[TRANSLATION]

Citation: *P. J. v. Canada Employment Insurance Commission*, 2013 SSTGDEI 7

Appeal No.: GE-13-374

BETWEEN:

P. J.

Appellant
Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance

SOCIAL SECURITY TRIBUNAL MEMBER:	Jean-Philippe Payment
HEARING DATE:	November 26, 2013
TYPE OF HEARING:	By questions and answers
DECISION:	Appeal dismissed

PERSONS IN ATTENDANCE

At the hearing by written questions and answers, the claimant's representative submitted the answers to the Tribunal's questions.

DECISION

[1] The Tribunal dismisses the claimant's appeal and finds that he is disqualified from receiving Employment Insurance benefits because he lost his employment by reason of misconduct.

[2] The Tribunal cannot consider the issue of the claimant's disentitlement. Indeed, the Tribunal does not have the necessary jurisdiction to hear an appeal on an issue that has not been previously reviewed by the Commission.

INTRODUCTION

[3] The Appellant filed a claim for Employment Insurance benefits on February 12, 2013 (Exhibit GD3-16). After an investigation by the Respondent's Integrity Services, the Respondent sent a letter to the claimant on April 4, 2013, to inform him of its refusal to pay Employment Insurance benefits since he lost his employment by reason of his misconduct (Exhibit GD3-22). On April 14, 2013, the claimant filed a request for reconsideration with the Canada Employment Insurance Commission (the Commission) (Exhibit GD3-24). This request for reconsideration dated June 11, 2013, upholds the Commission's original decision (Exhibit GD3-48). In an additional initial redetermination, the Commission added that it could not pay the Appellant benefits because he is in prison or in a similar institution (Exhibit GD3-49). The Appellant appealed these decisions before the Tribunal on July 10, 2013 (Exhibits GD2-1 to 8).

TYPE OF HEARING

[4] The hearing was in the form of a written questions and answers sheet for the reasons set out in the notice of hearing dated October 16, 2013 (Exhibit GD1-1).

ISSUE

[5] The Tribunal must determine whether the claimant lost his employment because of his own misconduct under sections 29 and 30 of the *Employment Insurance Act* (the Act).

[6] The Tribunal must determine whether the claimant is entitled to Employment Insurance benefits because he is incarcerated within the meaning of section 37 of the Act and section 54 of the *Employment Insurance Regulations* (the Regulations).

APPLICABLE LAW

[7] Subsection 112(1) of the Act states that a claimant or other person who is the subject of a decision of the Commission, or the employer of the claimant, may make a request to the Commission in the prescribed form and manner for a reconsideration of that decision at any time within (*a*) 30 days after the day on which a decision is communicated to them; or (*b*) any further time that the Commission may allow.

[8] Subsection 112(2) of the Act states that the Commission must reconsider its decision if a request is made.

[9] Section 113 specifies that a party who is dissatisfied with a decision of the Commission made under section 112, including a decision in relation to further time to make a request, may appeal the decision to the Social Security Tribunal established under section 44 of the *Department of Human Resources and Skills Development Act*.

[10] Paragraphs 29(*a*) and (*b*) of the Act state that for the purposes of sections 30 to 33,

> (*a*) "employment" refers to any employment of the claimant within their qualifying period or their benefit period and that (*b*) loss of employment includes a suspension from employment, but does not include loss of, or suspension from, employment on account of membership in, or lawful activity connected with, an association, organization or union of workers.

[11] Subsection 30(1) of the Act provides that a claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless

> (a) the claimant has, since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 or 7.1 to qualify to receive benefits; or
>
> (b) the claimant is disentitled under sections 31 to 33 in relation to the employment.

[12] Subsection 30(2) of the Act provides that subject to subsections (3) to (5), the disqualification is for each week of the claimant's benefit period following the waiting period for which he or she would otherwise qualify for benefits. Of course, it remains that the length of the disqualification is not affected by any subsequent loss of employment by the claimant during the benefit period.

[13] In *Canada (Attorney General) v. Larivée* (2007 FCA 132), the Federal Court of Appeal established that it is up to the Commission to discharge the burden of proving, on a balance of probabilities, that one of a claimant's actions constituted misconduct.

