



Citation: *EF v Canada Employment Insurance Commission*, 2022 SST 276

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: E. F.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (444559) dated January 4, 2022
(issued by Service Canada)

Tribunal member: Leanne Bourassa

Type of hearing: Teleconference

Hearing date: February 8, 2022

Hearing participants:

Decision date: February 18, 2022

File number: GE-22-207

Decision

[1] The appeal is dismissed.

[2] This means the Claimant is not entitled to Employment Insurance (EI) Benefits.

Overview

[3] The Claimant was working for two different senior care homes. In November 2020, he was laid off from one of the two jobs. Because of restrictions in place due to COVID-19, the Claimant was not able to get a job with a second care home, so he applied for EI benefits to make up for the lost earnings.

[4] He received benefits until October 2021. When his benefits came to an end, he reapplied but the Canada Employment Insurance Commission (the Commission) told him he did not qualify for benefits. He had not been without work or income for 7 consecutive days.

[5] The Claimant says that he cannot take another job for more hours because of public health rules surrounding the pandemic. He cannot afford to not work for 7 days to establish an interruption in earnings. The fact that he has been refused benefits has caused damage to his family's mental health. He is asking for his appeal to be reviewed on compassionate grounds.

Issue

[6] Did the Claimant qualify for EI benefits?

Analysis

[7] EI benefits are payable to an insured person who qualifies to get them. ¹

[8] To qualify for benefits, a claimant has to have had an interruption of earnings and a certain number of hours of insurable employment in their qualifying period. ²

¹ See subsection 7(1) of the Employment Insurance Act.

² See subsection 7(2) of the Employment Insurance Act.

[9] To have an interruption of earnings, a claimant has to have had been separated or laid off from an employer and have had a period of at least seven days during which they did not work and did not get paid or be owed pay.³

[10] It is up to the Claimant to show that he has had an interruption of earnings.⁴

The Claimant did not have an interruption of earnings

[11] The Claimant was never separated from his employment. He did not have an interruption of earnings.

[12] The Claimant admits that when he made his claim for benefits in October 2021, nothing in his working life had changed. He was still working for his employer and was guaranteed 30 hours of work per week. He was applying for benefits to make up for the income that he could not earn because he could not get a second job with another employer due to the health restrictions.

[13] The Commission argues that the Claimant continues to work for his employer and has not had a period of seven consecutive days where he did not work. Because of this, he did not have an interruption of earnings.

[14] I agree with the Commission. The Claimant has not shown that he had an interruption of earnings. While he is making less than he would have when he was working two jobs, or even when he was working one job and collecting benefits, he has not shown that he has been out of work for seven days.

[15] The Claimant argues that it would not be financially feasible for him to ask to take 7 days off to establish an interruption of earnings. I understand this, but note that even with such a break, if a claimant returned immediately to his employment, this would not be a clear interruption of earnings.

[16] I also note that the Claimant has mentioned that he has not had a reduction in hours with his current job and that he is guaranteed 30 hours of work per week. Even if

³ See subsection 14(1) of the Employment Insurance Regulations.

⁴ This is set out in *Theriault v. Canada (Attorney General)*, 2008 FCA 283.

he had been reduced to purely part-time hours, the Federal Court of Appeal has said that this does not amount to an interruption of earnings. The Claimant would still have to have had seven consecutive days without earnings.⁵

[17] I understand that the Claimant and his family are struggling without the benefit of EI benefits. Unfortunately, neither the Commission nor the Tribunal have any discretion to make a decision that is not in keeping with the clear definitions in the law.⁶

[18] Since the Claimant did not have an interruption of earnings, he can not qualify for EI benefits. Even if he met the other criteria under the law, he could not qualify, so I will not proceed with an analysis of his hours of insurable employment.

Conclusion

[19] The appeal is dismissed.

Leanne Bourassa
Member, General Division – Employment Insurance Section

⁵ See the decision in *Canada (Attorney General) v. Duffenais*, A-551-92

⁶ See the decision in *Canada (Attorney General) v. Levesque*, 2001 FCA 304