



Citation: *GG v Canada Employment Insurance Commission*, 2024 SST 1346

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:

G. G.

Respondent:

Canada Employment Insurance Commission

Representative:

Nikkia Janssen

Decision under appeal:

General Division decision dated August 28, 2024
(GE-24-2612)

Tribunal member:

Janet Lew

Type of hearing:

In Writing

Decision date:

November 5, 2024

File number:

AD-24-595

Decision

[1] The appeal is allowed.

[2] The Appellant, S. G. (Claimant), had sufficient self-employment earnings in 2023 to qualify for Employment Insurance sickness benefits.

Overview

[3] The General Division found that the Claimant had not shown that he had sufficient self-employment earnings to qualify for Employment Insurance sickness benefits. It found that he was not entitled to receive benefits.

[4] The Claimant argues that the General Division made jurisdictional, procedural, legal, and factual errors. He argues, for instance, that the General Division failed to consider some of the evidence that he provided. He argues that the General Division should have considered this information when it assessed whether he had sufficient earnings.

The parties agree on the outcome of the appeal

[5] The Respondent, the Canada Employment Insurance Commission (Commission), now accepts that the Claimant had sufficient earnings for 2023 to qualify for Employment Insurance sickness benefits. The 2023 CRA Express Notice of Reassessment shows income of \$22,672.¹ The Commission advises that it has received an updated data exchange that confirms that the Claimant had earnings of this amount for 2023.

[6] Following a settlement conference on November 5, 2024, the parties agree that the Claimant had sufficient earnings in 2023, and, subject to whatever the Claimant's reports might disclose, that he qualifies for upwards of 26 weeks of Employment Insurance sickness benefits.

¹ See 2023 CRA Express Notice of Reassessment showing income of \$22,672, at AD 1B.

I accept the proposed outcome

[7] The General Division failed to apply Part VII.1 of the *Employment Insurance Act* and also failed to calculate the Claimant's 2023 self-employment earnings.

– Part VII of the *Employment Insurance Act* applies

[8] The General Division determined that it did not have the jurisdiction or the ability to decide the amount of the Claimant's self-employment earnings. It deferred to the Canada Revenue Agency to decide the Claimant's self-employment earnings. It did this because it understood that any self-employment earnings had to be insurable to count towards qualifying for benefits. The General Division accepted the Commission's arguments that the Claimant did not have any (insurable) earnings.

[9] Under Part 1 of the *Employment Insurance Act*, an insured person qualifies if the person has sufficient hours of insurable employment within their qualifying period.

[10] Part VII.1 of the *Employment Insurance Act* deals with benefits for self-employed persons. By definition, a self-employed person is an individual who is employed but does not have insurable employment.²

[11] If, by definition, a self-employed person does not have any insurable employment, there is no utility in seeking a ruling on a self-employed person's insurable earnings from the Canada Revenue Agency. After all, a self-employed person is not engaged in insurable employment, so they do not have any insurable earnings.

[12] Part VII.1 of the *Employment Insurance Act*, which deals with self-employed persons, does not confer any jurisdiction on the Canada Revenue Agency to determine the insurable earnings of a self-employed person, as they do not have any insurable employment.

[13] Section 152.01(2) of the *Employment Insurance Act* sets out how to calculate the amount of self-employed earnings of a self-employed person. Under paragraph (2)(b),

² See section 152.01(1) of the *Employment Insurance Act*, for the definition of a self-employed person.

this amount is the “amount that would have been the person’s insurable earnings for the year had the person’s employment not been excluded from insurable employment.”

[14] The General Division erred when it required the Claimant to have insurable earnings. It should have applied Part VII of the *Employment Insurance Act* when deciding the amount of the Claimant’s self-employment earnings.

– **The Claimant had sufficient earnings**

[15] The evidence shows that the Claimant had sufficient earnings for 2023 in the amount of \$22,672. The Commission has new evidence to verify these earnings, in the form of an updated two-way data exchange. That evidence is not before me, but it does not contradict the evidence on file.

[16] The Commission calculates that the Claimant can receive up to 26 weeks of sickness benefits, effective as of April 14, 2024. He will need to serve a one-week waiting period.

[17] The Claimant will have to complete claimant reports. The Commission will phone him and help him fill out these reports. The number of weeks of benefits that the Claimant may receive will depend upon the information he provides in his reports.

[18] As the Commission pointed out, the Claimant will not receive benefits if he was out of the country. Or, if he ceased to be sick, he would no longer be eligible for sickness benefits.

[19] The Commission calculates that the Claimant’s weekly benefit rate will be about \$240, based on 55% of his weekly earnings ($\$22,672/52 \times 55\%$).

Conclusion

[20] The appeal is allowed. The General Division did not calculate the Claimant's 2023 self-employment earnings. The evidence shows that the Claimant had sufficient earnings to qualify for Employment Insurance sickness benefits.

Janet Lew
Member, Appeal Division