

[TRANSLATION]

Citation: *M. L. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 194

Date: November 13, 2015

File number: GE-15-1439

GENERAL DIVISION – Employment Insurance Section

Between:

M. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: Charline Bourque, Member, General Division - Employment Insurance Section

Heard by Teleconference on September 24, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

M. L., the claimant, participated in the hearing by teleconference. He was accompanied by Gabrielle Milliard, acting as his representative, and S. T., his mother, acting as his witness.

INTRODUCTION

[1] The Appellant filed an employment insurance claim to start on July 21, 2013. On February 5, 2015, the *Canada Employment Insurance Commission* (the “Commission”) tells the claimant that the place of residence had been changed. The result is that the number of weeks of regular benefits established for the claim starting July 21, 2013 is now 0 instead of 25 weeks. The Commission concluded that the claimant had knowingly made a false representation and imposed a penalty of \$1,503. An overpayment of \$21,317 was established. The Commission also tells the claimant that he had received 15 weeks of sick pay on this claim. For this type of benefit, the Commission can establish a claim on February 9, 2014. The waiting period will be from February 9 to 22, 2014 and the weeks from February 23 to May 24, 2014 that the claimant received in sick pay remain payable. An overpayment will result for the period of February 9 to 22, 2014, because these weeks will serve as the waiting period although they had been paid on the claim starting July 21, 2013. The Commission states that following these decisions, the total overpayment is \$13,392 in addition to the penalty of \$1,503 (GD4-4).

[2] On April 14, 2015, further to the claimant’s request for reconsideration, the Commission informs him that it did not vary the decision concerning the unestablished period of benefits. The Commission states that given the place of ordinary residence when the claim was filed on August 1, 2013, the claimant was not eligible for regular employment insurance benefits.

[3] The Commission states that the claimant had received 15 weeks of sick pay on this claim. The Commission adds that for “this type of benefit, we can establish a claim on February 9, 2014. Your waiting period will be from February 9 to 22, 2014 and the weeks from February 23 to May 24, 2014 that you had received in sick pay remain payable. An overpayment will result for the period of February 9 to 22, 2014, because these weeks will serve

as the waiting period although they had been paid on the claim starting July 21, 2013.”
Moreover, the Commission states that it did not vary the decision concerning the penalty.

[4] The claimant filed an appeal on these decisions with the *Social Security Tribunal of Canada* (“the Tribunal”) on April 23, 2015.

[5] This appeal was heard by teleconference for the following reasons:

- a) The complexity of the issue or issues;
- b) The fact that credibility could be a determining factor;
- c) The fact that the Appellant will be the only party attending the hearing;
- d) The information in the file, including the need for additional information;
- e) The fact that the Appellant or other parties are represented;
- f) This form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUES

[6] The issues are as follows:

- a) What is the claimant’s place of ordinary residence?
- b) Did the claimant accumulate enough insurable hours to meet the eligibility criteria for receiving employment insurance benefits?
- c) Did the claimant knowingly commit any of the acts or omissions listed in section 38 of the Act?
- d) If the answer to (c) is yes, did the Commission wisely exercise its discretionary power by imposing a penalty in accordance with section 38 of the Act?

THE LAW

[1] Subsection 7(1) of the *Employment Insurance Act* (the “Act”) stipulates that:

Unemployment benefits are payable as provided in this Part to an insured person who qualifies to receive them.

[2] Subsection 7(2) of the Act states that:

An insured person, other than a new entrant or a re-entrant to the labour force, qualifies if the person

- a) 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] Subsections 8(1) to (7) of the Act state as follows in relation to the qualifying period:

(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, 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 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;
 - 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.

[4] Subsection 17(1.1) of the *Employment Insurance Regulations* (the “Regulations”) states:

The regional rate of unemployment referred to in subsection (1) is

- a) for the purposes of sections 7, 7.1, 12 and 14 and Part VIII of the Act, the rate produced for the region in which the claimant was, during the week referred to in subsection 10(1) of the Act, ordinarily resident.