[14] In *Canada (Attorney General) v. Tucker* (A-381-85), the Federal Court of Appeal (the "Court") specified what constitutes misconduct, which the Act fails to do. The Court established that

> … in order to constitute misconduct the act complained of must have been wilful or at least of such a careless or negligent nature that one could say the employee wilfully disregarded the effects his or her actions would have on job performance.

[15] In *Canada (Attorney General) v. Hastings* (2007 FCA 372), the Court qualified and refined the concept of misconduct. Thus, the Court established that

> … there will be misconduct where the conduct of a claimant was wilful, i.e. in the sense that the conduct which led to the dismissal was conscious, deliberate or intentional. Put another way, there will be misconduct where the claimant knew or ought to have known that his conduct was such as to impair the performance of the duties owed to his employer and that, as a result, dismissal was a real possibility.

[16] In *Locke v. Canada (Attorney General)* (2007 FCA 262), the Court argued that for the alleged conduct to be misconduct, the claimant must have known that he would likely be dismissed for such conduct.

[17] In *McKay-Eden v. Canada (Attorney General)* (A-402-96), the Court supported consistent case law in reviewing mainly the aspect of wilful or reckless conduct.

[18] In *Canada (Attorney General) v. Brissette* (A-1342-92), the Court submitted that the misconduct must be committed by the claimant while employed by the employer and that it constitutes a breach of duty that is express or implied in the employment contract. It is not necessary that the misconduct be committed at work, in the workplace or in the course of the employment relationship.

[19] In *Canada (Attorney General) v. McNamara* (2007 FCA 107), the Court submitted that the relationship between employment and misconduct is not one of timing, but one of causation.

[20] In *Canada (Attorney General) v. Cartier* (2001 FCA 274) and *Smith v. Canada (Attorney General)* (A-875-96), among others, the Court submitted that there must be a causal link between the misconduct alleged against the claimant and the loss of employment. The misconduct must cause the loss of employment and must be an operative cause. In addition to the causal relationship, the misconduct must also be committed by the claimant while employed by the employer and that it constitutes a breach of duty that is express or implied in the employment contract.

[21] In *Auclair v. Canada (Attorney General)* (2007 FCA 19), the Court stated that it is not for the Board of Referees to consider whether dismissal was the appropriate disciplinary action in view of the misconduct.

[22] In *Fleming v. Canada (Attorney General)* (2006 FCA 16), the Court stated that it was not up to the Tribunal to determine whether the employer was guilty of misconduct by dismissing the applicant such that this would constitute unjust dismissal, but whether the applicant was guilty of misconduct and whether this misconduct resulted in his losing his employment.

[23] In *Fakhari v. Canada (Attorney General)* (A-732-95), the Court argued that

> … An employer's subjective appreciation of the type of misconduct which warrants dismissal for just cause cannot be deemed binding on a Board of Referees. It is not difficult to envisage cases where an employee's actions could be properly characterized as misconduct, but the employer's decision to dismiss that employee would be rightly regarded as capricious, if not unreasonable. We do not believe that an employer's mere assurance that it believes the conduct in question is misconduct and that it was the reason for termination of the employment, satisfies the onus of proof which rests on the Commission under section 28.

[24] Paragraph 37(*a*) of the Act states that except as may otherwise be prescribed, a claimant is not entitled to receive benefits for any period during which the claimant is an inmate of a prison or similar institution.

[25] Subsection 54(1) of the Regulations states that a claimant who is not a self-employed person, who is an inmate of a prison or similar institution and who has been granted parole, day parole, temporary absence or a certificate of availability, for the purpose of seeking and accepting employment in the community, is not disentitled from receiving benefits by reason only of section 37 of the Act.

[26] In *Commission des droits de la personne et des droits de la jeunesse du Québec v. Maksteel Québec Inc.* (2003 SCC 68), the Supreme Court of Canada stated that every incarcerated offender must suffer the consequences that result from being imprisoned, namely loss of employment for unavailability, which is itself an inescapable consequence of the deprivation of liberty.

[27] In *Canada (Attorney General) v. Knee* (2011 FCA 301), the Federal Court of Appeal stated that adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.

