



Citation: *CD v Canada Employment Insurance Commission*, 2022 SST 866

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

## Decision

**Appellant:** C. D.  
**Representative:** C. Y.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (445305) dated December 17,  
2021 (issued by Service Canada)

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**Tribunal member:** Raelene R. Thomas

**Type of hearing:** Videoconference  
**Hearing date:** April 6, 2022  
**Hearing participant:** Appellant  
**Decision date:** April 22, 2022  
**File number:** GE-22-491

## **Decision**

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

[2] The Claimant wasn't working full work weeks from October 3, 2021 onward. This means that he may be able to receive Employment Insurance (EI) benefits.

## **Overview**

[3] The Claimant was employed by a company in which he and his two brothers have an equal amount of shares. He stopped working on October 7, 2021 due to a shortage of work. The Commission asked the Canada Revenue Agency (CRA) to determine if the Claimant's employment was insurable. The CRA ruled the Claimant's employment from August 10, 2020 to July 10, 2021 was insurable.

[4] The Commission interviewed the Claimant and decided because he was operating a business he was working full work weeks and could not be considered unemployed for the period in question. So, the Commission decided that the Claimant couldn't receive EI benefits.

[5] The Claimant does not agree with the Commission's decision. He works for a company that he and his brothers own. The amount he works is determined by whomever requests the services of the company. He looks for other work for himself when he is not working for the company. He argues that he is still unemployed even while he is involved with the company because his involvement is so minor.

## **Issue**

[6] Was the Claimant's level of involvement so limited that he wasn't actually working full work weeks?

## **Analysis**

[7] If you are involved in a business, you may not be entitled to EI benefits.

[8] The law says that you can receive EI benefits for each week you are unemployed.<sup>1</sup> A week of unemployment means any week you don't work a full work week.<sup>2</sup>

[9] If you are self-employed or involved in a business, the law assumes that you work full work weeks.<sup>3</sup> This means you can't receive EI benefits.<sup>4</sup>

### **Exception if your involvement is limited**

[10] There is an exception if your level of involvement in the business is limited.<sup>5</sup>

[11] The exception applies if the Claimant's level of involvement is so limited that a person wouldn't normally rely on that self employment as their main means of earning a living.<sup>6</sup>

[12] The Claimant has to prove that his involvement was so limited that the exception applies.<sup>7</sup> The Claimant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that his involvement is limited.

### **Six factors for deciding level of involvement**

[13] To decide whether the exception applies, I have to consider the following six factors:<sup>8</sup>

- a) How much time did the Claimant spend on his self-employment / business?

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<sup>1</sup> Section 9 of the *Employment Insurance Act* (EI Act) sets out this rule.

<sup>2</sup> See section 11 of the Act.

<sup>3</sup> See section 30(1) of the *Employment Insurance Regulations* (EI Regulations).

<sup>4</sup> See *Marlowe v Canada*, 2009 FCA 102.

<sup>5</sup> See section 30(2) of the EI Regulations. It refers to a claimant being involved to "a minor extent" (in other words, their involvement is limited). Also see *Martens v Canada (Attorney General)*, 2008 FCA 240.

<sup>6</sup> See section 30(2) of the EI Regulations and *Martens v Canada (Attorney General)*, 2008 FCA 240.

<sup>7</sup> See *Canada (Attorney General) v Falardeau*, A-396-85, and *Lemay v Canada Employment Insurance Commission*, A-662-97.

<sup>8</sup> Section 30(3) of the EI Regulations sets out these six factors. This decision paraphrases those six factors for plain language.

- b) How much has the Claimant invested in his self-employment / business, and what are those investments (such as money, property, goods, and resources)?
- c) Financially, has the Claimant's self-employment / business been a success or failure?
- d) Was the Claimant's self-employment / business meant to be ongoing?
- e) What was the nature of the Claimant's self-employment / business?
- f) Did the Claimant intend to and want to find another job?

– **Time spent**

[14] The amount of time that the Claimant spends on his self-employment / business shows limited involvement because his involvement is limited to reporting for work when his brother determines that he is required for work. He spends one to two hours a week on company business when laid off from the company.

[15] The Claimant's brother, affirmed to give evidence, testified that he, the Claimant and another brother own a contracting company. Each brother holds the same number of shares in the company. The company was initially incorporated in 1975. The Claimant "bought into" the company in 1981 but is not a director of the company. The Claimant said from 1981 forward he worked for the company as an employee and received wages but no other income from the company.

[16] The Claimant's brother testified that in the past four years the company's work has been limited to providing carpenters to the local shipyard. The shipyard will contact the Claimant's brother for the number of workers it requires and the length of time the workers are required. The Claimant's brother will arrange for the workers and decide if the Claimant will be among the workers sent to work at the shipyard.

[17] The Claimant testified that he will work at a "shipyard job" for as long as there is work available. The shipyard decides how many workers it needs, the hours to be

worked and the length of time the workers will work. At the end of the work he is laid off by the company.