Penalty

38.(1) The Commission may impose on a claimant, or any other person acting for a claimant, a penalty for each of the following acts or omissions if the Commission becomes aware of facts that in its opinion establish that the claimant or other person has

- a) in relation to a claim for benefits, made a representation that the claimant or other person knew was false or misleading;
- b) being required under this Act or the regulations to provide information, provided information or made a representation that the claimant or other person knew was false or misleading;
- c) knowingly failed to declare to the Commission all or some of the claimant's earnings for a period determined under the regulations for which the claimant claimed benefits;
- d) made a claim or declaration that the claimant or other person knew was false or misleading because of the non-disclosure of facts;
- e) being the payee of a special warrant, knowingly negotiated or attempted to negotiate it for benefits to which the claimant was not entitled;
- f) knowingly failed to return a special warrant or the amount of the warrant or any excess amount, as required by section 44;
- g) imported or exported a document issued by the Commission, or had it imported or exported, for the purpose of defrauding or deceiving the Commission; or
- h) participated in, assented to or acquiesced in an act or omission mentioned in paragraphs (a) to (g).

(2) The Commission may set the amount of the penalty for each act or omission at not more than

- a) three times the claimant's rate of weekly benefits;
- b) if the penalty is imposed under paragraph (1)(c),
 - (i) three times the amount of the deduction from the claimant's benefits under subsection 19(3), and

- (ii) three times the benefits that would have been paid to the claimant for the period mentioned in that paragraph if the deduction had not been made under subsection 19(3) or the claimant had not been disentitled or disqualified from receiving benefits; or
- c) three times the maximum rate of weekly benefits in effect when the act or omission occurred, if no benefit period was established.

EVIDENCE

[7] The evidence in the file is as follows:

- a) Record of Employment from 9174-0761 Québec inc. located in the city of Québec. The record is addressed to the claimant in La Malbaie, shows a work period of February 12, 2011 to November 19, 2011 and was issued following a work shortage/end of contract. It shows a total of 1,210 insurable hours (GD3-19).
- b) Record of Employment from Industries Océan Inc. located in the city of Québec and addressed to the claimant in La Malbaie. The record shows a work period of January 23, 2012 to April 4, 2012 and was issued due to illness or injury. It shows 417 insurable hours (GD3-20).
- c) Amended Record of Employment from Industries Océan Inc. located in the city of Québec and addressed to the claimant in La Malbaie. The record shows a work period of April 17, 2012 to April 19, 2012 and was issued due to voluntary departure/other employment. It shows 30 insurable hours (GD3-21).
- d) Record of Employment from Piscines S. located in the city of Québec and addressed to the claimant in Québec. The record shows a work period of August 13, 2012 to August 29, 2012 and was issued following a work shortage/end of season or contract. It shows a total of 118 hours of insurable employment (GD3-22).
- e) Record of Employment from TBC Constructions Inc. located in the city of Québec and addressed to the claimant in La Malbaie. The record shows a work period of September

4, 2012 to September 10, 2012 and was issued following a work shortage/end of season or contract. It shows a total of 32 hours of insurable employment (GD3-23).