EVIDENCE

[28] The documentary evidence in the file is as follows:

(a) a fax transmission of a copy of the claimant's agreement dated December 16, 2011, with the Court, judicial district of Rimouski, with respect to the criminal charge he was facing (Exhibit GD3-32 to 35);
(b) that the claimant was convicted on October 19, 2012 (Exhibit GD4-3);
(c) a letter dated January 15, 2013, from the union representing the claimant, requesting unpaid leave from his employer on his behalf (Exhibits GD3-37 and 38);
(d) a letter dated February 11, 2013, from the employer, explaining to the claimant the reasons for his dismissal (Exhibits GD3-26 and 27);
(e) that the claimant's incarceration began on February 11, 2013 (Exhibit GD3-47);
(f) the claimant filed an initial claim for Employment Insurance benefits on February 12, 2013 (Exhibit GD3-16);
(g) the reason for leaving the job on Record of Employment number W26535723 is code M – Dismissal (Exhibit GD3-18);
(h) that the sentence was passed on March 22, 2013 (Exhibit GD3-44);
(i) a letter dated March 28, 2013, from the employer, amending the reasons for the claimant's dismissal (Exhibits GD3-28 and 29);
(j) a letter dated April 4, 2013, from the Commission providing the initial decision

denying benefits to the claimant for misconduct (Exhibit GD3-22);

(k) a letter dated April 14, 2013, from the claimant, requesting reconsideration from the Commission (Exhibit GD3-24);

(l) a letter dated June 11, 2013, from the Commission, upholding its decision on the issue of misconduct (Exhibit GD3-48);

(m) a letter dated June 11, 2013, from the Commission, advising the claimant that he cannot receive Employment Insurance benefits as of February 18, 2013, because he was in prison or in a similar institution (Exhibit GD3-49).

[29] The evidence gathered at the hearing is as follows:

(a) the *Recueil des politiques de gestion* from the Conseil du trésor (Quebec government), describing the employment responsibility of compensation officers at the Commission de la santé et de la sécurité au travail (the "CSST") (Exhibits GD7-8 to 12);

(b) the personnel staffing sheet outlining a performance assessment of the claimant dated between August 25, 2010, and August 26, 2010, by the different assessing stakeholders (Exhibits DG7-13 to 18).

SUBMISSIONS OF THE PARTIES

[30] The claimant argued:

(a) that the decision is erroneous in fact and law (Exhibit GD3-24);

(b) that although the (criminal) acts occurred and the claimant was convicted, the union and the claimant do not agree that the charges are connected with the functions that the claimant must perform as part of his duties (Exhibit GD3-39);

(c) that the union suggested a demotion of the claimant's position (Exhibit GD3-39);

(d) that the union had never heard that the employer's equipment could have been used for the claimant's alleged actions (Exhibit GD3-40);

(e) that the union raised section 18.2 of the *Quebec Charter of Human Rights and Freedoms* (Exhibit GD3-43) and indicated that the employer could have demoted him or given him other duties if it determined that his usual duties could be

connected with the offences of which he was convicted;

(f) that the claimant pleaded guilty to the charges brought against him (Exhibit GD3-44);

(g) that he had 21 months of incarceration to serve (Exhibit GD3-44);

(h) that he had to participate in in-patient therapy for six months (Exhibit GD3-44);

(i) that he could request parole at one third of his sentence, in October 2013, but that he must conclude his therapy six months before and that it should end around December 2013 (Exhibit GD3-44);

(j) that if his parole at one third of his sentence is refused, he may request a release after serving two thirds of his sentence as of May 11, 2014 (Exhibit GD3-44);

(k) that his employer maintained his employment even though the Court subjected him to a pre-trial (Exhibit GD3-44);

(l) that he showed, in the period between January 28, 2011, and February 11, 2013, that he performed the same duties without the charges on the conduct committed outside his work affecting his duties (Exhibit GD3-44);

Arguments from the representative at the hearing by written questions and answers

(m) that contrary to the Commission's opinion, the claimant's representatives are of the view that in this case, the claimant did not lose his employment because of his own misconduct under section 30(1) of the Act (Exhibit GD7-4);

(n) that the claimant's representatives relied on *Canada (Attorney General) v. Langlois* (A-94-95) and *Canada (Attorney General) v. Edward* (A-96-95), which noted that there is misconduct when the claimant loses his employment because of a breach of such scope that its author could normally foresee that it would likely affect his employment relationship. The breach in question must be such that the claimant no longer meets a fundamental obligation of his work contract (Exhibit GD7-4);

