



Citation: *WC v Canada Employment Insurance Commission*, 2022 SST 1197

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

# **Decision**

**Appellant:** W. C.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (0) dated May 18, 2022 (issued by Service Canada)

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**Tribunal member:** Lilian Klein

**Type of hearing:** Videoconference

**Hearing date:** October 3, 2022

**Hearing participants:** Appellant

**Decision date:** November 7, 2022

**File number:** GE-22-1722

## Decision

[1] I am dismissing the Claimant's appeal. This decision explains why

[2] According to a ruling by the Canada Revenue Agency (CRA), the Claimant did not work enough hours in insurable employment to qualify for Employment Insurance (EI) benefits. I do not have the jurisdiction to change a CRA ruling.

## Overview

[3] The Claimant is W. C.. He applied for EI regular benefits on September 30, 2020. His Record of Employment (ROE) showed that he worked 140 insurable hours from January 1, 2020, to June 30, 2020. He says his employer was a woman to whom he rented a room in his apartment. He says his job was to cook for her.

[4] At that time, temporary changes to the law in response to COVID-19 gave EI claimants for regular benefits a credit of 300 insurable hours in their qualifying period. This meant that they could meet the 420-hour requirement by working 120 hours.

[5] The Canada Employment Insurance Commission (Commission) investigated the employment relationship between the Claimant and his tenant. It decided that the ROE was false. So, he could not establish a benefit period.

[6] The previous General Division (GD) Tribunal Member (Member) asked the Commission to get a CRA ruling. On February 7, 2022, the Member summarily dismissed the appeal. The Claimant appealed this decision to the Tribunal's Appeal Division (AD).

[7] On May 16, 2022, the AD dismissed the GD decision because the GD Member issued his decision without giving the Claimant a fair opportunity to submit more evidence.<sup>1</sup> The AD sent the matter back to the GD for a completely new hearing. So, the Claimant's appeal is now before me.

[8] The Claimant says I should disregard the Commission's decision that his ROE was false and ignore the CRA's ruling on his insurable hours.

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<sup>1</sup> The GD Member set the deadline as February 28, 2022, and then issued the decision on February 8, 2022.

## The issue I must decide

[9] The only issue before me is: Did the Claimant have enough insurable hours to qualify for EI benefits?<sup>2</sup>

## Analysis

### How to qualify for benefits

[10] Not everyone who stops work can receive EI benefits. You have to prove that you qualify.<sup>3</sup> The Claimant has to prove this on a balance of probabilities. This means he has to show it is more likely than not that he qualifies.

[11] To qualify for benefits, you must have worked enough hours of insurable employment within a certain timeframe. This timeframe is called the “qualifying period.”<sup>4</sup>

[12] The number of hours you need in your qualifying period usually depends on the unemployment rate in your region.<sup>5</sup> But when the Claimant applied for benefits, temporary changes to the law in response to COVID-19 allowed you to qualify with just 420 hours.

[13] As well, at the time the Claimant applied for benefits, the government allowed a credit of 300 insurable hours. With these hours added to your qualifying period, you could qualify for benefits by working 120 hours of insurable employment.

### The Claimant’s qualifying period

[14] The hours that count are the ones you work during your qualifying period. The qualifying period is generally the 52 weeks before a benefit period would start.<sup>6</sup>

[15] The Commission decided that the Claimant’s qualifying period was the usual 52 weeks. It calculated that his qualifying period went from September 29, 2019, to September 26, 2021. The Claimant does not dispute this decision and there is no evidence to suggest it is incorrect. So, I accept the above dates as his qualifying period.

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<sup>2</sup> After discussion and reflection, the Claimant decided against making a Charter challenge. He said he wished to proceed with his appeal through the Tribunal. He said the Tribunal is the right venue.

<sup>3</sup> See section 48 of the EI Act.

<sup>4</sup> See section 7 of the EI Act.

<sup>5</sup> See section 7(2)(b) of the EI Act and section 17 of the *Employment Insurance Regulations*.

<sup>6</sup> See section 8(1)(a) of the EI Act. Section 8(1)(b) explains the exception to this general rule.

## The hours the Claimant worked

[16] **The Commission** decided after an investigation that the Claimant had not worked any insurable hours in his qualifying period. It found that his ROE was false and deleted it from its records.