- f) Record of Employment from the company Plomberie F. B. Inc. located in the city of Québec and addressed to the claimant in Québec. The record shows a work period of September 18, 2013 to April 27, 2013 and was issued following a work shortage/end of season or contract. It shows a total of 206 hours of insurable employment (GD3-24).
- g) Record of Employment from the company Réfrigération N. Inc. located in the city of Québec and addressed to the claimant in Québec. The record shows a work period of May 1, 2013 to May 24, 2013 and was issued following a work shortage/end of season or contract. It shows a total of 135 hours of insurable employment (GD3-25).
- h) Record of Employment from R. M. et Frères located in X (Lac St-Jean) and addressed to the claimant in La Malbaie. The claimant said that it was a job in La Malbaie. The record shows a work period of June 11, 2013 to July 19, 2013 and was issued following a work shortage/end of season or contract. It shows a total of 163 hours of insurable employment (GD3-26).
- i) A postal code search for XXX XXX shows that this is the Employment Insurance (EI) Economic Region of Lower Saint Lawrence and North Shore (GD3-27).
- j) A postal code search for XXX XXX shows that this is EI Economic Region of Québec (GD3-48).
- k) The seasonally-adjusted unemployment rate for the period of July 7, 2013 to August 10, 2013 for the Lower Saint Lawrence and North Shore region was 11.8 while it was 4.8 for the Québec region (GD3-28/29).
- l) On January 23, 2015, the Commission contacts M. R., from Immeuble populaire, the landlord of claimant's apartment. She states that the claimant has lived at this address since 2012. She mentions that he was living with a girl who left on June 30, 2014. Moreover, that is why she had another lease signed, because the claimant had a new roommate, R. T. (GD3-38).

- m) Lease for the rental of X de la X Street in Québec for the period of July 1, 2012 to June 30, 2013.
- n) On January 28, 2015, the claimant communicates with the Commission's investigator. The investigator's interview report states that he did not really live with A. V. even though he had a lease with her in 2012. They were not getting along. The claimant states that it is true that he had signed the lease, but he had asked a friend, R. T., to sublet the apartment. He did not have him sign a sublet agreement because he is a very good friend from high school and he asked him to pay less. He slept there if he had to work in Québec. But, most of the time, he was at his mother's in La Malbaie. His driver's licence shows the city of Québec address because Québec employers wanted to be sure that he lived in Québec. He wanted a Québec address because he didn't want to arrive with a claim for board if he was staying in La Malbaie. The claimant states that the first place he changed his address was at the CCQ. He says that he signed the June 2014 lease with R. T., but even so he only lived in Québec starting in November when he began working for Solutech. He claims that he has two addresses. As soon as he has no work, he goes to his his mother's in La Malbaie. He also worked for employers in La Malbaie such as Maurice et frères. In addition, during this period, in 2012, he was hospitalized six times for psychoses in the psychiatric ward. "So, for me, the address wasn't really important. But everything has been going well for about two-and-a-half years." He also states that immediately "for that claim, when I was informed that it was important to provide the correct address, I made the changes of address from La Malbaie to Québec. But in fact, it has just been since November 2014 that I have been in Québec a little bit more. Since I was sick at the time, I went back to my mom's." Regarding his employment insurance claim with the Québec address in July 2013, the claimant states "that there was a question about whether I had moved, I said yes and changed my address to the Québec one and then after, because it wasn't going well with my former girlfriend, I called back and said that I wanted all my correspondence sent to La Malbaie because I was there more often." He was hospitalized in Baie-St-Paul, 45 minutes from La Malbaie, but does not have a medical certificate. Afterward, he had a medical certificate from a physician in Québec because he injured his thumb; the certificate is from an occupational therapist and there is no occupational therapist in La Malbaie. When he provided the medical

certificate to employment insurance, he was told that he should change his address because the medical certificate indicated his Québec address. Immediately after, he called to have his address changed. He does not receive a cell phone bill. I have 200 minutes for my cell phone. I think that it is by pre-authorized debit. He did not officially sublet the apartment, because he knew that A. V. was going to leave because what she had chosen to study was not offered in Québec. He waited for her to leave (GD3-44/45).

- o) Medical certificate dated February 7, 2014 indicating that the claimant was on sick leave for an indeterminate period (GD3-46).
- p) Medical certificate dated April 4, 2014 indicating that the claimant was off work sick for one month (GD3-47).

[8] The evidence provided after the hearing is as follows:

- a) The claimant produced his 2013 income tax and benefit return at the La Malbaie address (GD6-2/3) as well as the one for 2012 (GD6-6).
- b) The Canada Revenue Agency notice of assessment for the 2013 tax year is addressed to the claimant in La Malbaie (GD6-4) as is the one for the 2014 tax year (GD6-5) and the 2012 tax year (GD6-7).

