



[TRANSLATION]

Citation: *ER v Canada Employment Insurance Commission*, 2021 SST 570

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: E. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (424358) dated June 4, 2021 (issued by Service Canada)

Tribunal member: Manon Sauvé

Type of hearing: Videoconference

Hearing date: July 21, 2021

Hearing participant: Appellant

Decision date: July 29, 2021

File number: GE-21-1113

Decision

[1] The appeal is dismissed.

[2] The Claimant was working full work weeks from August 1, 2017. This means that he isn't entitled to receive Employment Insurance (EI) benefits.

Overview

[3] The Claimant was receiving EI regular benefits. On August 1, 2017, he decided to start a business selling and servicing bakery equipment.

[4] In September 2018, the Commission¹ was informed that the Claimant had obtained a business number. It investigated whether the Claimant was still available for work.

[5] After investigating, the Commission found that the Claimant was running a business and working full work weeks. Since he wasn't unemployed, he wasn't entitled to receive EI benefits. The Commission assessed an overpayment of \$13,575.

[6] The Claimant admits that he focused on his business from August 1, 2017. He disagrees with what the Commission is asking him to repay. When speaking with an agent, he realized that he was entitled to benefits to support him in starting his business.

Issue

[7] Was the Claimant's level of involvement so limited that he wasn't actually working full work weeks?

¹ [Canada] Employment Insurance Commission (Respondent).

Analysis

[8] Before deciding the issue, I checked whether the Commission had carried out a reconsideration. If so, did it meet the time limit?

[9] In my view, the Commission started its investigation in September 2018, just over a year after benefits started being paid. I understand that the process spanned a few years, but the Claimant knew that the Commission was investigating his claim.

[10] Having said that, I will now decide whether the Claimant was working full work weeks in his business.

[11] If you are involved in a business, you may not be entitled to EI benefits.

[12] The law says that you can receive EI benefits for each week you are unemployed.² A week of unemployment means any week you don't work a full work week.³

[13] Also, if you are involved in a business, the law assumes that you work full work weeks.⁴ So, you can't receive EI benefits.⁵

Exception if your involvement is limited

[14] There is an exception if your level of involvement in the business is limited.⁶

[15] The exception applies if the Claimant's level of involvement was so limited that a person would not normally rely on that employment [*sic*] that business as their main means of earning a living.⁷

² Section 9 of the *Employment Insurance Act* (Act) sets out this rule.

³ See section 11 of the Act.

⁴ See section 30(1) of the *Employment Insurance Regulations* (Regulations).

⁵ See *Marlowe v Canada*, 2009 FCA 102.

⁶ See section 30(2) of the Regulations. It refers to a claimant being involved to "a minor extent" (in other words, their involvement is limited). Also see *Martens v Canada (Attorney General)*, 2008 FCA 240.

⁷ See section 30(2) of the Regulations and *Martens v Canada (Attorney General)*, 2008 FCA 240.

[16] The Claimant has to prove that his involvement is/was [*sic*] so limited that the exception applies.⁸ The Claimant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that his involvement was limited.

Six factors for deciding level of involvement

[17] To decide whether the exception applies, I have to consider the following six factors:⁹

- a) How much time did the Claimant spend on his the [*sic*] business?
- b) How much did the Claimant invest in his employment [*sic*] the business, and what were those investments (such as money, property, goods, and resources)?
- c) Financially, was the Claimant's business a success or failure?
- d) Was the Claimant's business meant to be ongoing?
- e) What was the nature of the Claimant's employment [*sic*] business?
- f) Did the Claimant intend to and want to find another job quickly?

– Time spent

[18] The amount of time that the Claimant spent on his employment [*sic*] business doesn't show limited involvement. The Claimant admits that he spent all his time on his business. He set up a business selling and repairing bakery equipment. With his partner, he carried out many tasks: writing the cheques, paying the bills, making the purchases, providing assessments, etc.

