



[TRANSLATION]

Citation: *SP v Canada Employment Insurance Commission*, 2023 SST 343

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

**Decision**

**Appellant:** S. P.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (426597) dated July 22, 2021  
(issued by Service Canada)

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**Tribunal member:** Manon Sauvé  
**Type of hearing:** In person  
**Hearing date:** November 16, 2022  
**Hearing participant:** Appellant  
**Decision date:** January 18, 2023  
**File number:** GE-21-1417

## Decision

[1] The Claimant hasn't shown an interruption of earnings for the benefit period starting November 11, 2018.

[2] The appeal is dismissed.

## Overview

[3] Since 2015, the Claimant has worked as a sales advisor for a window manufacturer.

[4] On November 11, 2018, he was laid off because of a shortage of work. He applied for benefits. A benefit period was established.

[5] As part of an investigation, the Commission wanted information about the Claimant's earnings during his benefit period. It also got his employment contract and details about his benefits.

[6] On June 8, 2021, the Commission decided that the contract continued from when it was signed on June 28, 2015, and November 11, 2018.

[7] The Claimant disagrees with the Commission. There was an interruption of earnings. So, he was entitled to receive Employment Insurance (EI) benefits.

## Issues

1. Was there an interruption of earnings for the benefit period starting November 11, 2018?

## Analysis

[8] To be entitled to EI benefits, a person must meet the requirements under the *Employment Insurance Act* (Act).<sup>1</sup>

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<sup>1</sup> *Employment Insurance Act* and *Employment Insurance Regulations* (Regulations).

[9] A person must meet one of the conditions from section 7 of the Act. Section 7(2)(a) requires an interruption of earnings from their job. This is an essential condition for receiving EI benefits.<sup>2</sup>

[10] The *Employment Insurance Regulations* (Regulations)<sup>3</sup> say that “an interruption of earnings occurs where, following a period of employment with an employer, an insured person is laid off or separated from that employment and has a period of seven or more consecutive days during which no work is performed for that employer and in respect of which no earnings that arise from that employment, other than earnings described in subsection 36(13), are payable or allocated.”

[11] The Claimant has to prove, on a balance of probabilities, that he meets all three conditions, and they are<sup>4</sup> cumulative. In other words, the Appellant has to show that it is more likely than not that he meets all three conditions.

[12] So, for the benefit period starting November 11, 2018, the Claimant has to show that:

- 1) he was let go or stopped working for his employer
- 2) he didn't work for seven consecutive days
- 3) he didn't receive any earnings from his job

[13] Also, claimants who receive income primarily from commissions under their employment contract may receive benefits when the employment contract has ended.<sup>5</sup>

[14] I first determined the Claimant's work situation. To do so, I considered his employment contract, his testimony, and the information the Commission obtained.

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<sup>2</sup> *Thériault v Canada (Attorney General)*, 2008 FCA 283.

<sup>3</sup> Section 14(1) of the Regulations.

<sup>4</sup> *Massé v Canada (Attorney General)*, 2007 FCA 82; *Canada (Attorney General) v Enns*, A-559-89.

<sup>5</sup> Section 14(5)(b)(i) of the Regulations.

[15] The Claimant has worked for his employer since 2015. He is a sales representative. He solicits or responds to customer requests for the manufacture and installation of windows.

[16] On January 28, 2015, the Claimant signed a work agreement as a telemarketing sales representative.<sup>6</sup> The agreement doesn't have an end date.

[17] The agreement sets out benefits and forms of compensation. The Claimant receives an advance of \$800, a cell phone allowance of \$60, and the employer contributes 50% to group insurance.

[18] On December 9, 2016, the Claimant was laid off because of a shortage of work. A benefit period was established. He received benefits until February 5, 2017. He went back to work on February 6, 2017.

[19] For this first benefit period, I made a decision in file GE-21-1416.

[20] On November 14, 2018, the Claimant was laid off because of a drop in sales. He applied for EI benefits. A period was established effective November 11, 2018, and benefits were paid to him.

[21] That decision by the Commission is the subject of this dispute. So, the analysis covers the period starting November 11, 2018.

[22] In September 2019, the Commission started an investigation. It asked the employer for information about whether he received commissions during the unemployment period.

[23] The employer sent the following information to the Commission: The Claimant receives one-fifth of his salary as an advance during his unemployment period. He can work one day per week, and he has group insurance during that period. He also receives \$60 per month for his cell phone.

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<sup>6</sup> GD3-27 to GD3-31.

[24] On November 20, 2019, the Commission told the Claimant that it would have to readjust the benefit amount based on his earnings from that period.