[9] The evidence produced at the hearing through the testimony of S. T., the claimant's mother, reveals that:

- a) Ms. S. T. says that the claimant's permanent address in 2013 was in La Malbaie. He spent more than eight months a year in La Malbaie despite the fact that he had an apartment in the city of Québec. All his personal belongings were in La Malbaie. He was looking for work in Charlevoix, but given the lack of job opportunities in the area, he was searching in the region. She claims that he was in La Malbaie more often than in Québec. Moreover, since the claimant was hospitalized, it was preferable for the address to remain in La Malbaie. She claims that when he made his change of address in 2014, he actually lived in the city of Québec from that point. She claims that the apartment was for the purposes of his work.

[10] The evidence produced at the hearing through the testimony of the Appellant reveals that:

- a) The claimant says that he lives at the family home in La Malbaie. He claims that he is looking for a job in Charlevoix. He lost his job at Océan due to his health problems and took a job in Québec for less pay because he wanted to work.
- b) He signed a lease for an apartment in Québec starting July 2012, but only started living there in October because he was working in Montréal for Piscines S. He moved to Québec for a short time, about one month, before realizing that it would not work with his girlfriend. He immediately returned to Charlevoix.
- c) He says that he went there from time to time but was staying in Charlevoix as often as possible. He had practically no furniture there. One of his friends was working from time to time in Québec, about three periods of two months and left him his apartment. He kept the apartment to have a base in Québec, so he could find a job there. He says that R. T. arrived around March-April 2014. He claims that since fall 2014, he has lived in Québec. That is why he changed his address.
- d) Regarding the changes of address, he says that the employment insurance officer had told him to use the Québec address when he was in Charlevoix and the job he held was also in Charlevoix.
- e) He had changed the address on his driver's licence on the advice of his friend, even though he was in Charlevoix more often. In 2013, he says that he was working for a Lac St-Jean company at his high school in Charlevoix. He was staying at the family home in La Malbaie. He filed his employment insurance claim in La Malbaie. Further to the information received, he changed his address twice.
- f) Regarding the apartment, he says that he only had half the rent to pay, no other expenses and that most of the time, he sublet his part of the apartment either to one of his ex-girlfriend's friends or to one of his friends.

- g) He says that he had made the change to his CCQ card on the advice of the union because the employers had to pay him board for a job in Québec. He says that in 2013, when he received the job offer from Morris et frères, his card had the Charlevoix address. The union placed him for this job because his CCQ card had his La Malbaie address.
- h) For his job searches, he looks primarily in Charlevoix, but given the lack of opportunities available, he was also looking in Québec.
- i) He considers himself to have permanently moved to Québec after he started his job at Solutech, in fall 2014.
- j) He had been under the care of a physician in La Malbaie, but was referred to a psychiatrist in Québec. Despite the fact that he was living in La Malbaie, he continued to be under the care of the physician in Québec. He says that the care in La Malbaie was not adequate. He was hospitalized six times in two-and-a-half years and since he has been treated in Québec, there was a change in medication and his situation stabilized. The reason for his transfer to Québec is related to medical care and not because of his move.

PARTIES' ARGUMENTS

[11] The Appellant argued that:

- a) The Commission discounts the fact that he had a base in Québec and that his first reflex is to return regularly, as soon as possible to La Malbaie. His phone number is in La Malbaie. He had to go to Québec regularly for medical care and was looking for a job in Québec with the goal of working because the job opportunities were limited in Charlevoix.
- b) The representative submits the following CUBs and highlights the following points:
 - CUB75060: The claimant intended to travel every time he had a work stoppage. He explains that he has an address in the place of work to help him be able to find a job.

