

[TRANSLATION]

Citation: *E. J. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 102

Appeal No: GE-14-1214

BETWEEN:

**E. J.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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SOCIAL SECURITY TRIBUNAL MEMBER: Normand Morin

HEARING DATE: September 2, 2014

TYPE OF HEARING: Teleconference

DECISION: Appeal dismissed

## **PERSONS IN ATTENDANCE**

[1] The Appellant, E. J., participated in the telephone hearing (teleconference) held on September 2, 2014.

## **DECISION**

[2] The Social Security Tribunal of Canada (the Tribunal) concludes that the appeal of the Canada Employment Insurance Commission (the Commission) decision regarding the calculation of the Appellant's rate of weekly Employment Insurance benefits and the allocation of his insurable earnings is without merit under section 14 of the *Employment Insurance Act* (the Act) and subsection 23(3) of the *Employment Insurance Regulations* (the Regulations).

## **INTRODUCTION**

[3] On April 20, 2013, the Appellant filed an initial claim for benefits effective April 21, 2013 (Exhibits GD3-3 to GD3-12).

[4] On July 24, 2013, the Commission informed the Appellant that, following a review of the new Records of Employment received from the employer, the Toronto-Dominion Bank, his rate of weekly benefits was set at \$481, rather than \$430 (Exhibits GD3-23 and GD3-24).

[5] On October 3, 2013, the Commission informed the Appellant that, following a review of the new Records of Employment received from the employer, the Toronto-Dominion Bank, his rate of weekly benefits was set at \$500, rather than \$481. The Commission stated that this letter was to replace the one sent on July 24, 2013 (Exhibit GD3-27).

[6] On November 21, the Commission informed the Appellant that, following a review of the new Records of Employment received from the employer, the Toronto-Dominion Bank, his rate of weekly benefits was set at \$222, rather than \$500. The Commission stated that, under subsection 23(3) of the *Employment Insurance Regulations*, since his remuneration

consisted solely of commissions, the insurable earnings paid in the last 52 weeks of his employment had to be allocated proportionately over that period (Exhibits GD3-31 and GD3-32).

[7] In a letter to Service Canada on January 17, 2014, the Appellant challenged the decision in his case (Exhibit GD3-34).

[8] On February 20, 2014, the Commission informed the Appellant that the decision made in his case on November 21, 2013, concerning the calculation of his rate of weekly benefits was upheld (Exhibit GD3-36).

[9] On March 18, 2014 (the date the Tribunal received the document according to the date stamp), the Appellant filed a Notice of Appeal with the Employment Insurance Section of the Tribunal's General Division. The Appellant submitted a copy of his letter of January 17, 2014, addressed to Service Canada and a copy of the Records of Employment issued by the employer, the Toronto-Dominion Bank (Exhibits GD2-1 to GD2-14).

[10] In a letter dated April 3, 2014, the Tribunal asked the Appellant to immediately provide [translation] "a copy of the revised decision that is the subject of the appeal..." The Tribunal also asked the Appellant to provide a written explanation or to fill out section 2B of the Notice of Appeal to provide the reasons for filing his appeal late (exhibit not numbered).

[11] On April 14, 2014 (the date the Tribunal received the document according to the date stamp), the Appellant submitted [translation] "a copy of the revised decision that is the subject of the appeal ..." to the Tribunal (Exhibits GD2A-1 to GD2A-4).

[12] On April 29, 2014, the Tribunal informed the Appellant that his appeal appeared to have been filed more than 30 days after the date on which the Commission's revised decision was communicated to him. The Tribunal also informed the Appellant that, since his appeal seemed to have been filed late, he had to request, no later than May 29, 2014, an extension of the period for filing the Notice of Appeal. The Tribunal also asked the Appellant to provide a written explanation or to fill out section 2B of the Notice of Appeal to provide the reasons for filing his appeal late (Exhibits GD2B-1 and GD2B-2).

[13] On May 22, 2014 (the date the Tribunal received the document according to the date stamp), the Appellant provided the reasons for filing the appeal late (Exhibits GD5-1 to GD5-4).

[14] In an interlocutory decision made on July 2, 2014, the Tribunal agreed to extend the appeal period before the Tribunal's General Division (exhibit not numbered).