[18] The Claimant's representative noted that the Claimant had 31 weeks of employment in the 52-week period of employment reported on the Record of Employment issued by the company.

[19] The Claimant testified that when he is laid off from the Company he may spend one or two hours a week working on company business.

[20] I find that the Claimant was not able to set his own hours of work. While it is the case Claimant has spent a significant amount of time working as an employee for the company he did not set his own hours of work in two respects. First, his brother would determine whether he would be called in to work. Second, the shipyard would determine the hours to be worked by the Claimant and any other company employees. In addition, the time spent by the Claimant on company business when not performing work for the shipyard is minimal. As a result, I find that the time spent by the Claimant operating the business show limited involvement.

– **Investments**

[21] The nature and amount of the Claimant's investments (such as money, property, goods, and resources) show limited involvement because the initial investment in the company took place when it was first incorporated.

[22] The business owns some tools and two older model pickup trucks. It has a storage shed. The business is run out of an office in the Claimant's brother's home. This evidence tells me the Claimant's investment in the company is limited because the assets of the company are of a low value and it does not own the premises that are dedicated to carrying out the business.

– **Financial success or failure**

[23] The financial situation of the Claimant's self-employment / business shows limited involvement because, while the company has paid the Claimant wages for his

employment, it has not paid any dividends to the Claimant or the other owners since its formation.

[24] A company typically pays dividends from amounts left over once expenses are deducted from revenues. In this case, there have been no dividends paid since 1975 when the business was first incorporated and since 1981 when the Claimant bought into the company. As a result, I find that the company cannot be considered to be a success.

– **Ongoing self-employment / business**

[25] The Claimant's self-employment / business is meant to be ongoing. The Claimant's brother testified that the company is in the business of construction and contracting. It has been operating since 1975. The company provides carpenters upon request to other companies, such as the shipyard. In the past it has bid on and built structures. The COVID-19 pandemic has reduced its business.

[26] The Claimant's Representative noted that the Claimant had 31 of 52 weeks employment in the period reported on the ROE. The Claimant told a Service Canada agent that he returned to work for the company from October 24, 2021 to November 27, 2021, when the shipyard again asked the company to provide workers.

[27] In my opinion, the length of time the company has been operation and its continuing operation does not show limited involvement.

– **Nature of the Claimant's self-employment / business**

[28] The Claimant is a red seal carpenter. The Claimant's self-employment / business was the provision of skilled carpenters to a local shipyard and other construction work.

[29] In my opinion, this doesn't show limited involvement because the Claimant's expertise and qualifications are in the same area as those required to carry on the company's business of providing carpenters and construction services.

– **Intention and willingness to find another job quickly**

[30] The Claimant's Representative said the Claimant lives and works in a rural area. There are not thousands of jobs available where he lives.

[31] The Claimant testified that he would be willing to work for other companies. When he is laid off he said he checks with other contractors and construction firms to see if there is work available. He does not have any computer skills so he is not in a position to look for work on-line. He does speak to friends, those in the trade and relatives when looking for work. The Claimant testified that if he could get work with another employer he would not consider his wages from the company to be his primary source of income.

[32] In my opinion, the Claimant's job search efforts show limited involvement because he continues to job search when he is laid off from the company. He would be willing to work for another employer and forgo his employment with the company.

**So, was the Claimant's level of involvement limited enough?**

[33] The Claimant's level of involvement is so limited that the exception applies. A person wouldn't normally rely on this self-employment / business as a main means of earning a living.

[34] I have considered all six factors mentioned above. The factors about the ongoing nature of the business and the Claimant's skill set being that required by the business suggest that his involvement is not limited. On the other hand, the factors about the time he actually spends on company business, as opposed to time spent working as an employee of the company, his level of investment, the limited financial success of the company and the Claimant looking for and willingness to work elsewhere suggest that the Claimant's involvement is limited.

[35] Two factors are especially important. Case law says that how much time you spend on the work and whether you intend to or want to find another job quickly are

important factors to consider.<sup>9</sup> The Claimant does not control his hours of work when he is working as an employee of the company. He spends at most two hours a week engaged in company business when he is laid off. The Claimant looks for work with other employers when he is laid off from the company. He is willing to work for another employer instead of working for the company. This evidence tells me the Claimant's involvement in the company is limited and minor in extent.

[36] With all of this in mind, I find the exception applies to the Claimant's self-employment / business.

[37] The Claimant wasn't working full work weeks. This means that the Claimant may receive benefits because there were weeks where he was unemployed.

## **Conclusion**

[38] I find that the Claimant's involvement in his self-employment / business is limited enough that the exception applies. He wasn't working full work weeks, so he was unemployed.

[39] This means that the appeal is allowed.

Raelene R. Thomas  
Member, General Division – Employment Insurance Section

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<sup>9</sup> See *Charbonneau v Canada (Attorney General)*, 2004 FCA 61.