- CUB69529: Confusion between the place where the work hours were accumulated and the place of residence. The important point is to returning when there was a stop in pay.
- CUB66469: States that the time when the benefits claim was made must be looked at and the facts posterior to that must be disregarded.

In the instant case, the representative argues that the changes of address made after the benefits claim should not be considered and claims that the Commission clearly considered them and questioned the claimant about this several times.

- CUB61554: Clarifies that section 17 of the Regulations makes a clear and meaningful distinction between the place where the claimant works and the region of ordinary residence. Moreover, section 17, taken as a whole, favours the claimant.
- CUB34034A: Regarding the weight given to the Commission's written statements in relation to the testimonies of the claimant and his mother.

[12] The Respondent submitted that:

Non-established benefit period

- a) The expression “place of ordinary residence” is not defined in the legislation. Based on the expression “resident,” it should mean the place where the claimant is established. The place of ordinary residence would mean the place where a person chose to live. It could not apply to a person who was in a place, by speculation, for a reasonably short period of time.
- b) Based on the facts in the file, the claimant’s place of residence was Québec, not La Malbaie. He signed a lease in June 2012 and he has lived at the address shown on that lease since, i.e. X de la X Street in Québec. The building owner states that the claimant has been the tenant and resident of this address since 2012 and that the only change that has been made is that a new roommate signed the lease, still at the same address, with the claimant in July 2014. The claimant’s driver's license and his documents related to the Commission de la Construction du Québec all show the

address in the city of Québec. Several of his records of employment also show the address in Québec. In addition, the claimant was under the care of a physician in the city of Québec area. Thus, the Commission needs to review his benefits claim.

- c) The Commission determined that the claimant was not a new entrant or re-entrant to the labour force under subsection 7(4) of the Act because he had at least 490 hours of labour force attachment in the 52 weeks prior to his qualifying period. Therefore, the claimant needed the number of hours of insurable employment specified in paragraph 7(2)(b) of the Act.
- d) According to the table in subsection 7(2) of the Act and based on the unemployment rate of 4.8% in the region of Québec, the minimum required to be eligible for employment insurance benefits was 700 hours.
- e) Unfortunately, based on the evidence on file, the claimant only accumulated 654 hours of insurable employment during his qualifying period.
- f) In CUB 64683, it was established that the criteria being used to determine the “place of ordinary residence” imply the consideration of both subjective and objective facts. This term designates the residence that is the most significant for the Appellant, either by usage, regularity or consistency in choosing his residence. In CUB 40662, the term “ordinary” clearly excludes any stay in a place that one does not plan to live permanently.
- g) As in the aforementioned decisions and the evidence on file, the Commission determined that the claimant’s place of residence is Québec, not La Malbaie.
- h) Thus, the Commission cannot establish a claim for the claimant because he does not meet the requirements for the number of hours of insurable employment needed to receive benefits.

Penalty

- i) The Commission argues that it demonstrated that the claimant made a false statement by providing the La Malbaie address when he filed his benefits claim (GD3-5). The Commission argues that the claimant knew that by filing a benefits claim outside Québec, this would help him qualify for employment insurance benefits. He intentionally provided an address in La Malbaie for his benefits claim starting July 21, 2013, with a view to obtaining employment insurance benefits.
- j) However, in the instant case, the claimant explains that he never thought that this might affect his eligibility for benefits. The Commission believes that the claimant's explanations are not plausible because he changed his address shortly after his benefits claim was established. Also, he still rents the same apartment at the same address as he did on July 1, 2012. In addition, he confirms that his address for his driver's licence, as well as his auto insurance, is the Québec address.
- k) If the Tribunal finds that a penalty is justified, it must then determine whether the Commission exercised its discretion judicially when setting the amount of the penalty.
- l) The Commission argues that it exercised its discretion judicially by considering all the relevant circumstances of the case at the time it determined the amount of the penalty.
- m) The total amount of the penalty must be under the \$5,000.00 threshold stipulated by the policy because it is a first offence.
- n) However, due to an error made by the Commission, the penalty was set at \$1,305.00. The Commission is not asking to change the amount imposed for the penalty.
- o) In the instant case, the claimant's place of residence was established in the Québec region. By filing his employment insurance benefits claim with a false address of residence and accepting direct deposits, he was very well aware that he was making false statements.

