



Citation: *JR v Canada Employment Insurance Commission*, 2023 SST 1950

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

Decision

Appellant: J. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (617749) dated October 19, 2023
(issued by Service Canada)

Tribunal member: Linda Bell

Type of hearing: In writing

Decision date: December 11, 2023

File number: GE-23-3062

Decision

[1] J. R. is the Appellant. I am dismissing his appeal.

[2] The Appellant has not shown he has enough hours to qualify for regular Employment Insurance (EI) benefits.

Overview

[3] On August 16, 2023, the Appellant submitted an application for regular EI benefits.

[4] The Commission decided the Appellant had not worked enough hours to qualify for regular benefits.¹ This is because he only has 692 hours in his qualifying period, but he needs 700 hours to qualify for regular benefits.

[5] Upon reconsideration, the Commission maintained its decision that the Appellant did not have enough hours to qualify for regular EI benefits. The Appellant disagrees. He appeals to the general division of the Social Security Tribunal (Tribunal).

Matter I have to consider first

Format of Hearing

[6] The hearing proceeded in writing, as requested by the Appellant.²

[7] On November 20, 2023, I wrote to the Appellant and explained that if he wished to submit any further statements or documents he must do so by December 4, 2023. I also explained that if he wished to change his hearing to a teleconference or videoconference, he must tell the Tribunal no later than December 4, 2023.

[8] There is nothing on file that suggests the Appellant tried to submit additional information or contact the Tribunal to request a different form of hearing. Nor is there

¹ Section 7 of the *Employment Insurance Act* (EI Act) says that the hours worked have to be “hours of insurable employment.” In this decision, when I use “hours,” I am referring to “hours of insurable employment.”

² Section 2(1) of the *Social Security Tribunal Regulations* states a Tribunal hearing must be held in the format requested by the appellant.

any indication that the Appellant requested more time to make those submissions. Accordingly, the hearing proceeded based on the information on file.

Issue

[9] Does the Appellant have enough hours to qualify for regular EI benefits?

Analysis

Qualifying for benefits

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

[11] To qualify for regular EI benefits a claimant has to show the following:

- a) they have had an interruption of earnings, and
- b) have the number of hours required to establish a claim for benefits.⁴

[12] To qualify for regular benefits between August 6, 2023, and September 9, 2023, in the Appellant's region, claimants are required to have at least 700 hours in the qualifying period.

[13] I will explain what the qualifying period is in more detail further down in this decision.

– Interruption of earnings

[14] An interruption of earnings occurs when the following criteria are met:

- the claimant is laid off, terminated, or on maternity leave from their employment,

³ See section 48 of the EI Act.

⁴ See section 7(2)(a) and (b) of the EI Act.

- the claimant does not work for seven consecutive days for that employer, and
- the claimant does not receive any earnings arising from that employment.⁵

[15] An interruption of earnings occurs at the beginning of the week in which the claimant's earnings reduce more than 40% of their normal weekly earnings.⁶

[16] The Appellant's last Record of Employment (ROE) indicates his last day paid was August 11, 2023. Neither party disputes that the Appellant suffered an interruption of earnings in the following week. This is when he met all the criteria to establish an interruption of earnings. So, I find as fact that the Appellant suffered an interruption of earnings in the week of August 12, 2023.

– **The Appellant's hours in the qualifying period**

[17] As noted above, the hours counted are the ones that the Appellant worked during his qualifying period. In general, the qualifying period is the 52 weeks before your benefit period would start.⁷

[18] Your **benefit period** is not the same thing as your **qualifying period**. It is a different timeframe. Your benefit period is the time when you can start a claim to receive EI benefits. The qualifying period is the period considered when determining the Appellant's hours.

[19] The Commission decided that the Appellant's qualifying period was from August 14, 2022, to August 12, 2023.

[20] The Appellant does not dispute the Commission's determination of his qualifying period. Nor does he dispute the Commission's determination that, at the time he applied for benefits, the regional rate of unemployment (RRU) in the area where he resides was

⁵ See section 14(1) of the *Employment Insurance Regulations* (EI Regulations).

⁶ See section 14(2) of the EI Regulations. Section 2 of the EI Act states that a week is seven consecutive days and starts on a Sunday.

⁷ See section 8 of the EI Act.

5.7%. This means he is required to have 700 hours of insurable employment to qualify for regular EI benefits.

[21] The Commission determined the Appellant had 692 hours in his qualifying period. The Appellant does not dispute that he only has 692 hours. Instead, he said it is unfair that he needs to have 700 hours when his employer made him take holidays that were not statutory holidays. He also said that the weather contributed to the fact he could not have worked more hours. He says he would have worked a few more days if he knew he was short 8 hours to qualify for benefits.

[22] I agree with the Commission's submissions that the Appellant's arguments that the 700-hour requirement is unfair, or that he should be granted benefits based on his financial needs, can be given no weight. This is because there is no discretionary authority over determining the hours required to qualify for benefits.

[23] Based on the foregoing, I find it as fact that the Appellant has 692 hours within his qualifying period.

Does the Appellant have enough hours to qualify for regular EI benefits?

[24] No. I find that the Appellant has not shown he has enough hours to qualify for regular benefits. This is because he needs 700 hours in his qualifying period, but he only has 692 hours.

[25] The Courts have held that the hour requirements set out in the EI Act and EI Regulations do not allow any discrepancy or discretion.⁸

[26] I sympathize with the Appellant's circumstances. However, I cannot change the law.⁹ My decision is not based on fairness. Rather, my decision is based on the facts before me and the application of the EI law.

⁸ See *Canada (Attorney General) v Levesque*, 2001 FCA 304.

⁹ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

[27] I have no discretion when determining the number of hours required to establish a claim for regular EI benefits. I cannot interpret or rewrite the EI Act or EI Regulations in a manner that is contrary to their plain meaning, even in the interest of compassion.¹⁰

Conclusion

[28] The Appellant does not have enough hours to qualify for regular EI benefits.

[29] The appeal is dismissed.

Linda Bell

Member, General Division – Employment Insurance Section

¹⁰ *Canada (Attorney General) v Knee*, 2011 FCA 301