### **TYPE OF HEARING**

[15] The hearing was held by teleconference for the reasons set out in the Notice of Hearing dated July 30, 2014 (Exhibits GD1-1 to GD1-3).

### **ISSUE**

[16] The Tribunal must determine whether the appeal of the Commission's decision regarding the calculation of the Appellant's rate of weekly Employment Insurance benefits has merit under section 14 of the Act, and whether his insurable earnings were allocated in accordance with subsection 23(3) of the Regulations.

### **APPLICABLE LAW**

[17] The provisions dealing with the calculation of the rate of weekly Employment Insurance benefits are set out in section 14 of the Act.

[18] To establish the "maximum insurable earnings", subsection 14(1.1) of the Act provides that:

(1.1) The maximum weekly insurable earnings is

(a) \$750 if the claimant's benefit period begins during the years 1997 to 2000; and

(b) if the claimant's benefit period begins in a subsequent year, the maximum yearly insurable earnings divided by 52.

[19] To calculate the “weekly insurable earnings”, subsection 14(2) of the Act provides that:

(2) A claimant’s weekly insurable earnings are their insurable earnings in the calculation period divided by the number of weeks determined in accordance with the following table by reference to the applicable regional rate of unemployment.

Table

<b>Regional Rate of Unemployment</b>	<b>Number of Weeks</b>
not more than 6%	22
more than 6 % but not more than 7%	21
more than 7 % but not more than 8 %	20
more than 8 % but not more than 9 %	19
more than 9 % but not more than 10 %	18
more than 10 % but not more than 11 %	17
more than 11 % but not more than 12 %	16
more than 12 % but not more than 13 %	15
more than 13 %	14

[20] With respect to the “allocation of insurable earnings”, subsection 23(3) of the Regulations sets out that:

Where the remuneration of an insured person consists solely of commissions or of salary and irregularly paid commissions, the person's insurable earnings paid in the period of employment or in the last 52 weeks, whichever is shorter, shall be allocated proportionately over the shorter of the period of employment and the last 52 weeks, as applicable, excluding weeks for which the insured person is on unpaid leave of absence from employment for one of the reasons referred to in subsection 12(3) of the Act.

[21] Concerning “liability for overpayments”, section 43 of the Act provides that:

**43.** A claimant is liable to repay an amount paid by the Commission to the claimant as benefits

(a) for any period for which the claimant is disqualified; or

(b) to which the claimant is not entitled.

## **EVIDENCE**

[22] The evidence in the docket is as follows:

- a) A Record of Employment dated April 23, 2013, shows that the Appellant worked as a mobile mortgage specialist for the employer, the Toronto-Dominion Bank, from November 21, 2011, to April 16, 2013, and that he stopped working for this employer because he was dismissed (Code M – Dismissal). The total insurable earnings established on the basis of this Record of Employment are \$12,204.73, and the total number of insurable hours was established at 1,965 (Exhibit GD3-13);
- b) An amended or replaced Record of Employment (serial number: W27749604), dated May 27, 2013, shows that the Appellant worked as a mobile mortgage specialist for the employer, the Toronto-Dominion Bank, from November 21, 2011, to April 16, 2013, and that he stopped working for this employer because he was dismissed (code M – Dismissal). The total insurable earnings established on the basis of this Record of Employment are \$13,294.73, and the total number of insurable hours was established at 1,965 (Exhibit GD3-14);
- c) An amended or replaced Record of Employment (serial number: W27878389), dated June 6, 2013, shows that the Appellant worked as a mobile mortgage specialist for the employer, the Toronto-Dominion Bank, from November 21, 2011, to April 16, 2013, and that he stopped working for this employer because he was dismissed (Code M – Dismissal). The total insurable earnings established on the basis of this Record of Employment are \$14,218.15, and the total number of insurable hours was established at 1,965 (Exhibit GD3-15);

