(2) of the *Employment Insurance Act*.

⁵ *Haile v. Canada (Attorney General)*, 2008 FCA 193.

⁶ Paragraph 49(1)(a) of the *Employment Insurance Act*.

⁷ Subsection 8(1) of the *Employment Insurance Act*.

[14] The Commission says the Claimant's qualifying period is from August 19, 2018 and August 17, 2019. I agree this is the Claimant's qualifying period.

[15] To establish the qualifying period, it is first necessary to determine when the benefit period would begin. The benefit period begins on the later of the Sunday of the week in which the interruption of earnings occurs, and the Sunday of the week in which the initial claim for benefits is made.⁸

[16] There are various Record of Employments (ROEs) on file. A ROE dated August 26, 2019 relates to the Claimant's last work before his application for benefits.⁹ It notes the Claimant's last day paid was August 22, 2019. I find the Claimant had an interruption of earnings on August 22, 2019. The Sunday of that week is August 18, 2019.

[17] The Claimant applied for benefits on August 12, 2019.¹⁰ The Sunday of that week is August 11, 2019.

[18] The later of August 11, 2019 and August 18, 2019 is August 18, 2019 so the Claimant's benefit period begins on August 18, 2019.

[19] The Claimant's qualifying period is the 52-week period prior to the beginning of the benefit period on August 18, 2019. The qualifying period is therefore, from August 19, 2018 to August 17, 2019.¹¹

[20] In some circumstances set out in the legislation, a qualifying period can be extended.¹² However, the Appellant did not argue there were any grounds for an extension to his qualifying period and there is no evidence of circumstances that would warrant a qualifying period extension.

⁸ Subsection 10(1) of the *Employment Insurance Act*.

⁹ GD3-24.

¹⁰ GD3-15.

¹¹ Paragraph 8(1)(a) of the *Employment Insurance Act*.

¹² Subsection 8(2) of the *Employment Insurance Act* sets out those circumstances.

Ordinarily Resident

[21] The minimum required number of hours of insurable employment that has to be accumulated in the qualifying period depends on the regional rate of unemployment in the EI Economic region where the Claimant was *ordinarily resident* during the week of the commencement of the benefit period.¹³

[22] I have to decide where the Claimant was ordinarily resident the week of August 18, 2019 to determine which regional rate of unemployment is applicable to the Claimant.

[23] The Claimant says he was “ordinarily resident” in X, Saskatchewan, the week of August 18, 2019, the week the benefit period was to begin. This is in the EI economic region of Northern Saskatchewan.¹⁴ The Commission says the Claimant was “ordinarily resident” in Saskatoon, which is in the EI economic region of Saskatoon, Saskatchewan¹⁵ in the week of August 18, 2019.

[24] The term “ordinarily resident” is not defined in the legislation. The Tax Court of Canada has said that, under the *Income Tax Act*, the term “ordinarily resident”, “is held to mean residence in the course of the customary mode of life of the person concerned, and it is contrasted with special or occasional or casual residence.”¹⁶

[25] In a prior decision concerning this issue made under the Employment Insurance legislation, it was held by an Umpire that, “In CUB 8871 the words “regular” or “customary” place of residence is the meaning of ordinary place of residence. That CUB also points out that it is not necessarily the place where that person dwells permanently or exclusively, but where the person, during the material time, has his usual or settled abode.”¹⁷

¹³ Subsection 17(1.1)(a) and Schedule I of the *Employment Insurance Regulations*.

¹⁴ GD8-3.

¹⁵ GD8-3.

¹⁶ *Mcfayden v. The Queen*, (2000) 2000 CanLII 480 (TCC), para. 99.

¹⁷ CUB 9074.

[26] I adopt the above noted approaches to determining “ordinary residence” and find that the definition of “ordinary residence” in the context of the employment insurance legislation requires a consideration of the residence where, during the week the benefit period begins, the claimant was regularly or customarily residing. The residence must be something more than simply an occasional or casual residence.

