



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. T. v Canada Employment Insurance Commission*, 2020 SST 763

Tribunal File Number: GE-20-1121

BETWEEN:

A. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Charlotte McQuade

HEARD ON: April 28, 2020

DATE OF DECISION: August 14, 2020

DECISION

[1] The appeal is dismissed. A. T. (the “Claimant”) has not shown that he has worked enough hours¹ to qualify for employment insurance (EI) benefits.

OVERVIEW

[2] The Claimant applied for EI benefits, but the Canada Employment Insurance Commission (the Commission) decided that the Claimant had not worked enough hours to qualify.

[3] The Commission says that the Claimant does not have enough hours because he needs 630 hours, but only has 177 hours. The Claimant disagrees with the insurable hours the Commission said he had earned. He thinks he has close to the required 630 hours. I requested the Commission obtain a ruling by the Canada Revenue Agency (the “CRA”) as only the CRA can rule on how many insurable hours a claimant has.² The CRA ruled that the Claimant only had 177 hours. The Claimant appealed the CRA ruling but the CRA confirmed its decision on appeal. I must decide whether the Claimant has worked enough hours to qualify for benefits.

[4] I have decided, for the reasons set out below, the Claimant has not worked enough hours to qualify for benefits.

PRELIMINARY MATTERS

[5] At his hearing on April 28, 2020, the Claimant objected to the insurable hours the Commission said he had. He said his employer’s records were not accurate. I adjourned the hearing so the CRA could rule on that issue. The Claimant requested that his hearing be reconvened by way of question and answer. The hearing was reconvened in this manner after the CRA rulings were obtained. I requested that the Claimant provide any further evidence or submissions he had concerning the CRA rulings. The Claimant responded that he had no further information to provide and that he adopted his previous submissions.

¹ Specifically, the hours worked have to be hours of insurable employment: section 7 of the *Employment Insurance Act*. In this decision, when I use “hours,” I am referring to hours of insurable employment.

² Section 90 of the *Employment Insurance Act*.

[6] The Claimant said at his hearing that in addition to the issue of insurable hours, he also wanted the Tribunal to consider whether a penalty should be made against his employer for providing false information to the Commission in his Record of Employments (ROEs). As I explained to the Claimant, I could not decide that issue because the Commission had not made any decision about a penalty. The law says that I only have jurisdiction to consider issues upon which the Commission has rendered a reconsideration decision.³

ISSUE

[7] Has the Claimant worked enough hours to qualify for EI benefits?

ANALYSIS

[8] Not everyone who stops working can be paid EI benefits. Claimants have to prove⁴ that they qualify for benefits.⁵ In order to qualify, claimants need to have worked enough hours within a certain timeframe.⁶ (This timeframe is called the qualifying period; I will explain what that is in more detail further down in the decision.)

[9] The number of hours that claimants need to have worked in order to qualify is not the same for everyone. Rather, it depends on the regional rate of unemployment that applies to that claimant in the week their benefit period is to begin.⁷

[10] A benefit period is the date from which benefits are paid. It begins on the later of (a) the Sunday of the week in which the interruption of earnings occurs, and (b) the Sunday of the week in which the initial claim for benefits is made.⁸

[11] The Claimant applied for benefits on December 12, 2019.⁹ The Claimant questions whether October 5, 2019 was his last day paid as noted on his ROE.¹⁰ He says he did not work after October 5 as he was on sick leave. He was terminated on October 31, 2019 but

³ Section 113 of the *Employment Insurance Act*.

⁴ The Claimant has to prove this on a balance of probabilities which means it is more likely than not.

⁵ Section 48 of the *Employment Insurance Act*.

⁶ Section 7 of the *Employment Insurance Act*.

⁷ Paragraph 7(2)(b) of the *Employment Insurance Act*; section 17 of the *Employment Insurance Regulations*.

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

⁹ GD3-17.

¹⁰ GD3-22.

thinks he was paid beyond October 5, 2019. The Commission determined the Claimant's benefit period was to begin December 8, 2019. I find this to be correct. The Claimant's objection to his last day paid does not affect the start of his benefit period as he applied for benefits after his interruption of earnings.

[12] The Commission decided that the Claimant's region was Calgary and that the regional rate of unemployment was 7.4% the week his benefit period was to begin.¹¹ The Claimant did not dispute this information and I accept it as facts. This means that the Claimant would need to have worked at least 630 hours in his qualifying period to qualify for EI benefits.¹²

[13] As noted above, the hours that are counted are the ones that the Claimant worked during his qualifying period. In general, the qualifying period is the 52 weeks before a claimant's benefit period would start.¹³

[14] The Commission decided that the Claimant's qualifying period should be extended by 52 weeks beyond the usual 52 weeks, because the Commission accepted that the Claimant had been unable to work due to medical reasons¹⁴ from September 10, 2017 to June 29, 2019 and from October 6, 2019 to December 7, 2019. The Commission therefore determined the Claimant's qualifying period went from was December 10, 2017 to December 7, 2019.