(o) that the criminal offences committed by the claimant and for which the employer terminated his employment did not affect the claimant's capacity to perform his duties (Exhibit GD4-8);

(p) that according to the evidence on file, it is shown that it was possible for the

employer to keep the employee on strength despite the fact that charges were brought against him, for which he later pleaded guilty (Exhibit GD4-8);

(q) that despite the commitments made by the claimant to the Court of Quebec, the claimant continued to perform his duties for the employer (Exhibit GD7-5);

(r) that by the employer's own admission, it took the steps needed so that the claimant could fulfill these commitments and continue to perform his duties (Exhibit GD7-5);

(s) that indeed, how could the claimant expect that committing the criminal offences for which he pleaded guilty could affect his employment relationship when the employer, by its actions, showed that his conduct did not render it impossible for him to perform his duties (Exhibit GD7-6);

(t) that nothing in the evidence on file supports that the employer's reputation was affected, especially since the claimant continued to perform his duties after being arrested and charged in December 2011 (Exhibit GD7-6);

(u) that the Commission did not show that the commission of the criminal acts for which the claimant pleaded guilty constitutes misconduct under the Act (Exhibit GD7-6);

(v) that the claimant has been incarcerated since March 11, 2013 (Exhibit GD7-6);

(w) that he could, however, be released after two thirds of his sentence, on May 11, 2014, or at the end of his sentence on December 6, 2014, (Exhibit GD7-6).

[31] The Respondent argued:

(a) that subsection 30(2) of the Act provides the imposition of disqualification for an indefinite period if it is established that the claimant lost his employment because of his own misconduct. For the alleged conduct to constitute misconduct under section 30 of the Act, it has to have been voluntary or willful or of such a careless or negligent nature that it appears to have been committed deliberately. There must also be a causal relationship between the misconduct and the dismissal (Exhibit GD4-6);

(b) that the claimant's alleged conduct constituted misconduct under the Act. The claimant was convicted of criminal acts (having invited an adolescent female to sexual touching; use of computer luring for the purpose of establishing sexual touching with a minor; sexual touching of a young girl of less than 14 years old) and even pleaded guilty on October 19, 2012 (Exhibit GD4-6);

(c) that the claimant lost his employment because of these actions. By his conduct, the employer argued that the claimant tainted the CSST's image; that through his position, he had to process files, including using a computer, involving employers working with clients composed of minors or an employer hiring minor employees; that, through his actions, he broke the relationship of trust with the employer, the employees and stakeholders, both internal and external; that he lost the trust of the public and his integrity; that he went against the rules and values stated in the *Public Service Act*, the *Regulation respecting ethics and discipline in the public service*, the *Déclaration de valeurs de l'administration publique québécoise*, the *Guide de l'éthique et de la discipline de la CSST* and the *Déclaration de services de la CSST*; and that the seriousness of the criminal acts he committed and their media coverage caused or are likely to cause the employer—as a public body—significant harm, interfering with its activities, image, credibility, reputation, mission and vision (Exhibits GD4-6 and 7);

(d) that the employer had kept the claimant on strength in his position during much of the period following the claimant's first arrest because the claimant was not convicted until proven guilty (Exhibit GD4-7);

(e) that section 37 of the Act and section 54 of the Regulations provide for the imposition of definite or indefinite disentitlement if it is established that the claimant is in prison or in a similar institution (Exhibit GD4-7);

(f) that in this case, the claimant was incarcerated for a maximum period of 21 months as of February 11, 2013, and that consequently, the Commission maintained that the claimant must be disqualified from the benefits because he is incarcerated (Exhibit GD4-7).

ANALYSIS

Disqualification / Misconduct

[32] Subsection 30(1) of the Act provides that a claimant is disqualified from benefits if he or she loses employment due to misconduct and subsection 30(2) of the Act provides that the disqualification is served during the weeks following the waiting period for which benefits would otherwise be payable. *Larivée* (2007 FCA 132) established that the burden is on the Commission to prove that either of the claimant's actions constituted misconduct. However, since the Act does not establish what misconduct is, *Tucker* (A-381-85) defined it by instructing that the alleged act must have been wilful, or at least of such a careless or negligent nature that one could say that the employee wilfully disregarded the effects his or her actions would have on job performance. More recently, *Hastings* (2007 FCA 372) added that there will be misconduct where the conduct of a claimant was wilful, i.e. in the sense that the actions which led to the dismissal were conscious, deliberate or intentional. Put another way, there will be misconduct where the claimant knew or ought to have known that his conduct was such as to impair the performance of the duties owed to his employer and that, as a result, dismissal was a real possibility.