[27] The Claimant completed his application for benefits on August 12, 2019 and provided a Saskatoon address. He also noted that his residential address was not different from his mailing address.¹⁸

[28] The Claimant told the Commission that he moved in the month of September 2019 to X, Saskatchewan. He also confirmed to the Commission that, when his application was filed on August 12, 2019, his residential address was as noted on the application.¹⁹

[29] The Commission argues the address the Claimant noted on his application is where he was ordinarily resident the week of August 18, 2019. The Commission says that the Claimant moved to a new residential address in X when he filed his request for reconsideration but the rate of unemployment to be used is where the Claimant was ordinarily resident when he made his application. The Commission submits that the rate does not change if the Claimant subsequently moves to another region.

[30] The Claimant says, although he was residing in Saskatoon, Saskatchewan in the week of August 18, 2019, he was “ordinarily resident” in “X” Saskatchewan. He says he accumulated most of his insurable hours for this claim from work in X, Saskatchewan, and he has more attachment to the Northern Saskatchewan area.

[31] The Claimant testified that he used to own a home in X, which is in the Northern Saskatchewan EI Economic Region. He says that the northern Saskatchewan area is where he has lived the longest overall.

[32] I asked the Claimant to go through his residence history with me going back to January 2018. The Claimant said he went on a trip out of Canada from March 2017 to January 2018.

¹⁸ GD3-5.

¹⁹ GD3-38.

When he returned to Canada, he went to Saskatoon to visit friends and look for work. The Claimant said he lived at the address noted on his application for benefits from January 2018 until May 2018. This address is a hotel in Saskatoon. The Claimant said that he then left the hotel and stayed with a friend in his apartment on X Street in Saskatoon from May to July 2018. The Claimant explained that he obtained a job at the X in X so he then moved to X, Saskatchewan, which is located in the Northern Saskatchewan EI economic region. The Claimant stayed in X until the end of September 2018 at which point he moved to X. His job ended at the end of October 2018. He stayed in X until December 2018.

[33] The Claimant said that he then went back to Saskatoon where he stayed with at his friend's apartment in Saskatoon until the end of February, 2019, at which point he then moved back to the hotel (which is the address on his application for benefits), where he stayed until the end of August, 2019.

[34] The Claimant said while in the hotel in Saskatoon, he had some assistance from social services in the form of a transitional employment allowance and they asked him to apply for employment insurance, which he did. He said he was also working around this time for some employment agencies but they were only casual jobs. The Claimant said the agencies were located in Saskatoon but some of the casual jobs were located in the northern Saskatchewan area. The Claimant said while living in the hotel, he used the hotel address as his mailing address. He also changed his identification such as his driver's licence to reflect the hotel address. The Claimant said he gave his employers that address as well.

[35] The Claimant said he ended up having to move back to X at the beginning of September 2019 as he was unable to sustain the hotel on his income. On October 27, 2019, he moved again to X, where he still is living. The Claimant said that he has always stored his permanent belongings partly in a place in X and partly in another place in X. The Claimant says when he moves around, he does not take many belongings with him. The Claimant testified that he has a historical connection to the Northern Saskatchewan EI economic region where X, X and X are all located. He owned a house in X a number of years ago. He says he has had more full time employment in that area. He has friends in both that area and in Saskatoon. The Claimant

testified that when he initially opened his bank account, his branch was in X and he did not need to change the branch to be able to bank in Saskatoon.

[36] The Claimant explained the reason he was living in Saskatoon in the hotel was to look for a job. He said the hotel did not require a lease. He paid monthly so he could easily move if needed. Also, the hotel was downtown. The Claimant said that he did not really have any intention to settle in one particular place. He said that he was not picky. His plan was to find a job, as he needed to survive. He is a social worker and says he his qualifications allow him to move outside of Saskatchewan.

[37] The Claimant explained that some of his ROEs contain a different address in Saskatoon, other than the hotel address. He said that address was an address of some friends that he used as a mailing address. He said he had used their address as a mailing address for some time.

[38] I find that the Claimant was ordinarily resident in Saskatoon, Saskatchewan, which is in the EI economic region of Saskatoon, Saskatchewan during the week of August 18, 2019. The preponderance of evidence shows that during the week of August 18, 2019, the Claimant was regularly or customarily residing in Saskatoon.