ANALYSIS

Place of residence

[13] Paragraph 17(1)(a) of the Regulations states that for the purposes of sections 7, 7.1, 12 and 14 of the Act, the place of residence must be considered to determine the applicable regional unemployment rate when establishing the claimant's employment insurance claim.

[14] The claimant's employment insurance benefits claim was established based on subsection 17(1) of the Regulations by using Québec as the claimant's place of ordinary residence. The claimant argues that this was not his place of ordinary residence because at the time he filed his employment insurance claim, his place of ordinary residence was La Malbaie.

[15] The Commission argues that based on the facts on file, the claimant's place of residence is Québec, not La Malbaie. He signed a lease in June 2012 and he has lived at the address indicated on that lease since, i.e. X de la X Street in Québec. The building owner states that the claimant has been the tenant and resident of this address since 2012 and that the only change that has been made is that a new roommate signed the lease, still at the same address, with the claimant in July 2014. The claimant's driver's licence and his documents related to the Commission de la Construction du Québec all show the address in the city of Québec. Several of his records of employment also show the address in Québec. In addition, the claimant was under the care of a physician in the city of Québec area. Thus, the Commission needs to review his benefits claim.

[16] At the hearing, the claimant confirmed that he had changed his address on his driver's licence when he planned to move to Québec with his girlfriend. He says that at the end of his contract in Montréal, he returned home to La Malbaie, despite the fact that he had signed a lease with his girlfriend in June 2012. Then, he had moved to Québec in October 2012 and quickly realized, in a month, that it would not work with his girlfriend. So, he returned to La Malbaie and sublet his apartment to his girlfriend's friend and one of his friends for certain periods of time. He says that given the few job opportunities in the Charlevoix region, he also had to look for work in Québec. In addition, the union had suggested that he change the address on his CCQ card to the one in Québec to avoid employers being reluctant to hire him because of having to

pay board. He says he changed the address on his CCQ card after his last contract in La Malbaie. Regarding this last contract before filing his employment insurance claim, he said that he had obtained it because of the fact that his CCQ card still had the La Malbaie address. His last job was for a Lac St-Jean company, but he was working in La Malbaie, in his old high school. In addition, he says that during this time, he had been hospitalized and was staying in La Malbaie. His medical care had been transferred to Québec because of the ineffectiveness of his treatment in La Malbaie, not because he had moved to Québec. He considers himself to have officially moved to Québec when he started working for Solutech, in fall 2014.

[17] The claimant's mother came to testify to the effect that the claimant was staying in La Malbaie during the period concerned. She says that the claimant spent more than eight months a year in La Malbaie despite the fact that he had an apartment in the city of Québec. All his personal belongings were in La Malbaie. When he had contracts in Québec, he came home every weekend.

[18] Therefore, although the legislation does not specify the meaning of the ordinary place of residence, it generally means the place where a claimant is established, where he chooses to live. Both subjective and objective facts are considered in this determination. It is the residence that is the most significant for the Appellant, either by usage, regularity or consistency (CUB64683). Moreover, the facts that must be taken into consideration are those that existed at the time remuneration ceased (CUB69529 and CUB66469).

[19] The Tribunal notes that when the claimant filed his employment insurance benefits claim on August 1, 2013, he was finishing a job in La Malbaie (GD3-26) and provided his address in La Malbaie. In addition, the claimant submitted his tax returns for 2012 and 2013 with the La Malbaie address (GD6-2/3/6). Also, at that time, the address indicated on his CCQ card was the one in La Malbaie because he had obtained this job through his union, which is based on the address on this card.