[33] In *Locke* (2007 FCA 262), the Court advanced that for the alleged action to be misconduct, the claimant must have known that he would likely be dismissed because of such conduct. In addition, *Auclair* (2007 FCA 190) and *Flemming* (2006 FCA 16) stated that it is not for the Tribunal to consider whether dismissal was the appropriate disciplinary action in view of the alleged misconduct or whether the employer was guilty of misconduct by dismissing the applicant such that this would constitute unjust dismissal, but whether the applicant was guilty of misconduct and whether this misconduct resulted in his losing his employment.

[34] Moreover, in *Fakhari* (A-732-95), the Court argued that

> … An employer's subjective appreciation of the type of misconduct which warrants dismissal for just cause cannot be deemed binding on a Board of Referees. It is not difficult to envisage cases where an employee's actions could be properly characterized as misconduct, but the employer's decision to dismiss that employee would be rightly regarded as capricious, if not unreasonable. We do not believe that an employer's mere assurance that it believes the conduct in question is misconduct, and that it was the reason for termination of the employment, satisfies the onus of proof which rests on the Commission under section 28.

[35] In its submissions, the Respondent stated that it was of the opinion that the claimant lost his employment because of his actions. The Respondent argued that by his conduct, the claimant tainted the CSST's image and that through his position, he had to process files, including using a computer, involving employers working with clients composed of minors or an employer hiring minor employees; that, through his actions, he broke the relationship of trust with the employer, the employees and stakeholders, both internal and external; that he lost the trust of the public and his integrity; and that he went against the rules and values stated in the *Public Service Act*, the *Regulation respecting ethics and discipline in the public service*, the *Déclaration de valeurs de l'administration publique québécoise*, the *Guide de l'éthique et de la discipline de la CSST* and the *Déclaration de services de la CSST*. The Respondent went so far as to state that the seriousness of the criminal acts he committed and their media coverage caused or are likely to cause the employer—as a public body—significant harm, interfering with its activities, image, credibility, reputation, mission and vision.

[36] In his submissions, the claimant or his representative stated several times and in great detail that, either way, the claimant could perform his work and that the employer proved that it could offer duties that could have satisfied the Court's requirements. The claimant's representative added that it was not possible for the claimant to expect the employment relationship to be affected when the employer took steps that did not make it impossible for him to perform his duties.

[37] The *Recueil des politiques de gestion* (the Recueil) from the Conseil du trésor (Quebec government) submitted by the claimant's representative at the Tribunal's request, explained the powers of a compensation officer in section 2, at paragraph 3 (NOTE: emphasis of certain passages was done by the Tribunal):

> [translation]
> … the principal and habitual powers of compensation officers consist of establishing the admissibility of compensation claims and of determining the nature and the quantum of the indemnity or compensation to be paid, as required, to the persons likely to be indemnified or compensated under the *Workers' Compensation Act*, the *Automobile Insurance Act*, the *Act respecting indemnities for victims of asbestosis and silicosis in mines and quarries*, the *Crime Victims Compensation Act* or the *Act to promote good citizenship*: they gather, through investigative work, any information relevant to establishing indemnity awarded under any of the above-noted legislation.

In terms of actual duties, article 4 of section 2 of the Recueil explains that:

> [translation]
> … Compensation officers are responsible for establishing, in accordance with current legislative, regulatory and administrative standards, the admissibility and nature of compensation claims resulting in an indemnity, compensation or medical assistance, under the Act from which the right to indemnification flows. They are responsible for gathering information on facts and circumstances surrounding the event covered in the Act concerned; they communicate with the interested parties, their agents or any other person concerned, so as to clarify certain particular points, such as the facts giving rise to medical evidence and the victim's pre-existing conditions; they complete a compensation claim file with the concerned persons using affidavits if it is necessary; they are asked to

> provide information to claimants and other interested parties and may also be called to testify before the Tribunal. . . .

[38] In the case before the Tribunal, the claimant committed acts that, based on his own admission of guilt, lead to believe that the claimant can no longer, in whole or in part, fulfill his job description as it was presented to the Tribunal by the claimant's representatives.