[17] **The Canada Revenue Agency (CRA)** made a ruling on the number of insurable hours that the Claimant had in his qualifying period. It said:

**We have ruled that, for the period under review, you were not an employee or a self-employed worker with [Xin Shao]. As a result, there was no insurable employment.**<sup>7</sup>

[18] **The Claimant** does not agree with the Commission or the CRA. He argues that he worked 140 insurable hours during his qualifying period and his ROE documents this work.<sup>8</sup> He says he cooked his employer's meals for about an hour a day, Monday to Friday, from January 1, 2020, to June 30, 2020. He says she paid the necessary deductions on his \$17-per-hour job and the net payment he got was \$400 a month.

[19] The Claimant says the Commission based its decision that his ROE was false on incorrect assumptions due to a language barrier. He says the Commission was biased and violated his language rights when it ignored his request for an interpreter.<sup>9</sup>

[20] The Claimant argues that the Commission acted in bad faith when it passed on its assumptions to the CRA as if they were facts. He says the Commission ignored his evidence and made errors.<sup>10</sup> He says his evidence includes his email with the terms of his job, his handwritten receipts for cash payments received and a bank statement, the ROE, and the employer's clarification letter and proof of business registration.<sup>11</sup>

[21] The Claimant says this evidence should be enough for me to disregard the Commission's conclusion that he worked no insurable hours and that his ROE was false. He says he wants to clear his name of any allegation of fraud.

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<sup>7</sup> See GD9-1. The CRA's explanation was that "he was not paid in exchange for the work" (GD9-2).

<sup>8</sup> See the ROE at GD3-22.

<sup>9</sup> The Claimant said the interpreter at the first hearing was not skilled and so we got a new one for his main hearing. He said he wanted to speak to me in English too when interpretation failed to get his point across.

<sup>10</sup> See the errors listed at RGD2-8.

<sup>11</sup> See, for example, the copy of a job agreement (GD2-11), and the employer's clarification letter (GD7-2).

[22] The Claimant says the Commission failed to request a CRA ruling before deciding that his ROE was false and he had no insurable hours. He says the Commission missed the deadline to ask for this ruling. But the law says the Commission may request a CRA ruling “at any time.”<sup>12</sup>

[23] The Claimant argues that I should “strike out”<sup>13</sup> the CRA ruling since it was made after a request by the previous GD Member, who was biased against him. He says that Member had no authority to ask the CRA for a ruling, even indirectly. He says the Member demonstrated his bias by summarily dismissing the appeal without hearing all the evidence.

[24] But I held a new hearing on this appeal, as the AD instructed. So, I have considered the evidence and submissions without regard to the previous GD Member’s decision. My only role is to decide whether the Claimant qualified for EI benefits.

[25] As I explained to the Claimant, I am bound by (compelled to follow) the CRA’s ruling that he had no insurable hours of employment.<sup>14</sup> Only the CRA has the right to decide how many insurable hours someone has worked.<sup>15</sup>

[26] This means that I must use the CRA’s ruling in deciding this appeal.

### **So, did the Claimant work enough hours to qualify for EI benefits?**

[27] No. I find that the Claimant has not proved that he had enough insurable hours to qualify for EI benefits. This is because he needed 420 hours (including the 300-hour credit) based on his application date but did not work the missing 120 insurable hours.

[28] As I told the Claimant, his only option is to appeal the CRA’s ruling directly to that agency. The CRA is the venue for him to argue that the Commission’s findings were wrong because of bias and a language barrier. Only a new CRA ruling that he had enough insurable hours to qualify for benefits can overturn the Commission’s decision.

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<sup>12</sup> Section 90(2) of the EI Act says the Commission can apply for a ruling at any time but there are deadlines for other parties to request a ruling.

<sup>13</sup> See, for example, RDG6-5.

<sup>14</sup> See *Canada (Attorney General) v Romano*, 2008 FCA 117.

<sup>15</sup> See section 90.1 of the EI Act.

## **Conclusion**

[29] The Claimant did not have enough hours of insurable employment to qualify for EI benefits.

[30] So, the law requires me to dismiss the Claimant's appeal.

Lilian Klein

Member, General Division – Employment Insurance Section