



Citation: *LH v Canada Employment Insurance Commission*, 2022 SST 746

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

Decision

Appellant (Claimant): L. H.
Representative: C. G.

Respondent (Commission): Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (446720) dated January 21, 2022
(issued by Service Canada)

Tribunal member: Gerry McCarthy

Type of hearing: Teleconference
Hearing date: May 26, 2022
Hearing participants: Appellant's representative
Decision date: May 27, 2022
File number: GE-22-791

Decision

[1] The appeal is dismissed.

Overview

[2] The Claimant applied for regular Employment Insurance (EI) benefits on October 23, 2021. The employer (“X”) issued the Claimant’s Record of Employment indicating she worked from September 6, 2020, to October 9, 2021, and was paid bi-weekly. The employer also indicated the reason for issuing the Record of Employment was at the Claimant’s request.

[3] The Commission notified the Claimant that her claim for EI benefits was cancelled, because it couldn’t be established that starting October 10, 2021, she had seven consecutive days without work or pay prior to the start of her claim.

[4] The Commission says the Claimant was remunerated on a bi-weekly basis. The Commission further says that although the Claimant worked one week on and one week off, she still received and continued to receive regular bi-weekly remuneration. The Commission further says that no interruption of earnings occurred for the Claimant prior to October 10, 2021, which was the beginning of the requested benefit period.

[5] The Claimant’s representative submitted that the Claimant’s previous two claims were approved with the exact same employer and situation. The Claimant’s representative says the Claimant didn’t have a fixed schedule and sometimes worked on her week off. The Claimant’s representative also indicated that the Claimant’s second Record of Employment indicated she stopped worked on October 9, 2021, and returned on October 17, 2021, which was more than seven consecutive days.

Matters I have to consider first

[6] The Claimant’s representative attended the hearing and explained that the Claimant didn’t wish to join the hearing. The Claimant’s representative confirmed that

the Claimant had received her Notice of Hearing. The Claimant's representative also indicated we could proceed in the Claimant's absence. So, the hearing proceeded in the Claimant's absence.

[7] The Claimant's representative further confirmed she was the Claimant's sister. The Claimant's representative also indicated she wanted to provide oral submissions and didn't wish to testify.

Issue

[8] Did the Claimant have an interruption of earnings?

Analysis

[9] To be eligible for EI benefits, a claimant must meet certain criteria described under the law.¹ One of these conditions is that the claimant must have had an interruption of earnings from employment.²

[10] The definition of an interruption in earnings is defined under the law as being "an interruption that occurs in the earnings of an insured person at any time and in any circumstances determined by the regulations."³ The Regulations describe the circumstances which are used to determine whether an interruption in earnings has occurred.⁴

[11] The Regulations say that where an insured person is employed under a contract of employment under which the usual remuneration is payable in respect of a period greater than a week, no interruption of earnings occurs during that period, regardless of the amount of work performed in the period and regardless of the time at which or the manner in which the remuneration is paid.⁵

¹ Section 7 of the *Employment Insurance Act*.

² Section 7(2)(a) of the *Employment Insurance Act*.

³ Subsection 2(1) of the *Employment Insurance Act*.

⁴ Subsection 14(1) of the *Employment Insurance Regulations*.

⁵ Subsection 14(4) of the *Employment Insurance Regulations*.

Did the Claimant have an interruption of earnings?

[12] I find the Claimant did not have an interruption of earnings, because she did not have seven consecutive days without work or pay prior to the start of her claim. I recognize the Claimant's representative submitted that the Claimant stopped work on October 9, 2021, and returned on October 17, 2021 (GD3-17 and GD6-3) which was one day more than seven-days. Nevertheless, the Claimant must have seven consecutive days off work outside her bi-weekly pay period for an interruption of earnings to occur. On this matter, I agree with the Commission that the first Record of Employment (GD3-17) showing the Claimant's first day worked as October 9, 2021 (Saturday) and the second Record of Employment (GD6-3) with her first day worked as October 17, 2021 (Monday) would further support that the week of October 10, 2021, to October 16, 2021, was considered the Claimant's regular week off work.

Additional Submissions by the Claimant's representative

[13] I realize the Claimant's representative argued that the Claimant received EI benefits on her previous two claims with the same employer and in the exact same situation (GD 13). Nevertheless, I must apply the law in this case. In short: Although the Claimant worked one week on and one week off, she still received and continued to receive regular bi-weekly remuneration from the employer.

[14] I further recognize the Claimant's representative submitted that the Claimant sometimes worked during her week off and work would report those earnings on her previous claims. However, the Claimant was still remunerated on a bi-weekly basis. Furthermore, the employer (Ms. H./Payroll) told the Commission that there had been no two-week period that the Claimant had been off work (GD3-19). The employer (Ms. H.) also confirmed the Claimant had requested her Record of Employment.

[15] Finally, I realize the Claimant's representative was surprised and frustrated that the Claimant couldn't establish a claim for EI benefits. Nevertheless, I must the apply

the law to the evidence. In other words, I cannot ignore the law even for compassionate reasons.⁶

Conclusion

[16] The appeal is dismissed.

Gerry McCarthy

Member, General Division – Employment Insurance Section

⁶ *Knee v Canada (Attorney General)*, 2011 FCA 301).