[39] However, as a CSST compensation officer, the Tribunal believes that the claimant had to know that he would be dismissed if his conduct was such as to impair the performance of the duties owed to his employer. As the Recueil notes in section 2, paragraphs 3 and 4, this category of employment has the principal powers (including but not limited to) of establishing admissibility of the indemnity paid under the *Crime Victims Compensation Act* of the Province of Quebec in accordance with current standards. The actions requested of a compensation officer by article 4 of the Recueil are clear. A compensation officer's abilities are gathering and communicating with interested parties, their agents and concerned persons. At no time in the Recueil is it noted that the compensation officer in this occupational category would not have to directly or indirectly contact minors and how he must do so in carrying out the task that is his responsibility.

[40] Case law in matters of disqualification consistently shows that to constitute misconduct, the alleged act must have been wilful or at least of such a careless or negligent nature that one could say the employee wilfully disregarded the effects his or her actions would have on performance (*Tucker* A-381-85). *Hastings* (2007 FCA 372) is clear and specified that there is misconduct when the claimant knew or ought to have known that his conduct was such as to impair the performance of the duties owed to his employer and that, as a result, dismissal was a real possibility. Relying on *Locke* (2007 FCA 262), the Tribunal believes the claimant lost his employment because of his own misconduct since he should have known that he would likely be dismissed by acting as

he did and especially because of the duties that he had to perform as a compensation officer.

[41] Moreover, *Brissette* (A-1342-92) and *Cartier* (2001 FCA 274) noted that for it to be recognized as such, the misconduct must be committed when the claimant was employed by the employer and that it is a breach of an express or implied obligation resulting from his work contract. This case law explained that this misconduct does not have to be committed in the course of the employment relationship with the employer. In the matter before the Tribunal, the claimant had to know that his conduct could impair the proper conduct of his professional actions. To understand the description of the claimant's duties, the Tribunal had to deal with [translation] "persons likely to receive compensation." This in no way disqualifies the claimant from having discussions with minors, quite the opposite. As for the claimant's position on the fact that he could not know that his action could be characterized as misconduct when his employer kept him on strength, the Tribunal submitted that the rules of justice that prevail in Canada are such that they do not deprive individuals of their rights as long as they are not convicted by a judicial proceeding of what they are accused of. That the employer could have suffered from the negative image that the claimant's case cast on the organization is something that cannot be received by the Tribunal. Bad press, which the claimant is subject to, is not in the claimant's control within the scope of his duties. That the employer could have officially stated that the claimant was guilty of his actions may, however, in accordance with the employment and administrative criteria specific to the CSST, be characterized as misconduct under the Act and case law.

Disentitlement

[42] Paragraph 37(*a*) of the Act states that claimants are not entitled to benefits for any period during which they are inmates of a prison or a similar institution. Subsection 54(1) of the Regulations states that claimants are not disentitled from receiving benefits by reason only of section 37 of the Act if they are inmates of a prison or a similar institution and have been granted parole day parole, temporary absence or a certificate of availability, for the purpose of seeking and accepting employment in the community.

[43] In *Québec (Commission des droits de la personne et des droits de la jeunesse) v. Maksteel Québec Inc.* (2003 SCC 68), the Supreme Court of Canada stated that every offender must suffer the consequences that result from being imprisoned, namely loss of employment for unavailability. This unavailability is an inescapable consequence of the deprivation of liberty.

[44] In the case before the Tribunal, the claimant has been incarcerated since March 11, 2013, and he is still imprisoned (Exhibit GD7-6).

[45] *Knee* (2011 FCA 301) is clear: the Federal Court of Appeal stated the principle that adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.

[46] Given the absence of review under subsections 112(1), 112(2) and section 113 of the Act with respect to the Commission's original decision on paragraph 37(*a*), the Tribunal does not have the required jurisdiction to hear an appeal relating to an issue that was not reviewed by the Commission and thus cannot consider the issue of the claimant's disentitlement.

CONCLUSION

[47] On the issue of disqualification, the appeal is dismissed.

[48] The Tribunal cannot consider the issue of the claimant's disentitlement since the Commission's initial decision was not reviewed under subsections 112(1), 112(2) and section 113 of the Act.

Jean-Philippe Payment
Member, General Division

DATE OF REASONS: December 17, 2013