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

Citation: *HM v Canada Employment Insurance Commission*, 2021 SST 20

Tribunal File Number: GE-20-923

BETWEEN:

H. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Gerry McCarthy

HEARD ON: January 7, 2021 (and December 8, 2020)

DATE OF DECISION: January 12, 2021

Canada

DECISION

[1] The appeal is dismissed. The Claimant has not shown that he has worked enough hours[1] to qualify for Employment Insurance (EI) sickness benefits.

OVERVIEW

[2] The Claimant applied for EI sickness benefits on September 8, 2019, but the Canada Employment Insurance Commission (the Commission) decided the Claimant had not worked enough hours to qualify.

[3] The Commission says the Claimant does not have enough hours because he needs 1,330 hours, but only has 1,196 insurable hours. The Claimant disagrees and says he accumulated additional insurable hours from two other employers. I must decide whether the Claimant has worked enough hours to qualify for EI sickness benefits.

PRELIMINARY MATTERS

[4] After waiting 10-minutes for the Claimant to attend the re-scheduled teleconference hearing on January 7, 2021, I asked the Tribunal "Call Centre" to contact the Claimant. The Call Centre agent attempted to contact the Claimant and was told he had died two-days earlier. I send my sincere sympathy and condolences to the Claimant's family at this time.

[5] A hearing is allowed to go ahead without the claimant if they were given the Notice of the Hearing.[2] In this case, the Claimant was sent a Notice of Hearing for a re-scheduled hearing to be held January 7, 2021 (RGD5). An earlier hearing had taken place on December 8, 2020, and the Claimant provided over 60-minutes of oral testimony at the time. However, the hearing on December 8, 2020, was adjourned to allow the Claimant more time to submit Records of Employment he believed would provide additional insurable hours. The Claimant did submit those Records of Employment now listed in RGD6-1 to RGD6-8. The Commission responded to

[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 12 of the *Social Security Tribunal Regulations*.

these Records of Employment on December 29, 2020, with supplementary submissions (RGD8-1 to RGD8-3).

[6] At this point, I have reviewed the documentation and determined I have all the evidence needed to make a decision in the absence of the Claimant. In the decision that follows, I will provide the reasons for my conclusion and specifically address the Claimant's submissions from the hearing on December 8, 2020, along with the additional Records of Employment he submitted after the hearing was adjourned.

ISSUE

[7] Did the Claimant work enough hours to qualify for EI sickness benefits?

ANALYSIS

[8] Not everyone who stops working can be paid EI benefits. Claimants have to prove[3] that they qualify for benefits.[4] In order to qualify, claimants need to have worked enough hours within a certain timeframe.[5]

[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.[6] In general, the number of hours that claimants need to have worked in order to qualify depends on the regional rate of unemployment that applies to that claimant. The Commission decided the Claimant's region was "Southern Interior British Columbia" and that the regional rate of unemployment at the time was 6.7 percent.

[10] People who want special benefits like EI sickness benefits can qualify if they have 600 or more hours. However, in this case the Commission issued a subsequent violation to the Claimant in accordance with the law.[7] This means where an insured persons accumulates one or more violations in the 260-weeks before making their initial claim for EI benefits, the number of hours

[3] The Claimant has to prove this on a balance of probabilities which means it is more likely than not.
[4] Section 48 of the *Employment Insurance Act*.
[5] Section 7 of the *Employment Insurance Act*.
[6] Paragraph 7(2) (b) of the *Employment Insurance Act*; section 17 of the *Employment Insurance Regulations*.
[7] Subsection 7.1(1), 7.1(2), 7.1(3), 7.1(4), and 7.1(5) of the *Employment Insurance Act*.

that person requires to qualify for benefits is increased according to the table in that subsection.[8] A subsequent violation requires that claimant have 100 percent more hours to establish a claim.

[11] The only exception to the law on violations says that where a claimant qualified for EI benefits with the increased number of hours twice before, the increased entrance requirement cannot be applied to a third claim for EI benefits.[9]

[12] Each time a violation is imposed it results in a claimant's requirement for increased insurable hours for five-years (260-weeks) or the claimant's next two qualified claims, whichever occurs first. There is no exception to this rule even when a claim for EI sickness benefits is involved.

