



Citation: *NH v Canada Employment Insurance Commission*, 2022 SST 886

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

Decision

Appellant:

N. H.

Respondent:

Canada Employment Insurance Commission

Decision under appeal:

Canada Employment Insurance Commission
reconsideration decision (460001) dated March 10, 2022
(issued by Service Canada)

Tribunal member:

Leanne Bourassa

Decision date:

May 26, 2022

File number:

GE-22-1061

Introduction

[1] The Appellant made an application for Employment Insurance (EI) benefits. The Respondent denied the Appellant's claim because he did not have enough hours of insurable employment in his qualifying period to qualify for benefits.

Issue

[2] The Tribunal must decide whether the appeal should be summarily dismissed.

The law

[3] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[4] Section 22 of the *Social Security Tribunal Regulations* states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.

[5] Section 7(2) of the *Employment Insurance Act* states that an insured person qualifies for benefits if the person had an interruption of earnings from employment and had, during their qualifying period, at least the number of hours of insurable employment set out in the law.

Evidence

[6] The Appellant applied for benefits on February 5, 2022. In his application, he said that he had worked for two employers in the 52 months before his application. He wrote that he had worked for X From March 1, 2021 until January 28, 2022.

[7] In the file, there are two Records of Employment. The first says that the Appellant worked for X from January 31, 2022 until February 4, 2022 and had 40 insurable hours of employment. The second says that the Appellant worked for Statistics Canada 2001 from May 31, 2021 until June 22, 2021 and had accumulated 131 insurable hours of employment. No other Records of Employment are in the file.

[8] The Respondent provided evidence that at the time of his application for benefits, the Appellant lived in the Montreal economic region and the unemployment rate in that region at that time was 5.7%.

[9] With his notice of appeal, the Appellant submitted a series of email messages exchanged with X. These emails from between February 4, 2022 and March 13, 2022 include requests from the Appellant for a Record of Employment to be issued by his employer.

[10] On May 2, 2022, the Tribunal wrote to the Appellant to advise him of the intention to summarily dismiss this matter.

[11] With his response to notice of intention to summarily dismiss, the Appellant provided the Tribunal with copies of two pay stubs issued by X on February 4, 2022. The first stub shows the Appellant was paid for 122.50 hours during the pay period of January 1 to January 28, 2022. The second stub shows he was paid for 118.25 hours for the pay period of February 1, 2022 to February 28, 2022.

Submissions

[12] The Appellant submitted that he had sufficient insurable hours in his qualifying period to qualify for benefits, but that his employer X had not produced a Record of Employment.

[13] The Respondent submitted that the Appellant had failed to demonstrate that he was qualified to receive EI benefits. While he needed to show he had 420 hours of insurable employment in his qualifying period, he only had 171 hours.

Analysis

[14] In order for a claimant residing in the economic region of Montreal to qualify for EI benefits beginning February 5, 2022, they would normally have to show they had

more than 700 hours of insurable employment in their qualifying period¹. However, as part of Budget 2021, temporary measures were put in place by the Government of Canada, which set a common entrance requirement of 420 hours of insurable employment for claims with a benefit period starting between September 26, 2021 and September 18, 2022.

[15] Since the Appellant applied for benefits on February 5, 2022, his qualifying period would be from February 7, 2021 to February 5, 2022.²

[16] The Appellant does not dispute that he needed 420 hours of insurable employment in his qualifying period to qualify for benefits. He also does not dispute the qualifying period identified by the Respondent.

[17] The parties also agree that the Appellant had accumulated 171 hours of insurable employment. This is set out in the two Records of Employment that are on file.

[18] The Appellant argues that he worked many more hours for his employer X during the qualifying period. Unfortunately, there is not sufficient documentary evidence on file to support this.

[19] I acknowledge that the Appellant submitted pay stubs that appear to show that he worked during January 2022 for X. However, even if I were to accept the pay stub as sufficient to establish the hours, there is still no confirmation that the hours were insurable hours of employment.

[20] There is also not clear evidence about how many hours in the February 1 to February 28, 2022 pay stub were actually worked during the qualifying period. I could only consider the entirety of the first pay stub and certain hours in the second³. There

¹ This is determined by consulting the table set out in subsection 7(2)(b) of the Employment Insurance Act (Act). A claimant in a region with a regional rate of unemployment below 6% would normally be required to have 700 hours of insurable employment in their qualifying period.

² This is established pursuant to paragraph 8(1)(a) of the Act.

³ This pay stub appears to have been issued on February 4, 2022. It is not feasible that the Appellant would have worked all 118.25 hours on this paystub in the first four days of the month.

would not be sufficient hours in those stubs to reach the 420 hours necessary to qualify for benefits.

[21] Since the Appellant has not been able to show that he had sufficient hours of insurable employment in his qualifying period, he cannot meet his burden of proving he qualifies for EI benefits. The Appellant was given notice that the Tribunal was considering dismissing his appeal, and he was not able to provide additional evidence of additional hours of insurable employment. Because of this, his appeal has no reasonable chance of success and I must dismiss it.

Conclusion

[22] The Tribunal finds that the appeal has no reasonable chance of success; therefore the appeal is summarily dismissed.

Leanne Bourassa
Member, General Division – Employment Insurance Section