[39] Although the Claimant was living in a hotel, I find this was not an occasional or casual residence. The Claimant had lived at this hotel in Saskatoon from January to May 2018. He then stayed in Saskatoon, briefly living with a friend from May to July 2018. Although the Claimant then left Saskatoon to work at the X and resided in the Northern Saskatchewan areas of X and X, from August to December, 2018, the Claimant then returned to Saskatoon in January, 2019, where he remained until the end of August, 2019. Although the Claimant has moved about somewhat, he has lived at the hotel longer than any other residence, going back all the way to January 1, 2018 and has lived primarily in Saskatoon from that time The Claimant resided continuously in Saskatoon from January 2019 until August 2019.

[40] The Claimant says he did not really have any intention to settle in one particular place. The Claimant was, however, living and seeking work for a significant period of time preceding the week of August 18, 2019 week in Saskatoon. I note as well the Claimant did not maintain a

permanent residence in the Northern Saskatchewan area, having stored his permanent belongings there.

[41] The addresses the Claimant used on his documentation reflects an attachment to Saskatoon. The Claimant used the address of the hotel in Saskatoon on his application for benefits and testified that he changed his identification such as his driver's licence to reflect the hotel address. All of the ROEs on file show that the Claimant provided his employers with Saskatoon addresses. The Claimant's last two ROEs show the Saskatoon hotel address that the Claimant noted on his application for benefits.²⁰

[42] The Claimant also accessed social services from the Saskatoon hotel address, which suggests more than a casual residence in Saskatoon.

[43] I acknowledge that the Claimant had a historical connection to the Northern Saskatchewan area, having previously owned a home there and lived there for a lengthy period as well as having had more longer term employment in that area. However, I must determine where the Claimant was ordinarily resident during the week of August 18, 2019. While it is necessary to look back in time somewhat, that is only relevant in so far as it helps establish where the Claimant was treating as his settled abode around the material time of August 18, 2019. As above, the Claimant's pattern of residence shows that during the material time, being the week of August 18, 2019, the Claimant was treating Saskatoon as his usual or settled abode.

[44] I also acknowledge the Claimant's argument that, during his qualifying period, the employer with whom he accumulated the most significant number of insurable hours was in Northern Saskatchewan (the X). He accumulated 480 of his 643 insurable hours with this employer.²¹ However, the test in the legislation requires determining where the Claimant was "ordinarily resident" the week the benefit period was to begin, not where he accumulated the most insurable hours.

²⁰ GD3-24 and GD3-26.

²¹ GD3-18.

[45] I find the Claimant was ordinarily residing in Saskatoon the week of August 18, 2019, which is in the EI economic region of Saskatoon, Saskatchewan.²²

Hours of insurable employment required to qualify for regular benefits

[46] It is not disputed that the regional rate of unemployment for the week the Claimant's benefit period was to begin, the week of August 18, 2019, in the EI economic region of Saskatoon, Saskatchewan was 5.8%.²³ I therefore accept this as a fact.

[47] The Commission determined, having regard to the ROEs on file from the three employer's the Claimant had worked for during his qualifying period, that the Claimant had accumulated 643 hours of insurable employment in his qualifying period from August 19, 2018 and August 17, 2019. The Claimant testified he did not dispute the Commission's calculation of insurable hours from the ROEs. The Claimant testified that he had no other work or employers in his qualifying period. I find the Claimant had 643 hours of insurable employment in his qualifying period.

[48] I find that the Claimant has not established that he has the required hours of insurable employment in his qualifying period to qualify for regular benefits based on his initial claim for benefits made on August 12, 2019. He only has 643 hours instead of the required 700 hours.

CONCLUSION

[49] The appeal is dismissed. The Claimant does not have enough insurable hours to qualify for regular benefits with respect to the initial claim for benefits made on August 12, 2019.

Charlotte McQuade

Member, General Division - Employment Insurance Section

HEARD ON:	January 8, 2020
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²² GD8-3.

²³ GD3-28 to GD3-29.

METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	A. R., Appellant