[13] In this case, the Claimant has a subsequent violation that was imposed on May 29, 2015 for a claim where he failed to declare his earnings while on a claim in 2014 (GD3-22 and GD3-19 to GD3-21). This was considered a subsequent violation because of a previous serious violation imposed on June 11, 2014 (GD3-15 to GD3-18).

[14] The Claimant's subsequent violations means he would need to have worked at least 1,330 hours in his qualifying period to qualify for EI sickness benefits.[10] In this case, the Claimant's qualifying period is from August 5, 2018, to August 3, 2019.

Did the Claimant have enough insurable hours to qualify for EI sickness benefits?

[15] I find the Claimant did not have enough insurable hours to qualify for EI sickness benefits for the following reasons:

[16] First: The Claimant required 1,330 hours in his qualifying period from August 5, 2018, to August 3, 2019, and only accumulated 1,196 hours of insurable employment in that period. I realize the Claimant submitted two additional Records of Employment after the adjourned hearing on December 8, 2020 (RGD-4). However, I agree with the Commission that these

[8] Subsection 7.1(1) of the *Employment Insurance Act*.
[9] Subsection 7.1(3) of the *Employment Insurance Act*.
[10] Section 7.1 1) of the *Employment Insurance Act* sets out a chart that tells us the minimum number of hours that a claimant needs depending on the type of violation they have been issued.

additional Records of Employment (from “X” and “X) were outside the Claimant’s qualifying period.

[17] Second: The Claimant had not yet qualified for two claims since the imposition of his subsequent violation. I recognize the Claimant argued that his subsequent violation dated February 25, 2016, was changed to a warning. However, this would not change the impact of the classification of the subsequent violation dated May 29, 2015. In short, the subsequent violation dated May 29, 2015, would remain along with the increased hours needed to qualify for EI sickness benefits.

Additional Submissions from the Claimant

[18] During the hearing on December 8, 2020, the Claimant submitted he worked more insurable hours for “Nata Farms” than had been listed in the Appeal file. However, the Commission explained in their supplementary submissions dated December 29, 2020, that they contacted “Nata Farms” about any additional hours the Claimant might have worked for them (RGD-8). The employer confirmed the Claimant had worked August 29 (2019), August 30 (2019) and August 31, (2019) for a total of 26.5 hours. Nevertheless, the Claimant’s qualifying period is from August 5, 2018, to August 3, 2019, and these hours were outside this period.

[19] I further realize the Claimant submitted during the hearing on December 8, 2020, that he was only looking for three-weeks of EI sickness benefits and should qualify because he paid EI premiums. However, the Claimant was provided with a ruling from the Canada Revenue Agency (CRA) on his insurable hours (RGD4). The CRA determined the Claimant accumulated 1,209 insurable hours for the period from July 1, 2018, to August 3, 2019. As a result, the Commission did amend two Records of Employment and re-calculated the Claimant’s hours. On this matter, I must adhere to the CRA’s ruling on the calculation of the Claimant’s insurable hours. In other words: I have no authority or jurisdiction to change the CRA’s calculation of the Claimant’s insurable hours.

[20] Finally: I recognize this decision will be addressed to the Claimant who is now deceased. I extend my sympathy to the bereaved. I also realize that when the Claimant presented his appeal on December 8, 2020, he was frustrated because was denied EI sickness benefits. In issuing this

decision, I wish to emphasize that I cannot change or re-write the law to allow benefits when the requirements have not been satisfied. In short: I cannot circumvent the law even in the interest of compassion.[11]

[21] In the last analysis, I find that the Claimant has not proven that he had enough hours to qualify for EI sickness benefits, because he needs 1,330 hours but only had 1,196 hours.

CONCLUSION

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

Gerry McCarthy
Member, General Division - Employment Insurance Section

[11] *Attorney General of Canada v. Knee*, 2011 FCA 301).