- d) An amended or replaced Record of Employment (serial number: W28390667), dated July 5, 2013, shows that the Appellant worked as a mobile mortgage specialist for the employer, the Toronto-Dominion Bank, from November 21, 2011, to April 16, 2013, and that he stopped working for this employer because he was dismissed (Code M – Dismissal). The total insurable earnings established on the basis of this Record of Employment are \$15,163.45, and the total number of insurable hours was established at 1,965 (Exhibit GD3-16);
- e) Documents from Human Resources and Skills Development Canada regarding the seasonally adjusted unemployment rates by Employment Insurance economic region show that, in the Employment Insurance economic region of Montreal (2000), for the period from April 7, 2013, to May 11, 2013, the rate was 7.9% and that the number of insurable hours required to qualify for regular Employment Insurance benefits was set at 630. The minimum number of weeks of regular benefits payable was 17, and the maximum number of weeks of regular benefits payable was 40 (Exhibits GD3-17 to GD3-22);
- f) An amended or replaced Record of Employment (serial number: W28875654), dated July 25, 2013, shows that the Appellant worked as a mobile mortgage specialist for the employer, the Toronto-Dominion Bank, from November 21, 2011, to April 16, 2013, and that he stopped working for this employer because he was dismissed (Code M – Dismissal). The total insurable earnings established on the basis of this Record of Employment are \$15,599.14, and the total number of insurable hours was established at 1,965 (Exhibit GD3-25);
- g) An amended or replaced Record of Employment (serial number: W29108200), dated August 14, 2013, shows that the Appellant worked as a mobile mortgage specialist for the employer, the Toronto-Dominion Bank, from November 21, 2011, to April 16, 2013, and that he stopped working for this employer because he was dismissed (Code M – Dismissal). The total insurable earnings established on the basis of this Record of Employment are \$15,849.14, and the total number of insurable hours was established at 1,965 (Exhibit GD3-26);

- h) An amended or replaced Record of Employment (serial number: W30159522), dated October 23, 2013, shows that the Appellant worked as a mobile mortgage specialist for the employer, the Toronto-Dominion Bank, from November 21, 2011, to April 16, 2013, and that he stopped working for this employer because he was dismissed (Code M – Dismissal). The total insurable earnings established on the basis of this Record of Employment are \$16,349.14, and the total number of insurable hours was established at 1,965 (Exhibit GD3-28);
  
- i) An amended or replaced Record of Employment (serial number: W30559282), dated November 20, 2013, shows that the Appellant worked as a mobile mortgage specialist for the employer, the Toronto-Dominion Bank, from November 21, 2011, to April 16, 2013, and that he stopped working for this employer because he was dismissed (Code M – Dismissal). The total insurable earnings established on the basis of this Record of Employment are \$16,599.14, and the total number of insurable hours was established at 1,965 (Exhibit GD3-29);
  
- j) On November 21, 2013, the Commission explained that the calculation carried out on the basis of the Appellant's Record of Employment (bearing serial number W30559282, dated November 20, 2013) takes account of subsection 23(3) of the *Employment Insurance Regulations* because the Appellant's income consisted solely of commissions (Exhibit GD3-30);
  
- k) In a document on the details of the notice of debt (DH009 dated November 23, 2013, the Appellant's total debt is set at \$7,172 (Exhibit GD3-34);
  
- l) On February 20, 2014, the employer, the Toronto-Dominion Bank (E. G.) stated that the Appellant was paid solely on commission. The employer explained that the amount on the Appellant's Record of Employment was amended a number of times because the Appellant continued to receive commissions related to sales that he had made before his dismissal. The Commission indicated that the overpayment was set at \$6,906. The Commission indicated that it informed the Appellant that the overpayment amount that he was being asked to repay was upheld (Exhibit GD3-35).



[23] The evidence presented at the hearing is as follows:

- a) The Appellant mentioned the key components in the docket and reiterated the reasons for his appeal;
- b) He explained that, in his job with the employer, the Toronto-Dominion Bank, he acted as a mobile mortgage specialist, working to bolster mortgage volumes for the financial institution. He explained that he was paid when the files were notarized, which meant, in some cases, waiting for a number of months (from three months to one year), after signing mortgage agreements with clients. He said that this situation explained why eight different Records of Employment were issued by his former employer.

## **SUBMISSIONS OF THE PARTIES**

[24] The Appellant made the following submissions and arguments:

- a) He claims that he told the Commission (Employment Insurance), right on the first day of his claim, that is, at the end of April 2013, that he was a contract employee but that he had no base salary and that he was paid solely on commission. He stated that he told an Employment Insurance officer about the situation on or around April 30, 2013, that is, between the time the Records of Employment dated April 23, 2013 (Exhibit GD2-7) and May 27, 2014 (Exhibit GD2-8) were issued by his employer, because he had received commissions within that period. He pointed out that the Commission did not, however, take into account the fact that he was an employee paid irregularly and solely on commission when it set his benefit rate and that the Commission instead considered him to be a salaried employee. He also stated that, in his many calls to the Employment Insurance office, he was often told that the Records of Employment contained false information (Exhibit GD5-2);
- b) He submitted that his former employer, the Toronto-Dominion Bank, made false representations and provided wrong information about his employment and that the wrong information was still on the Records of Employment issued by the employer.