⁸ See *Canada (Attorney General) v Falardeau*, A-396-85; and *Lemay v Canada Employment Insurance Commission*, A-662-97.

⁹ Section 30(3) of the Regulations sets out these six factors. This decision paraphrases those six factors for plain language.

– **Investments**

[19] The nature and amount of the Claimant's investments (such as money, property, goods, and resources) don't show limited involvement.

[20] I note that the Claimant invested \$10,000 in the business. He rented space to operate his business. He got a \$10,000 line of credit.

– **Financial success or failure**

[21] The financial situation of the Claimant's business doesn't show limited involvement. The Claimant decided to start his business to become successful and live off his income. In 2017–2018, the starting year, the business was unprofitable. In 2018–2019, it made a profit of \$2,364. A salary was paid to an employee both years.

[22] Because of COVID-19, the Claimant had to close his business. It is unclear whether the business was going to be successful.

– **Ongoing business**

[23] The Claimant's business, which was meant to be ongoing, doesn't show limited involvement. The Claimant said that he wanted to live off his business. But the pandemic changed his plans.

– **Nature of the Claimant's business**

[24] The Claimant created a business to sell and repair bakery equipment. With the help of a friend who knew the business, they decided to provide this service. They paid this friend so that he could develop their business.

– **Intention and willingness to find another job quickly**

[25] The Claimant didn't look for a job after starting his business. He spent all his time on his venture. He was hoping to support himself with this business. This shows that the Claimant's level of involvement wasn't limited.

So, was the Claimant [*sic*] level of involvement limited enough?

[26] The Claimant's level of involvement wasn't so limited that the exception applies. A person would normally rely on this business as a main means of earning a living.

[27] I have considered all six factors mentioned above. In my view, the Claimant hasn't shown that his level of involvement was limited enough.

[28] Two factors are especially important. Case law says that how much time you spend on the work and whether you intend to or want to find another job quickly are important factors to consider.¹⁰ In this case, the Claimant spent all his time on his business, and he didn't look for a job.

[29] With all of this in mind, I find the exception doesn't apply to the Claimant's business.

[30] The Claimant was working full work weeks. This means that the Claimant may not receive benefits because there weren't weeks where he was unemployed.

[31] The Federal Court of Appeal says that it is highly commendable for anyone to try to make new work for themselves or start their own business. But the idea behind the EI plan is to offer temporary benefits to people who are unemployed and looking for work. Unfortunately, the Claimant's efforts fall outside the scope of the EI plan.¹¹

[32] According to the Claimant, the Commission contacted him in June to follow up. He informed the Commission that he was toying with the idea of starting his business. He feels he isn't responsible for repaying the debt.

[33] The Claimant argues that the Commission gave him incorrect information. He wasn't informed that he had to stop claiming EI benefits. Instead, the agent

¹⁰ See *Charbonneau v Canada (Attorney General)*, 2004 FCA 61.

¹¹ See *Canada (Attorney General) v Jouan*, A-366-94.

congratulated him on starting his business and [told him] that an agent would contact him soon.

[34] The Commission, in turn, argues that there was no communication with the Claimant about starting a business. The Commission spoke with the Claimant in August, but for another case. According to the Commission, he spoke with another department.

[35] I find that the Claimant had to complete his claims for EI benefits during that period. He didn't answer "yes" to the question of whether he had a business or was self-employed, and he didn't mention that he wasn't available for work, because he was focusing on his business.

[36] With this in mind, I place more weight on the Commission's information. The Claimant had to give correct answers when completing his claims, especially if there seemed to be no problems with the Commission.

[37] As for the debt, the Tribunal doesn't have the power to decide this issue.¹² Only the Commission can decide whether a claimant has to repay an overpayment in full.

Conclusion

[38] I find that the Claimant was working full work weeks, so he wasn't unemployed.

[39] The appeal is dismissed.

Manon Sauvé
Member, General Division – Employment Insurance Section

¹² Section 112.1 of the Act, and see section 56 of the Regulations to learn about the Commission's powers when it comes to debts.