



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. R. v. Canada Employment Insurance Commission*, 2018 SST 311

Tribunal File Number: GE-17-2238

BETWEEN:

**M. R.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

---

DECISION BY: Raelene R. Thomas

HEARD ON: February 20, 2018

DATE OF DECISION: March 22, 2018

## REASONS AND DECISION

### DECISION

[1] The appeal is dismissed. The Tribunal finds the Appellant did not accumulate enough hours of insurable employment in his qualifying period to qualify for benefits.

### OVERVIEW

[2] The Appellant argued that hours of insurable employment earned prior to the start of his qualifying period should be counted so that he may qualify for benefits. The qualifying period is the period during which an insured person must accumulate at least the required number of hours of insurable employment to qualify for benefits. The Respondent determined that, during the qualifying period, the Appellant earned less than the required number of hours of insurable employment and therefore he did not qualify for Employment Insurance benefits.

### ISSUE

Did the Appellant accumulate sufficient hours of insurable employment in the qualifying period to qualify for benefits?

### ANALYSIS

[3] In reaching its decision the Tribunal is guided by the following:

- i) The Appellant bears the onus of proof to show that he has met the qualifying conditions (*Canada (Attorney General) v. Terrion* 2013 FCA 97); and
- ii) adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning (*Canada (Attorney General) v. Knee*, 2011 FCA 301).

**Issue: Did the Appellant accumulate sufficient hours of insurable employment in the qualifying period to establish a benefit period?**

[4] No, the Appellant did not accumulate sufficient hours of insurable employment during his qualifying period to qualify for benefits.

[5] Whether a person qualifies for benefits is determined by section 7 of the *Employment Insurance Act* (the Act). Subsection 7(2) provides that, to qualify for benefits, a person must have accumulated, in his or her qualifying period, a minimum number of hours of insurable employment.

[6] Subsection 7(2) of the Act sets out the number of hours of insurable employment required in a qualifying period to qualify for benefits. The minimum number of hours is based on the regional rate of unemployment that applies to the insured person. There is no dispute that, at the relevant time, the Appellant resided in the Northern Alberta region and the unemployment rate for the region was 12%. Pursuant to the table in subsection 7(2) of the Act, he was therefore required to have 490 hours of insurable employment during the qualifying period to establish a benefit period.

[7] The qualifying period is determined in accordance with section 8 of the EI Act. Subsection 8(1) of the Act provides, subject to subsections (2) to (7), the qualifying period is the shorter of (a) the 52-week period immediately before the beginning of a benefit period and (b) the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period.

[8] The Respondent determined that the Appellant's qualifying period was from Sunday, May 15, 2016, to Saturday, May 13, 2017. The Respondent submitted that there were no grounds to extend the qualifying period. The Appellant argues that hours before May 15, 2016, should be taken into account as well because he was told in July 2016 by a Service Canada Representative hours earned prior to that date would be counted for a period of two years. However, The Tribunal finds there is no evidence of circumstances that would warrant a qualifying period extension under section 8 of the Act, in order to count any hours earned before

May 15, 2016. Thus, the Tribunal accepts the qualifying period of May 15, 2016, to May 13, 2017, determined by the Respondent pursuant to paragraph 8(1)(a) of the Act.

[9] The Respondent determined that, during his qualifying period, the Appellant had accumulated 253 hours of insurable employment. The Appellant agrees he does not have any other hours of insurable employment in the qualifying period. Rather, the Appellant argued the hours he accumulated before his qualifying period should be counted. He submits he had enough hours of insurable employment on his Records of Employment, spanning the period September 26, 2015, to May 13, 2017, to qualify for benefits. He testified these insurable hours were earned during an “immediately preceding benefit period.” He states that he was told in July 2016 by a Service Canada Representative special measures had been put in place to allow him to “keep and use” all the hours earned from September 2015 to July 2016 for any claim arising in the next two years and he asked that the hours be used to qualify him for benefits beginning May 14, 2017.

[10] The Respondent quoted subsection 7(2) of the Act and stated the Appellant provided the same Records of Earnings in his request for reconsideration and in his appeal. The Respondent submitted that this employment falls outside the Appellant’s qualifying period of May 15, 2016 to May 13, 2017 and unfortunately cannot be used in the calculation.