[25] On June 8, 2021, the Commission sent the Claimant a decision saying that it didn't establish a benefit period, because there was no interruption of earnings.

[26] The Commission could reconsider the benefit period for the period starting November 18, 2018. It made its review within the 36-month time limit. So, it exercised its discretion properly.

[27] It found that there had been no interruption of earnings for various reasons. First, the Claimant is a commissioned salesperson and the employment agreement started January 28, 2015, and ended in May 2019, when the employer shut down the telemarketing service.

[28] It relies on section 14(5)(b)(ii) of the Regulations, which says the following for commissioned employees: "An interruption of earnings in respect of an insured person occurs in the case of an insured person who is employed under a contract of employment [...] when: the insured person's contract of employment is terminated." The Claimant never stopped working for his employer until the shutdown.

[29] The Claimant disagrees with the Commission. When he applied for benefits, he had been off work for seven consecutive days.

[30] So, when the employer laid him off because of a shortage of work, the employment contract ended. Otherwise, the employer would have to pay him the \$800 advance for the entire period, from January 2015 until the department shut down. This wasn't the case; otherwise, he would not have needed to apply for EI benefits.

[31] I am of the view that this provision from the Regulations doesn't apply to the Claimant. There was a shortage of work and the employer laid him off. He would have received the advance under his contract; there would have been no interruption of earnings for that reason.

[32] The Commission also says that the employment relationship wasn't severed because he received a day's pay in advance during the unemployment period. He could work one day per week.

[33] In addition, the employer maintained wage-loss insurance during the benefit period, and he received an allowance for his cell phone.

[34] The Claimant says that when he stopped working, the employer didn't pay him the cell phone allowance. He used his personal phone while working for his employer, and the employer paid him \$60.

[35] Regarding the paid day of work, the Claimant explained that in 2018, because of economic hardship, the employer offered the equivalent of one day per week.

[36] He went to the EI office to get help completing his application. He asked for help to complete his application for benefits. He even met with a supervisor to make sure he met the requirements of the Act.

[37] Regarding the Claimant's argument that he followed the advice of a Commission staff member when completing his application, the Commission argues that an error by a staff member can't enable a claimant to receive benefits if it is contrary to the Act.<sup>7</sup>

[38] I agree with the Commission. If an employee gave the Claimant incorrect information, it can't justify paying benefits if it is contrary to the Act. We still need to know about the nature of the discussions between the employee and the Claimant.

[39] Regarding the advance paid by the employer for one day of wages per week, the Claimant says that he reported his income to the Commission for each week of benefits in 2018.

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<sup>7</sup> *Rodger v Canada (Attorney General)*, 2013 FCA 222 (CanLII): In this case, the claimant alleged that he was misled by a Commission staff member, which could explain the delay in applying. The Court didn't accept that argument.

[40] The Commission says that the employment relationship wasn't severed during that period. The Claimant didn't have seven consecutive days without earnings from his employer.

[41] I am of the view that this arrangement with the employer didn't sever the employment relationship with the Claimant. He remains available for his employer and has to respond to its requests.

[42] Regarding the employer paying group insurance premiums during the layoff, the Commission argues that the Act says that earnings can take different forms. The employer maintained the Claimant's insurance (medication, liability, and sickness). That means the employment relationship wasn't severed.

[43] The Claimant argues that he could have been insured by the government or another insurance company. He had the right to choose his insurance.

[44] I am of the view that the employment relationship wasn't severed between the Claimant and his employer because the employer maintained the Claimant's group insurance plan. This means that the Claimant remained available for his job and that the benefit constitutes earnings within the meaning of the Act.

[45] The Federal Court of Appeal<sup>8</sup> has said that a benefit constitutes earnings. In that case, the Appellant worked in an outfitting business. She was provided with housing on her worksite year-round, while the outfitting business was closed.

[46] I find that the Claimant's situation is comparable. So, even though he isn't working, even though he received earnings for one day per week for that period, the relationship wasn't severed during the downturn in the operations of the business. This is because group insurance is maintained and paid for by the employer.

[47] As a result, the Claimant hasn't shown that he didn't receive earnings for seven consecutive days.

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<sup>8</sup> *Massé v Canada (Attorney General)*, 2007 FCA 82.

[48] In closing, the Claimant provided medical documentation in support of his case. I haven't accepted this medical evidence because it isn't relevant to the issue at hand.

## **Conclusion**

[49] I find that the Claimant hasn't shown that he had seven consecutive days of interruption of earnings. This means that he isn't entitled to receive benefits for the period starting November 11, 2018.

[50] The appeal is dismissed.

Manon Sauvé  
Member, General Division – Employment Insurance Section