



Citation: *BT v Canada Employment Insurance Commission*, 2022 SST 950

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

Decision

Appellant: B. T.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (453331) dated February 9, 2022 (issued by Service Canada)

Tribunal member: John Noonan

Type of hearing: Teleconference

Hearing date: May 26, 2022

Hearing participants: Appellant **

Decision date: May 31, 2022

File number: GE-22-957

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant, B. T. was, upon reconsideration by the Commission, notified that, they were unable to pay him either special or regular Employment Insurance benefits. He had 125 hours of insurable employment during his qualifying period. September 27, 2020 through to September 25, 2021. However, he needed 420 hours of insurable employment to qualify for benefits. The Appellant asserts that he should be eligible to receive the one time 300 hours credit which was, according to him, available until September 25, 2021 (GD3-24-26). The Tribunal must decide if the Appellant had accumulated the number of hours of insurable employment required by section 7 in order to establish a claim and receive employment insurance benefits.

Matter I have to consider first **

[3] There were technical difficulties with Zoom at the Appellant's hearing. He was unable to connect with audio or video. He was able, however, to send via the chat section of Zoom the following information "Hello, I am having problems with zoom" "I have sent a detailed message with my information" "According to the Agent Jennifer, I had 418 employment hours, on Sept 19 2021. However she does not include the 48 hours employment that I had at X" "With all my hours accounted for in all of the information slips it should be 466 hours" "Im sorry I cannot get zoom video to work, can you proceed with the information that I have provided by email?"

[4] This information is addressed in the Appellant's submissions and the representations of the Commission and dealt with by the Tribunal in the decision and as per his request the writing of this decision can and is being completed.

Issue

[5] Issue # 1: Did the Appellant, in his qualifying period, accumulate the number of hours of insurable employment required by section 7 of the Act in order to receive employment insurance benefits.

Analysis

[6] The relevant legislative provisions are reproduced at GD4.

[7] Subsection 7(1) of the Act states that: (1) Unemployment benefits are payable as provided in this Part to an insured person who qualifies to receive them.

[8] Subsection 7(2) of the Act states that:

(2) An insured person qualifies if the person

a) has had an interruption of earnings from employment; and

(b) has had during their qualifying period at least the number of hours of insurable employment set out in the table reproduced at GD4-5 in relation to the regional rate of unemployment that applies to the person.

[9] The Government of Canada implemented Temporary Measures to Facilitate Access to Benefits.

[10] These included, as per section 153.17 (1), that initial claims made on or after September 27, 2020 and earlier than September 19, 2021 were “deemed” to have, in this case, an additional 300 hours of insurable employment in their qualifying period.

[11] Claims made after that date were, as per Budget 2021, were subject to temporary legislative measures that came into force on September 26, 2021 replacing the measure that had the 300 hour additional insured hours. One of the new legislative measure is as follows:

Common entrance requirement:

Clients need 420 hours of insurable employment to establish a claim for regular or special benefits with a BPC from September 26, 2021 to September 18, 2022.

Issue 1: Did the Appellant, in his qualifying period, accumulate the number of hours of insurable employment required by section 7 of the Act in order to receive employment insurance benefits?

[12] No.

[13] The Commission ruled that the Appellant failed to qualify to receive employment insurance benefits because he required 420 hours of insurable employment in his qualifying period between September 27, 2020 and September 26, 2021 whereas he had accumulated only 125 hours. He had insufficient hours of insurable employment to establish a claim.

[14] In an effort to allow the Appellant the opportunity to avail of the 300 hour “one time” credit which was only available for claims with a benefit period commencing on or before September 19, 2021, the Commission explored the possibility of antedating the claim by one week to September 19, 2021. The qualifying period was then correctly determined to be the period beginning September 20, 2020 through to and including September 18, 2021 based on the provisions of paragraph 8(1) of the Act.

[15] Further, the Commission in an attempt to help the Appellant, determined that there are errors on one of the Appellant’s ROEs which can only be address by that employer. ***The Commission submits that another ROE has been submitted from X for a period worked from May 01, 2020 to October 10, 2020 (GD3-19). However, the ROE needs be confirmed on first day worked, last day worked/paid, final pay period ending date, total insurable earnings and earnings by pay period. The Commission was not able to contact the employer because the phone number on the ROE is wrong (GD3-30). The Commission has sent the employer a letter requesting a callback for the information (GD3- 31). Unfortunately, the Commission cannot recalculate the claim to determine if the claimant can qualify for benefits until the ROE from X is corrected/verified.***

[16] During this period the Appellant worked for Y and accumulated, based on the fact that insurable hours which fall outside the qualifying period cannot be used in the calculation of a claim, 118 hours of insurable employment during his qualifying period. This is because the claimant's hours for the week of September 19, 2021 to September 24, 2021 would be in his benefit period and are not in the qualifying period (GD3-27) and therefore excluded. As per section 153.17 (1), initial claims made on or after September 27, 2020 were "deemed" to have, in this case, an additional 300 hours of insurable employment in their qualifying period. Only the insurable hours that fall within the qualifying period can be considered when determining whether there are sufficient hours to allow a claim. (Should company records show different dates or a different number of hours worked each week than those calculated by the Commission, a review of this claim would be a possibility.)

[17] Pursuant to Section 7 of the Act and the temporary measures which came into force on September 26, 2021, the Appellant required 420 hours of insurable employment in his qualifying period.

[18] The Appellant here accumulated only 125 hours during his qualifying period therefore a benefit period cannot be established.

[19] I find the Commission correctly applied the provisions of the Act (Section 7) when it determined the Appellant required 420 hours to qualify.

[20] Neither the Commission nor the Tribunal has any discretion regarding the conditions imposed by the Act and the Regulations.

[21] As a final matter, the Appellant advised that the Service Canada website is confusing when it proclaims that the one time credit is available for one year but fails to outline details from Section 8 of the Act which prevent the use of all hours obtained up to and including September 25, 2021.

[22] The Federal Court of Appeal has confirmed that since the Service Canada website does not purport to deal with the specifics of every person's particular situation,

claimants cannot reasonably treat general information on the website as if it were personally provided to them by the Commission in response to an inquiry about their eligibility on given facts. **Mauchel v. Canada (AG), 2012 FCA 202**

Conclusion

[23] The Member finds that, having given due consideration to all of the circumstances, the Appellant accumulated only 413 hours of insurable employment whereas he needed 420 hours therefore a benefit period cannot be established. The appeal on this issue is dismissed.

[24] **Again I refer the Appellant to paragraph 15 of this decision. If and when he contacts the employer, X, to have the ROE properly completed, any revised dates and hours may, upon verification by the Commission, result in a benefit period being established and benefits being paid. This action must be done by the Appellant in a timely manner.**

John Noonan

Member, General Division – Employment Insurance Section