He gave the example of the amount of \$3,914.24, which the employer entered for pay period 1 in Block 15C of the Record of Employment issued on April 23, 2013, and the amount of \$5,000.24, which was entered for pay period 1 in Block 15C of the Record of Employment issued on May 27, 2013 (Exhibits GD2-7 and GD2-8). He submitted that the employer's calculations were quite wrong in the 15C blocks of the Records of Employment and that the irregular earnings he received should be averaged out or entered consistently in all the blocks or available entries (pay periods). He explained that his situation involved eight separations (Records of Employment) which were [translation] "not always within the standards" of Employment Insurance (Exhibits GD5-1 et GD5-2) ;

- c) He also pointed out that the first six Records of Employment issued by his employer did not mention the fact that he was a commissioned employee. He noted that the first Record of Employment issued by his employer, dated April 23, 2013, was filled out by E. G., who did not at that time mention that he was a commissioned employee (Exhibit GD2-7). He explained that the last amended or replaced Record of Employment, dated November 20, 2013, which was also filled out by E. G, this time did mention his commissioned employee status (Exhibit GD2-14), but that the employer was aware of this right from the beginning (Exhibits GD2-7 and GD2-14). The Appellant pointed out the fact that the employee who filled out the first Record of Employment indicated that the Appellant was a regular employee and that the same employee stated in the last Record of Employee issued by the employer that he was a commissioned employee (Exhibits GD2-7 and GD2-13). He pointed out that Mr. E. G. also told the Commission that the Appellant was a commissioned employee (Exhibit GD2-35);
- d) He submitted that the employer made obvious mistakes that have caused him serious harm because the Records of Employment provided by the employer contained wrong information or were not filled out appropriately. He submitted that, for these reasons, he must now pay back an overpayment, in addition to being taxed on the amounts that were not paid to him (Exhibits GD5-1 and GD5-2). He said that he was being [translation] "penalized twice" because he has to pay back an amount for

which he was already taxed. He submitted that, if the employer had trouble filling out his Records of Employment, it should have contacted the Employment Insurance centre for help (Exhibits GD5-1 and GD5-2). He stated that his former employer should not underestimate the importance of this type of process. He submitted that, rather than considering it a [translation] “simple mistake” by his former employer, he would call it a combination of [translation] “persistent mistakes, administrative failure and flagrant administrative carelessness” (Exhibits GD5-1 and GD5-2);

- e) He stated that he must therefore pay more tax, that his file has been transferred to the Canada Revenue Agency (CRA), and that he is now being asked to pay back [translation] “rather huge amounts” (Exhibit GD3-34). He stated that his benefits dropped by more than half between November 2013 and February 2014, and that he was asked to pay back a portion of this amount as overpayment. He stated that he has made arrangements to do so;
- f) He noted that he used to work as a financial security advisor, that he had to work with tax laws, and that sanctions must apply where harm has been caused. He submitted that, if he had made false representations to Employment Insurance, he would have made the necessary repayments. He said that he had made mistakes as an employee at the financial institution where he worked and had paid for his mistakes (e.g., calculation of notary fees) and that the same principle should apply to his employer. He stated that he has always been [translation] “very honest” in his Employment Insurance reports;
- g) He stated that the amounts in the last Record of Employment issued by the employer, dated November 20, 2013, seemed [translation] “okay” but that, in terms of the arrangement of the calculations in the grid, the information is wrong (Exhibit GD2-14);
- h) He submitted that his employer knew that he was paid solely on commission but that it did not tell the Commission right from the start, and that the employer had filled out the Records of Employment, certifying that the information provided was accurate;

- i) He submitted that section 39 of the Act provides for penalties in the case of false or misleading representations and that this part of the Act best applies to the present case;
- j) He submitted that he had enough evidence to successfully demonstrate his former employer's [translation] "flagrant" administrative failing (Exhibit GD5-2).

