



[TRANSLATION]

Citation: *HG v Canada Employment Insurance Commission*, 2023 SST 307

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

## Decision

**Appellant:** H. G.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (539238) dated October 21, 2022 (issued by Service Canada)

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**Tribunal member:** Manon Sauvé

**Type of hearing:** Videoconference

**Hearing date:** December 7, 2022

**Hearing participant:** Appellant

**Decision date:** January 23, 2023

**File number:** GE-22-3567

## **Decision**

[1] The appeal is dismissed.

[2] The Claimant is self-employed when he focuses on writing. But he wasn't working full work weeks as the Commission decided. This means that he may be able to receive Employment Insurance (EI) benefits.

## **Overview**

[3] As part of his university studies, the Claimant has published writings.

[4] In April and May, he stopped working. He applied for EI benefits on May 3, 2022.

[5] After learning about his writing activities, the Commission investigated whether the Claimant could live off the income from his publications. It intended to determine whether he was self-employed.

[6] If so, was the Claimant working full work weeks while involved in writing and publishing his writings?

[7] The Commission decided that the Claimant was self-employed, but it could not find that he could live off this work. This meant that he was entitled to benefits, but he had to declare the income from his writing activities.

[8] The Claimant partly disagrees with the Commission's decision. He isn't self-employed when he focuses on writing. He was forced to write what he wrote. For example, his graduate studies require that he publish his doctoral thesis.

## **Issue**

[9] Is the Claimant self-employed?

## Analysis

[10] 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>

[11] Also, if you are self-employed, the law assumes that you work full work weeks.<sup>3</sup> So, you can't receive EI benefits.<sup>4</sup>

[12] The Act<sup>5</sup> [*sic*] says that a self-employed person is an individual who is engaged in a business or is employed but doesn't have insurable employment.

[13] In the Claimant's case, he works for himself when he writes for his studies or other purposes.

[14] I understand that the Claimant can't receive earnings from publishing writings. Still, the Commission has to assess, among other things, the time spent on that activity to make sure that he is actually unemployed during that time. That is what it did, and it found that his activity was limited, which entitled him to benefits.

[15] That is because there is an exception if your level of involvement in the business was limited.<sup>6</sup>

[16] The exception applies if the Claimant's level of involvement was so limited that a person would not normally rely on that self-employment as their main means of earning a living.<sup>7</sup>

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<sup>1</sup> Section 9 of the *Employment Insurance Act* (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* (Regulations).

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

<sup>5</sup> Section 30(5) of the Regulations.

<sup>6</sup> See section 30(2) of the 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>7</sup> See section 30(2) of the Regulations and *Martens v Canada (Attorney General)*, 2008 FCA 240.

[17] The Claimant has to prove that his involvement was so limited that the exception applies.<sup>8</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 was limited.

[18] To decide whether the exception applies, I have to consider the following six factors:<sup>9</sup>

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

[19] In this case, the Commission determined that the Claimant's activity as a writer was limited and that, because of this, his involvement in writing didn't support a finding that he could live off his income from sales. This meant that he was entitled to benefits, but he had to declare the income from sales or related to his writing activities.

[20] The Claimant disagrees that he is self-employed. He says that it isn't a job but a mandatory activity as part of his studies. So, he can't be considered self-employed when he writes and publishes writings related to his studies.

[21] He submitted additional documents before the hearing. I agree with the Commission that the documents submitted aren't relevant to deciding his appeal.

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<sup>8</sup> See *Canada (Attorney General) v Falardeau*, A-396-85, and *Lemay v Canada Employment Insurance Commission*, A-662-97.

<sup>9</sup> Section 30(3) of the Regulations sets out these six factors. This decision paraphrases those six factors for plain language.

[22] Additionally, I agree with the Claimant that he can't earn a living from his income as a writer. But he has to report his income to the Commission because he is self-employed when he writes.

## **Conclusion**

[23] I find that the Claimant is self-employed. But the income from his activity as a writer is limited. This means that he is entitled to benefits.

[24] The appeal is dismissed.

Manon Sauvé  
Member, General Division – Employment Insurance Section