



Citation: *AR v Canada Employment Insurance Commission*, 2021 SST 930

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

Decision

Appellant: A. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (412441) dated January 12, 2021 (issued by Service Canada)

Tribunal member: Katherine Wallocha

Type of hearing: Teleconference

Hearing date: April 27, 2021

Hearing participants: Appellant

Decision date: April 28, 2021

File number: GE-21-324

DECISION

[1] The appeal is dismissed. The Claimant has not shown that she has worked enough hours of insurable employment to qualify for employment insurance (EI) benefits.

OVERVIEW

[2] The Claimant applied for regular EI benefits on October 19, 2020. She indicated that her last day of work was December 31, 2017, and she will not be returning to work with this employer because she is on sick leave. She also indicated that she had no other periods of work in the last 52 weeks.

[3] The Canada Employment Insurance Commission (Commission) determined that the Claimant did not have enough hours to establish a benefit period. This means she could not be paid EI benefits.

[4] The Claimant argued that her claim is legitimate as she has contributed to EI, as did her employer. She was diagnosed with breast cancer in the fall of 2017. Her insurance provider determined it would be two years before she could return to work. Unfortunately, her disease required more treatment than some others. However, she did not experience an interruption of earnings and received regular compensation that was directly attributable to her employment. She continued to receive and use her health and dental benefits provided by her employer because she maintained her employment status until she was laid off on September 30, 2020.

WHAT I MUST DECIDE

[5] Has the Claimant worked enough hours of insurable employment in her qualifying period to qualify for EI benefits?

REASONS FOR MY DECISION

[6] Not everyone who stops working can be paid EI benefits. Claimants have to prove that they qualify for benefits¹. You have to prove this on a balance of probabilities. This means that you have to show that it is more likely than not that you qualified for benefits.

Does the Claimant qualify for EI benefits?

[7] No, the Claimant has not accumulated sufficient hours of insurable employment during her qualifying period to qualify for EI benefits.

[8] To qualify, claimants need to have worked enough hours within a certain timeframe². This timeframe is called the qualifying period. In general, the qualifying period is the 52 weeks before a claimant's benefit period would start³.

[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 claimant⁴.

[10] The Commission decided the Claimant's region was Calgary, and the regional rate of unemployment at the time of her application was 13.1%. This means that the Claimant needed to work at least 420 hours in her qualifying period to qualify for EI benefits⁵.

[11] The Claimant does not dispute the Commission's decisions about the region or the regional rate of unemployment that applies to her. There is no evidence that causes me to doubt the decision. So, I accept as fact that the Claimant needs to have worked 420 hours to qualify for benefits.

¹ This is set out in s 48 of the *Employment Insurance Act* (EI Act).

² This is set out in s 7 of the EI Act.

³ This is set out in s 8 of the EI Act.

⁴ This is set out in s 7(2)(b) of the EI Act. s 17 of the *Employment Insurance Regulations* explains how to determine the regional rates of unemployment.

⁵ Section 7 of the EI Act sets out a chart that tells us the minimum number of hours that a claimant needs depending on the different rates of unemployment.

[12] The Commission decided that the Claimant's qualifying period was the usual 52 weeks. However, the Commission also accepted that the Claimant was unable to work for medical reasons and extended her qualifying period to the maximum 104 weeks⁶. The Claimant's qualifying period was determined to be from October 21, 2018, to October 17, 2020.

[13] The Claimant does not dispute the Commission's decision about her qualifying period and there is no evidence that causes me to doubt it. So, I accept as fact that the Claimant's qualifying period is from October 21, 2018, to October 17, 2020.

[14] Since the Claimant was receiving short-term and long-term disability payments from February 23, 2018, until February 22, 2020, I asked for a Canada Revenue Agency (CRA) ruling on whether her disability payments were insurable. CRA decided on March 25, 2021, that the Claimant's wage loss replacement plan was not insurable because the amount was excluded as income under the *Income Tax Act*. Only CRA who can make a ruling on insurable employment⁷ and I must accept that ruling⁸.

[15] Given the CRA ruling on insurability, I find that the Claimant has not proven that she has enough hours to qualify for EI benefits, because she needs 420 hours, but has accumulated zero hours.

[16] The Claimant argued that her record of employment shows she worked more than enough hours to qualify for EI benefits. This is true, but she stopped working in December 2017, before the beginning of her qualifying period.

[17] The Claimant feels that her employer terminated her employment while she was on long-term disability and that is contrary to the *Labour Standards Code*. Her employer committed an unlawful act and the Commission relied on that unlawful act to achieve a desired number of hours to deny her claim. The Commission was party to an unlawful act. Her employment was terminated on September 30, 2020, and it must be accepted

⁶ This is set out in s 8(2) of the EI Act.

⁷ This is set out in s 90 of the EI Act.

⁸ This is explained in the Federal Court of Appeals (FCA) decision *Canada (Attorney General) v Romano*, 2008 FCA 117.

or the Commission is in contravention of the code. There was no interruption of earnings until then.

[18] I do not agree that the Commission was party to an unlawful act. The Claimant applied for EI benefits. She was terminated from her employment and requested benefits. The Commission must respond to her application by first determining if she worked the required number of hours in her qualifying period to qualify for EI benefits. Whether her employer terminated her unlawfully or not is not an issue for the Commission or the Tribunal to determine. It is up to Labour Standards to make that determination.

[19] I agree with the Claimant's argument that her separation of employment occurred in September 2020, and there was no interruption of earnings because she was receiving disability payments. However, this does not change the fact that the Claimant had not worked nor accumulated any hours of insurable employment in the 104 weeks before her employment was terminated.

[20] The Claimant felt that if she could make the connection between the employer and the insurer, she could show that the payments she received from the insurer were, in fact, paid by the employer. I recognize the Claimant received disability payments because of her working relationship with the employer. However, CRA has ruled those payments were not insurable. This means no hours of insurable employment were attached to those payments.

[21] Employment insurance is an insurance plan and, like other insurance plans, claimants have to meet terms in order to get paid benefits. I respect the Claimant's argument that she feels she is being penalized and the Commission is discriminating against her because she is sick with more than a broken leg. But I am unable to rewrite the law or interpret it differently than its plain meaning⁹. While I sympathize with the Claimant's situation, I do not have the discretion to allow benefits where there is no

⁹ This is explained in the FCA decision *Canada (Attorney General) v. Knee*, 2011 FCA 301.

entitlement¹⁰. The Claimant was required to have accumulated enough hours to qualify. She does not meet the requirements, so she does not qualify for EI benefits.

CONCLUSION

[22] The appeal is dismissed.

K. Wallocha

Member, General Division - Employment Insurance Section

¹⁰ This is explained in the FCA decision *Canada (Attorney General) v. Lévesque*, 2001 FCA 304.