



Citation: *AT v Canada Employment Insurance Commission*, 2023 SST 1324

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

Decision

Appellant: A. T.
Representative: D. O.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (545259) dated September 12,
2022 (issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Videoconference
Hearing date: April 3, 2023
Hearing participants: Appellant
Appellant's representative

Decision date: April 5, 2023
File number: GE-22-4131

Decision

[1] The appeal is allowed. I find the Appellant does have enough self-employed earnings to qualify for benefits.

Overview

[2] The Appellant signed an opt in agreement with the Commission for employment insurance (EI) benefits for self-employed people effective August 5, 2019.¹

[3] The Appellant filed a claim for maternity and parental benefits for self-employed people and a benefit period was started effective March 6, 2022.

[4] When the Appellant applied for benefits she stated that she had not yet filed her tax return but estimated her self-employment earnings at \$65,000.

[5] On June 30, 2022, the Commission sent a letter to the Appellant informing her that they had received information from the Canada Revenue Agency (CRA) regarding her self-employment earnings. They say that the CRA told them she only had \$15 in self-employment earnings which did not meet the minimum requirements, so they could not pay her benefits. They asked her to repay all the benefits she had collected up to that point.

[6] The Appellant says that she has over \$49,000 of self employment earnings, well above the minimum, so she should qualify for benefits.

Issue

[7] Does the Appellant have the required amount of self employment earnings to qualify for benefits?

¹ GD03-61

Analysis

[8] I note that no party has disputed that the Appellant meets the other requirements for self-employment benefits and that the only issue in contention is that she does not have the required amount of self-employment earnings. Since no party is disputing the other requirements to get self-employment benefits and I see no evidence to contradict this, my analysis will focus solely on whether the Appellant has enough self-employment earnings to get benefits.

[9] I find the Appellant does have the required amount of self-employment earnings to qualify for benefits.

The Appellant's self-employment status

[10] The law says that a "self-employed person" is someone who is or was engaged in a business or is employed but does not have insurable employment because they are employed by a corporation and they control more than 40% of the corporations voting shares.²

[11] The Appellant testified that she is incorporated and controls 100% of the voting shares.

[12] I accept the Appellant is incorporated as her business says it is a corporation.³ I also accept that she controls 100% of the voting shares, which makes her a "self-employed person."

How to calculate her self-employment earnings

[13] The Commission submits the Appellant's qualifying period is from January 1, 2021, to December 31, 2021.⁴

² Section 152.01(1)

³ GD03-12 her business is listed as **** Psychological Services Inc.

⁴ GD04-4

[14] The Commission submits that in order to qualify for benefits the Appellant needed to have earned at least \$5,289.00 in her qualifying period.⁵

[15] The Commission submits the Appellant only has \$15 self employment earnings for her qualifying period.⁶ They say they got this information from the CRA and the CRA takes this information from Schedule 13, Line 4 of her Income Tax Return for the 2021 tax year.⁷

[16] The Appellant says that her Notice of Assessment shows she made \$49,455 net income in 2021, all of which was from her self-employment. She says that she takes money out of her corporation as a dividend, which is why her tax return is prepared the way it is.

[17] I find I accept the submission of the Commission that the Appellant's qualifying period is from January 1, 2021, to December 31, 2021.⁸ I note the Appellant does not dispute this.

[18] I find I accept the submission from the Commission that the Appellant needs a minimum of \$5,289.00 in self-employment earnings in her qualifying period to qualify for benefits. I note the Appellant does not dispute this.

[19] I note the Commission seems fixated on Schedule 13, Line 4 of the Appellant's income tax return. I find this is a mistake.

[20] The law does not specify that self-employment earnings are determined solely by what is on Schedule 13, Line 4. Instead, the law sets out specific ways to calculate self-employment earnings depending on what kind of "self-employed person" the Appellant is.

⁵ GD04-4

⁶ GD04-4

⁷ GD03-37

⁸ Subsection 152.08(1) of the *Employment Insurance Act* supports this is the correct qualifying period as it says the qualifying period is the year immediately before the year in which the benefit period begins and the Appellant's benefit started on March 6, 2022.

[21] Since the Appellant is a self employed person by reason of controlling more than 40% of the voting shares of a corporation, her self-employment earnings are the amount that would have been her insurable earnings for the year, if her employment had been insurable.⁹

[22] When I look at the Appellant's Notice of Assessment for 2021 it says she has net income of \$49,455, which I find would be her insurable earnings if her employment was insurable.¹⁰

[23] I find this amount vastly exceeds the \$5,289 in self-employment earnings the Commission says the Appellant needs during her qualifying period in order to qualify for benefits.

[24] So, since the only issue keeping the Appellant from the benefits for self-employed people that she has requested was her alleged lack of self-employment earnings, and since I have found she has enough of those earnings, she qualifies for the self-employment benefits she is requesting.

Conclusion

[25] The appeal is allowed. The Appellant has the required amount of self-employment earnings she needs to qualify for benefits.

Gary Conrad

Member, General Division – Employment Insurance Section

⁹ Section 152.01(2)(b) of the *Employment Insurance Act*

¹⁰ GD03-36