[25] The Commission made the following submissions and arguments:

- a) It explained that the rate of weekly benefits is the maximum amount that a claimant can receive for each week of the benefit period and that the basic benefit rate is set at 55% of an employee's average insurable earnings, as set out in subsection 14(1.1) of the Act (Exhibit GD4-2);
- b) It stated that, since April 7, 2013, the benefit rate for claimants (not including fishers and self-employed workers) is calculated using variable best weeks of insurable earnings during the "qualifying period", as defined in subsection 8(1) of the Act. It stated that the number of best weeks required for the "calculation period", as defined in subsection 14(4) of the Act, will be from 14 to 22, depending on the rate of unemployment in the Appellant's ordinary place of residence. The Commission explained that the amount of "weekly insurable earnings" will be determined using the total insurable earnings in the best weeks, divided by the number of weeks specified in the table in subsection 14(2) of the Act for the rate of unemployment in the Appellant's ordinary place of residence (Exhibit GD4-3);
- c) It explained that the Appellant's qualifying period was set from April 22, 2012, to April 16, 2013, in accordance with paragraph 8(1)(a) of the Act (Exhibit GD4-3);
- d) It stated that, based on the 7.9% rate of unemployment in Montreal, where the Appellant lives, the number of best weeks required for the benefit rate calculation was set at 20, in accordance with the table in subsection 14(2) of the Act (Exhibit GD4-3);

- e) It pointed out that the Appellant was paid on commission and that the insurable earnings for the last 52 weeks was set at \$20,432.73 based on the total earnings indicated in Block 15C of the last Record of Employment (Exhibit GD3-29; Exhibit GD4-3);
  
- f) It pointed out that, within the qualifying period, the 20 weeks with the highest insurable earnings were identical because the Appellant was paid on commission. The Commission stated that, in the case of commissioned employees, to establish insurable earnings for the entire qualifying period, it added all the earnings indicated in Block 15C of the last Record of Employment (Exhibit GD3-29). It indicated that total insurable earnings for the entire qualifying period were \$20,432.73 and that they had been allocated equally to the entire 52-week period and multiplied by 27 weeks to get the amount in Block 15B of the Record of Employment, namely, \$10,609.30, which was used to calculate the benefit rate. The Commission also indicated that it calculated the number of days of employment during the last 27 weeks (26 weeks multiplied by 7 days plus 2 days for the last week = 184 days). It mentioned that there were only two days of work in the last week because the end of the pay period was Sunday. It explained that the total insurable earnings of \$10,609.30 in the calculation period of 27 weeks were divided by those 184 days. It added that, when this total was divided by 184 days and multiplied by seven (7) days, the result was average weekly insurable earnings of \$403.62 (Exhibit GD4-3);
  
- g) It noted that the employer had issued a number of Records of Employment without, however, doing anything illegal. It stated that, on each Record of Employment, the insurable earnings increased because of commissions that had been paid out after termination of employment although they had been earned during the period of employment, giving the Appellant an advantageous benefit rate (Exhibit GD4-3).

## ANALYSIS

[26] The Federal Court of Appeal (the Court) reaffirmed the principle that a claimant's benefit rate is based on weekly insurable earnings and that the method used to establish the benefit rate is the same for all claimants: 55% of weekly insurable earnings, in accordance with subsection 14(1) of the Act (*Manoli*, 2005 FCA 178).

[27] In *Knee* (2011 FCA 301), Justice John M. Evans of the Court stated:

However, tempting as it may be in such cases (and this may well be one), adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.

[28] The Court also confirmed the principle that even when the overpayment was the result of a mistake by the Commission, this does not excuse the claimant from having to repay it. (*Lanuzo*, 2005 FCA 324).

[29] In the present case, the Commission first determined that the Appellant's qualifying period was from April 22, 2012, to April 16, 2013, pursuant to paragraph 8(1)(a) of the Act (Exhibit GD4-3).

[30] The Commission explained that, by using the 7.9% rate of unemployment in the Montreal Employment Insurance region, where the Appellant lives, the number of best weeks required to calculate the benefit rate had been set at 20 weeks, in accordance with the table in subsection 14(2) of the Act (Exhibit GD4-3).