[15] The Claimant questioned at his hearing whether the qualifying period could be extended past 104 weeks, saying there must be some grounds to do so. I find the Claimant's qualifying period was correctly established as the 104-week period from December 10, 2017 to December 7, 2019. The maximum length of a qualifying period is 104 weeks.¹⁵

[16] The employer provided a ROE dated November 7, 2017 saying the Claimant worked from January 20, 2017 to September 8, 2017 and earned 451 insurable hours.¹⁶ An ROE dated October 17, 2019 notes the Claimant worked from July 2, 2019 to October 5, 2019 and earned

¹¹ GD3-27.

¹² Section 7 of the *Employment Insurance Act* sets out a chart that tells us the minimum number of hours that a claimant needs depending on the different rates of unemployment.

¹³ Section 8 of the *Employment Insurance Act*.

¹⁴ Section 8(2)(a) allows for an extension of the qualifying period by the number of weeks a person is incapable of work due to illness during the qualifying period.

¹⁵ Subsection 8(7) of the *Employment Insurance Act*.

¹⁶ GD3-24.

175 insurable hours.¹⁷ An ROE dated November 7, 2019 says the Claimant worked from September 22, 2019 to October 3, 2019 and earned 2 insurable hours.¹⁸

[17] The Commission decided that the Claimant had worked insurable 177 hours during his qualifying period. The Commission excluded the 451 insurable hours the Claimant earned from January 20, 2018 to September 8, 2017 as these hours were earned outside his qualifying period.

[18] The Claimant disputed that he has 177 hours in his qualifying period. He says he was wrongfully terminated and the employer's records are not correct. The Claimant thinks he has earned around the required 630 hours. I asked the Commission to seek a ruling from CRA on the number of hours of insurable employment the Claimant had earned during his qualifying period, because that particular question is not one that I have the power to decide.¹⁹ The CRA ruled that the Claimant had 177 insurable hours from July 2, 2019 to October 3, 2019.²⁰ The Commission advised that the CRA Rulings Officer had told the Commission that the ruling did not refer to the period from December 10, 2017 to December 7, 2019 because the Claimant had no insurable hours worked in that period prior to July 2, 2019. The ruling was therefore changed to reflect only the period worked (July 2, 2019 to October 3, 2019).²¹

[19] The Claimant appealed the CRA's decision but the CRA made the same ruling on appeal. I do not have the power to change the CRA's ruling so I will use the number of 177 insurable hours earned to decide the Claimant's appeal. I accept that even though the ruling refers to the period from July 2, 2019 to October 3, 2019, the 177 insurable hours reflects the only hours the Claimant worked with his employer in his qualifying period from December 10, 2017 to December 7, 2019.²²

[20] There is no evidence in the file that the Claimant had any other work or earned any other hours of insurable employment in his qualifying period from December 10, 2017 to December 7, 2019. The Claimant testified that the only work he had in Canada was with this particular employer. He had no other work in his qualifying period. The Commission correctly excluded

¹⁷ GD3-22.

¹⁸ GD3-20.

¹⁹ Section 90 of the *Employment Insurance Act*.

²⁰ GD9-4.

²¹ GD11-1.

²² GD3-22.

the hours earned outside the qualifying period from consideration as only hours earned within the qualifying period can be considered.

[21] I find that the Claimant has not proven that he has enough hours to qualify for benefits, because he needs 630 hours, but he only has 177 hours.

[22] The Claimant asks that I consider the fact he was a long-term employee with his employer. I acknowledge that fact. However, Employment Insurance is an insurance plan and, like other insurance plans, claimants have to meet terms in order to get paid benefits. In this case, the Claimant does not meet the requirements, so does not qualify for benefits. While the Claimant's situation may be sympathetic, I cannot rewrite the law.²³

CONCLUSION

[23] The Claimant does not have enough hours to qualify for benefits. This means that the appeal is dismissed.

Charlotte McQuade

Member, General Division - Employment Insurance Section

HEARD ON:	April 28, 2020
METHOD OF PROCEEDING:	Teleconference and Questions and Answers
APPEARANCES:	A. T., Appellant

²³ *Pannu v Canada (Attorney General)*, 2004 FCA 90.