



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *JW v Canada Employment Insurance Commission*, 2021 SST 110

Tribunal File Number: GE-21-197

BETWEEN:

**J. W.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Amanda Pezzutto

HEARD ON: March 2, 2021

DATE OF DECISION: March 8, 2021

## **Decision**

[1] J. W. is the Claimant. The Canada Employment Insurance Commission (Commission) made a decision about her Employment Insurance (EI) benefits. She is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I am allowing the Claimant's appeal. I agree with her. I find that she has enough earnings to qualify for EI benefits. This means that she can receive maternity benefits.

## **Overview**

[3] The Claimant applied for EI maternity benefits in October 2020. She applied for benefits for self-employed workers. The Commission decided that she did not have enough earnings in the 2019 calendar year to qualify for benefits.

[4] Benefits for self-employed workers are based on your earnings, instead of the hours you worked. To qualify for benefits, you have to show that you earned enough money in the prior year. To make a decision, I have to decide whether the Claimant has enough earnings to qualify for EI benefits.

[5] The Commission says that the Claimant does not have enough earnings in 2019 to qualify for benefits. The Commission says that their system shows that she had no earnings at all.

[6] The Claimant disagrees. She says that she made a mistake with one form on her tax return. She says that she has evidence proving that she earned nearly \$50,000 in 2019. She says she should qualify for benefits.

## **Issue**

[7] Does the Claimant have enough earnings in 2019 to qualify for EI benefits?

## **Analysis**

### **How to qualify for benefits for self-employed workers**

[8] Not everyone who stops work can receive EI benefits. You have to prove that you qualify for benefits.<sup>1</sup> You have to prove this on a balance of probabilities.<sup>2</sup> This means that you have to show that it is more likely than not that you qualify for benefits.

[9] To qualify for benefits for self-employed workers, you have to show that you have enough earnings.<sup>3</sup> The Commission looks at your earnings from self-employment in the prior calendar year.<sup>4</sup> So, if you are applying for benefits in 2020, you have to prove that you have enough earnings in 2019 to qualify for benefits.

[10] The amount of earnings you need changes from year to year.<sup>5</sup>

### **Is the Claimant a self-employed person?**

[11] The Claimant was confused when she first applied for benefits. She had a Record of Employment (ROE) and a T4. She applied for benefits for insured workers. The Commission noticed that she is the owner of her corporation. The Commission directed the Claimant to apply for benefits for self-employed workers.

[12] At the hearing, the Claimant said that she owns 100% of the shares of her corporation. She also said this on her application for benefits. The Commission has not given me any reason to doubt the Claimant's statements. The Commission also seems to agree that the Claimant owns all of the shares of her corporation because the Commission told her to apply for benefits for self-employed workers.

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<sup>1</sup> See section 48 of the EI Act. Also *Pannu v Canada (Attorney General)*, 2004 FCA 90, at para. 3. While these apply to claims for benefit under Part I of the *Employment Insurance Act*, I find that it is likely that the burden of proving entitlement under Part VII.1 of the *Employment Insurance Act* also falls on the claimant.

<sup>2</sup> In its decision *Canada (Attorney General) v. Corner*, A-18-93, the Federal Court of Appeal held that the standard of proof is the balance of probabilities for employment insurance matters.

<sup>3</sup> Paragraph 152.07(1)(d) of the *Employment Insurance Act*.

<sup>4</sup> Subsection 152.08(1) of the *Employment Insurance Act*.

<sup>5</sup> Subsection 11.1(1) of the *Employment Insurance Regulations*.

[13] The law says that you are not an insured worker if you are working for your own corporation.<sup>6</sup> I find that the Claimant owns more than 40% of the shares of her corporation. This means that she is self-employed<sup>7</sup> and she can apply for benefits for self-employed workers.

### **The Claimant's earnings**

[14] The Claimant and the Commission agree about some of the basic facts. They both agree that the Claimant applied for benefits in 2020. Her qualifying period is the 2019 calendar year. I see nothing in the file that makes me doubt these facts. I agree with the Claimant and the Commission. The 2019 calendar year is the Claimant's qualifying period.

[15] The Commission says that the Claimant needs at least \$7,279 of earnings in her qualifying period. The Claimant does not say that she disagrees with the Commission's calculation. I accept that the Claimant has to prove that she earned at least \$7,279 in 2019.

[16] Because the Claimant owns more than 40% of the shares in her corporation, the law says I have to look at her earnings in a different way. I have to ask myself this question: how much would the Claimant have earned if she were working in insurable employment?<sup>8</sup> In other words, how much did the Claimant earn while she was working for her corporation in 2019?

[17] There is a lot of evidence that describes the Claimant's earnings from her corporation in 2019. The Claimant prepared an ROE for herself. It says that she earned \$31,300 from July to December 2019. Her 2019 T4 says that she earned \$49,300 from employment at her corporation. Her 2019 Notice of Assessment from the Canada Revenue Agency (CRA) says that she earned \$49,300 from employment.

[18] The Commission says that this evidence is not reliable because the Claimant prepared it herself. I agree that the Claimant prepared the ROE and T4 herself. However, I do not think that this means that these documents are unreliable.

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<sup>6</sup> Paragraph 5(2)(b) of the *Employment Insurance Act*. Specifically, the law says that, if you have earnings from working for a corporation, and you own more than 40% of the shares of that corporation, the earnings are not insurable earnings for the purposes of Part I of the *Employment Insurance Act*.

<sup>7</sup> Subsection 152.01(1) of the *Employment Insurance Act*, under paragraph (b) of the definition of a *self-employed person*.

<sup>8</sup> Paragraph 152.02(2)(b) of the *Employment Insurance Act*.

[19] The Claimant spoke about her employment income at the hearing. She made a solemn affirmation that she was going to tell the truth at the hearing. The Claimant has always said that she had \$49,300 of earnings from her corporation in 2019. Her paperwork also shows that she earned \$49,300 in 2019. I give a lot of weight to the fact that the Claimant has always said the same thing about her earnings in 2019. I also give weight to her ROE, T4, and Notice of Assessment.

[20] I understand that the Commission's internal records show that the Claimant had no earnings at all in 2019. However, the Commission has not explained why their internal system is more reliable than the Claimant's evidence. The Commission has not told me where this information comes from. Is it possible that the system is slow to update when there is new information? Would this information change if the CRA reassessed the Claimant's 2019 tax return? The Commission has not given me enough information to answer these questions. I do not think the printout from the Commission's system outweighs all of the evidence the Claimant has given me about her earnings.

[21] Nothing in the file makes me think the Claimant is giving me incorrect information about her income in 2019. I have no reason to think that the T4 and the ROE are unreliable. I have no reason to doubt the information on the Claimant's 2019 Notice of Assessment. I think it is likely that the Claimant is telling the truth about her income. I find that the Claimant has proven that she earned \$49,300 from working for her corporation in 2019.

[22] The Claimant has to prove that she earned at least \$7,279 in 2019 to qualify for benefits. I find that she has proven that she earned \$49,300. I find that she has earned enough in 2019 to qualify for benefits.

## **Conclusion**

[23] I am allowing the Claimant's appeal. She has enough earnings in 2019 to qualify for benefits.

Amanda Pezzutto  
Member, General Division - Employment Insurance Section

HEARD ON:	March 2, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	J. W., Appellant