[31] The Commission explained that the Appellant was paid on commission and that his insurable earnings for the last 52 weeks had been set at \$20,432.73 based on the total earnings in Block 15C of the last Record of Employment issued for the Appellant by the employer, the Toronto-Dominion Bank, dated November 20, 2013 (Exhibits GD3-29 and GD4-3).

[32] Regarding the establishment of the Appellant's average weekly earnings, the Commission provided the following explanations:

[translation]

Within the qualifying period, the 20 weeks with the highest insurable earnings were identical because the Appellant was paid on commission. In the case of commissioned employees, to establish insurable earnings for the entire qualifying period, the Commission added all the earnings indicated in Block 15C of the last Record of Employment (Exhibit GD3-29). The total insurable earnings for the entire qualifying period of \$20,432.73 were allocated equally to the entire 52-week period and multiplied by 27 weeks to get the amount in Block 15B of the Record of Employment, namely, \$10,609.30, which was used to calculate the benefit rate. The Commission calculated the number of days of employment during the last 27 weeks (26 weeks multiplied by 7 days plus 2 days for the last week = 184 days). There were only two days of work in the last week because the end of the pay period was Sunday. The total insurable earnings of \$10,609.30 in the calculation period of 27 weeks were divided by those 184 days. When this total was divided by 184 days and multiplied by seven (7) days, the result was average weekly insurable earnings of \$403.62 (Exhibit GD4-3).

[33] The Commission then explained that it established the Appellant's rate of weekly Employment Insurance benefits at \$222 using the following calculations: \$10,609 (insurable earnings during the base period) ÷ 184 days (divisor) then multiplied by 7 days = \$403.60 (average weekly insurable earnings) X 55% = \$222 (benefit rate) (Exhibit GD4-3).

[34] The Commission also stated that, under subsection 23(3) of the Regulations, a salary that consists solely of commissions is allocated equally to the last 52 calendar weeks, or less if the period of employment is shorter, which is not the case here (Exhibits GD4-2 and GD3-30).

[35] The Commission also made the following submission:

[translation]

The employer issued a number of Records of Employment without, however, doing anything illegal. On each Record of Employment, the insurable earnings increased because of commissions that had been paid out after termination of employment although they had been earned during the period of employment, giving the Appellant an advantageous benefit rate (Exhibit GD4-3).

[36] At the hearing, the Appellant did not provide new reasons or facts that could have led the Tribunal to conclude that the calculation of the Appellant's benefit rate was wrong or inaccurate after the Commission had made corrections in this regard, based on the last

Record of Employment provided by the employer to establish the Appellant's rate of weekly benefits (Exhibit GD3-29).

[37] The Appellant stated that his former employer had made false representations and that the mistakes were still on the Records of Employment that it had issued, in particular because the employer had not allocated the income from his commissions consistently in the spaces provided in Block 15C of the Records of Employment. However, the Tribunal cannot accept the Appellant's argument that the employer should take responsibility for the harm that he felt he suffered. The Tribunal notes that it is not the employer who received the Employment Insurance overpayment, but the Appellant who did, and that he cannot, for this reason, escape his obligations under the Act in this regard.

[38] In the same vein, if the Commission made a mistake in processing the Appellant's file because it failed from the outset to take into account the fact that he was paid solely on commission, the Appellant cannot be excused from his obligation to repay the overpayment (*Lanuzo, 2005 FCA 324*).

[39] Although it fully sympathizes with the Appellant in this case, the Tribunal is bound by very clear legislative provisions regarding the Appellant's obligation to repay the overpayment in accordance with section 43 of the Act, even if, in this case, he is in no way responsible for the overpayment that he is being asked to repay (*Knee, 2011 FCA 301*). Under section 43 of the Act, the Employment Insurance benefit overpayment must be repaid.

[40] Based on the Commission's explanations and calculations, the Tribunal is of the view that the Commission correctly established the Appellant's benefit rate and met the requirements of the Act in this regard (*Manoli, 2005 FCA 178*).

[41] Based on the case law cited above, the Tribunal considers that the Appellant's benefit rate was calculated in accordance with section 14 of the Act and that his insurable earnings were allocated in accordance with subsection 23(3) of the Regulations.

[42] The appeal on this issue has no merit.



## **CONCLUSION**

[43] The appeal is dismissed.

*Normand Morin*

Member, General Division

DATE OF REASONS: September 10, 2014