



Citation: *NA v Canada Employment Insurance Commission*, 2023 SST 2076

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

Decision

Appellant: N. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (601191) dated August 24, 2023 (issued by Service Canada)

Tribunal member: John Noonan

Type of hearing: In person

Hearing date: November 29, 2023

Hearing participants: Appellant

Decision date: December 21, 2023

File number: GE-23-2637

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant, N. A., was, upon reconsideration by the Commission, notified that it was unable to pay her the Employment Insurance Sickness benefits she requested. Specifically, she needed 600 hours of insurable employment during her qualifying period between March 27, 2022 and March 25, 2023 to qualify, but she had only 595 hours of insurable employment. The Appellant argued she has, according to her calculations, the required hours. The Tribunal must decide if the Appellant had accumulated the number of hours of insurable employment required by section 7 of the Act and section 93 of the Regulations in order to establish a special benefits claim and receive employment insurance benefits.

Matter I have to consider first:

[3] The Appellant, at her hearing, submitted documentation which she believed would show she had accumulated the required number of insurable hours to qualify for special benefits.

[4] The Tribunal asked the Commission to review these documents in the hope an additional 5 hours could be substantiated and a benefit period established.

[5] The Tribunal thanks the Commission for its timely review and response, however upon this review there was no “new “ hours found and the Commission’s original conclusion regarding number of hours has not changed. Details of this review are available to the Appellant at GD-08.

Issue

[6] Issue # 1: Did the Appellant, in her qualifying period, accumulate the number of hours of insurable employment required by section 7 of the Act in order to receive employment insurance special benefits?

Analysis

[7] The relevant legislative provisions are reproduced at GD4.

[8] Section 7(2) of the Act stipulates that an insured person qualifies if the person **(a)** has had an interruption of earnings from employment; and **(b)** has had during their qualifying period at least the number of hours of insurable employment set out in the table at GD4-7 in relation to the regional rate of unemployment that applies to the person or section 93 of the Regulations.

Issue 1: Did the Appellant, in her qualifying period, accumulate the number of hours of insurable employment required by section 7 of the Act in order to receive employment insurance special benefits?

[9] No.

[10] In this case the Appellant's qualifying was correctly determined by the Commission to be the period from March 27, 2022 through to March 25, 2023 as set out in paragraph 8(1)(a) of the Act.

[11] According to the section 93 of the Regulations the minimum requirement for the Appellant to qualify to receive employment insurance special – sickness - benefits is 600 hours.

[12] The Appellant accumulated only 595 hours during her correctly determined qualifying period therefore a benefit period cannot be established.

[13] The Appellant's records of employment and pay stubs submitted were all reassessed by the Commission resulting in an increased number of insurable hours on this claim.

[14] Unfortunately, this revised number is still short of the required 600 hours albeit by only 5 hours.

[15] No benefit period can be established where a claimant fails to show entitlement to receive employment insurance benefits pursuant to the Act and Regulations.

[16] I find the Commission correctly applied the provisions of the Regulations when it determined the Appellant required 600 hours to qualify.

[17] Neither the Commission nor the Tribunal has any discretion regarding the conditions imposed by the Act and the Regulations even on the basis of fairness.

[18] I find that no benefit period can be established on the Appellant's March 30, 2023 claim due to her not having accumulated the required number of hours of insurable employment in her qualifying period.

[19] At her hearing, the Appellant testified that she has additional information to show she has the required number of hours to qualify. (Dealt with at Paragraphs 3-4 and 5 above)

[20] The Appellant requested that an exception be made in her case due to her not being a regular claimant. Had she known she would have remained employed until she got enough hours to be eligible for benefits.

[21] Exceptions cannot be made as the legislation is specific on the determination of the qualifying period as well as, the requirements that only hours of insurable employment within that period can be included in the calculation of the benefits to which the claimant is entitled. Neither the Commission nor the Tribunal has any discretion with respect to the qualifying conditions.

[22] While I understand and sympathize with the Appellant's frustrations and that she has medical and financial difficulties I must consider the facts and apply the statutory requirements and cannot ignore, refashion, circumvent or rewrite the Act, even in the interest of compassion (**Canada (Attorney General) v. Knee, 2011 FCA 301**).

Conclusion

[23] The Member finds that, having given due consideration to all of the circumstances, the Appellant accumulated only 595 hours of insurable employment whereas she needed 600 hours therefore the appeal on this issue is dismissed.

John Noonan

Member, General Division – Employment Insurance Section