[11] As noted above, it is not in dispute that, in the Appellant’s qualifying period of May 15, 2016, to May 13, 2017, the Appellant accumulated 253 hours of insurable employment. The Tribunal therefore accepts it as fact. The Tribunal finds the Appellant is seeking to use hours of insurable employment accumulated prior to the qualifying period of May 15, 2016, to May 13, 2017, to satisfy the number of hours required by subsection 7(2) of the Act. However, hours accumulated outside the qualifying period cannot be allocated to that period (*Haile v. Canada (Attorney General)* 2008 FCA 193). The Federal Court of Appeal has confirmed that the requirements under subsection 7(2) of the Act do not allow any discrepancy and provide no discretion (*Attorney General (Canada) v. Lévesque*, 2001 FCA 304).

## **CONCLUSION**

[12] The Tribunal acknowledges the Appellant’s frustration at not having hours he worked prior to the start of the qualifying period considered for his application for benefits in May 2017.

As the Appellant required 490 hours of insurable employment in the qualifying period but accumulated 253 within the qualifying period, the Tribunal finds the Appellant has failed to accumulate enough hours of insurable employment in his qualifying period to qualify for benefits pursuant to subsection 7(2) of the EI Act.

[13] The appeal is dismissed.

Raelene R. Thomas

Member, General Division - Employment Insurance Section

HEARD ON:	February 22, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. R., Appellant

## ANNEX

### THE LAW

#### Employment Insurance Act

**7 (1)** Unemployment benefits are payable as provided in this Part to an insured person who qualifies to receive them.

**(2)** 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 following table in relation to the regional rate of unemployment that applies to the person.

#### TABLE

Regional Rate of Unemployment	Required Number of Hours of Insurable Employment in Qualifying Period
6% and under	700
more than 6% but not more than 7%	665
more than 7% but not more than 8%	630
more than 8% but not more than 9%	595
more than 9% but not more than 10%	560
more than 10% but not more than 11%	525
more than 11% but not more than 12%	490
more than 12% but not more than 13%	455
more than 13%	420

**(3) to (5)** [Repealed, 2016, c. 7, s. 209]

**(6)** An insured person is not qualified to receive benefits if it is jointly determined that the insured person must first exhaust or end benefit rights under the laws of another jurisdiction, as provided by Article VI of the *Agreement Between Canada and the United States Respecting Unemployment Insurance*, signed on March 6 and 12, 1942.

**8 (1)** Subject to subsections (2) to (7), the qualifying period of an insured person is the shorter of

**(a)** the 52-week period immediately before the beginning of a benefit period under subsection 10(1), and

**(b)** the period that begins on the first day of an immediately preceding benefit period and ends with the end of the week before the beginning of a benefit period under subsection 10(1).

**(2)** A qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission

may direct, that throughout the week the person was not employed in insurable employment because the person was

- (a) incapable of work because of a prescribed illness, injury, quarantine or pregnancy;
- (b) confined in a jail, penitentiary or other similar institution and was not found guilty of the offence for which the person was being held or any other offence arising out of the same transaction;
- (c) receiving assistance under employment benefits; or
- (d) receiving payments under a provincial law on the basis of having ceased to work because continuing to work would have resulted in danger to the person, her unborn child or a child whom she was breast-feeding.

(3) A qualifying period mentioned in paragraph (1)(a) is extended by the aggregate of any weeks during the qualifying period for which the person proves, in such manner as the Commission may direct, that

- (a) earnings paid because of the complete severance of their relationship with their former employer have been allocated to weeks in accordance with the regulations; and
- (b) the allocation has prevented them from establishing an interruption of earnings.

(4) A qualifying period is further extended by the aggregate of any weeks during an extension for which the person proves, in such manner as the Commission may direct, that

- (a) in the case of an extension under subsection (2), the person was not employed in insurable employment because of a reason specified in that subsection; or
- (b) in the case of an extension under subsection (3), the person had earnings paid to them because of the complete severance of their relationship with their former employer.

(5) For the purposes of subsections (2) to (4), a week during which the person was in receipt of benefits does not count.

(6) For the purposes of subsection (3) and paragraph (4)(b), a week during which the person was employed in insurable employment does not count.

(7) No extension under any of subsections (2) to (4) may result in a qualifying period of more than 104 weeks.

## **Employment Insurance Regulations**