[20] The Tribunal also notes that several records of employment were addressed to the claimant's city of Québec address. The claimant explained that he wanted to work and thus did not limit his searches to the Charlevoix region. Therefore, to increase his job chances, he

provided employers in the Québec region with his Québec address and employers in the Charlevoix region with his La Malbaie address. He spent most of his time off in La Malbaie.

[21] The Tribunal also notes that the claimant gave a credible testimony. He was consistent through the various conversations he had with the Commission and at the Tribunal. He explained his situation clearly and provided clarifications on certain aspects of his situation. His testimony was also supported by that of his mother, who also confirmed that the claimant was living in La Malbaie despite the fact that he had an apartment in Québec and that he lived there when he found work.

[22] Therefore, based on the evidence and the arguments submitted by the parties, the Tribunal finds that when his employment insurance claim was filed on August 1, 2013 (claim starting July 21, 2013), the claimant's ordinary residence was in La Malbaie. The Tribunal finds that the claimant demonstrated that he was generally living in La Malbaie despite the fact that he was working in another region, usually Québec, and despite the fact that he had done a contract in Montréal. The Tribunal finds that the fact of working in another place and having a base there does not change his place of ordinary residence. Therefore, the Tribunal finds that the Lower Saint Lawrence-North Shore economic region must be used for the calculations to establish an employment insurance claim.

Non-established benefit period

[23] Subsection 7(4) of the Act states that a person enters or re-enters the labour force if that person has worked less than 490 insurable hours in the 52 weeks prior to the qualifying period.

[24] The Commission determined that the claimant was not a new entrant or re-entrant to the labour force under subsection 7(4) of the Act because he had at least 490 hours of labour force attachment in the 52 (52) weeks prior to his qualifying period. The records of employment confirm that the claimant was not a new entrant or re-entrant to the labour force (GD3-19 to GD3-21).

[25] Subsection 7(2) of the Act states that:

An insured person, other than a new entrant or a re-entrant to the labour force, qualifies if the person

a) 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.

[26] The unemployment rate for the Lower Saint Lawrence-North Shore region was 11.8% for the period of July 7 to August 10, 2014 (GD3-28). The table in subsection 7(2) of the Act states that for a region in which the unemployment rate is more than 11%, but not more than 12%, 490 hours of insurable employment are needed to meet the required conditions.

[27] The claimant had 654 hours of insurable employment in his qualifying period of July 22, 2012 to July 20, 2013. Therefore, as indicated in Schedule 1 of the Act, the claimant was entitled to 25 weeks of regular employment insurance benefits. The benefit rate was set by the Commission at \$501 and is not in dispute in this appeal.

[28] In addition, the claimant was eligible for sick pay for the period of February 23, 2014 to May 24, 2014. These benefits are not called into question in this appeal.

[29] Therefore, the claimant's regular benefits claim must be re-established from July 21, 2013. The claimant was entitled to 25 weeks of regular benefits and was eligible for sick benefits for the period of February 23, 2014 to May 24, 2014 because this issue was not appealed by the parties.

Penalty

[30] Paragraph 38(1)(a) of the Act states that the Commission may impose on a claimant, or any other person acting for a claimant, a penalty for each of the following acts or omissions if the Commission becomes aware of facts that in its opinion establish that the claimant or other person has

(a) in relation to a claim for benefits, made a representation that the claimant or other person knew was false or misleading;

[31] The claimant contests the penalty imposed by the Commission stating that he had no fraudulent intent and he made his changes of address on the advice of the Commission.

[32] The Commission argues that it demonstrated that the claimant made a false statement when he provided the La Malbaie address when he submitted his benefits claim. The Commission argues that the claimant knew that by filing a benefits claim outside Québec, this would enable him to qualify for employment insurance benefits. He intentionally provided an address in La Malbaie for his benefits claim starting July 21, 2013, with a view to obtaining employment insurance benefits.

[33] However, in the instant case, the claimant explains that he never thought that this might affect his eligibility for benefits. The Commission believes that the claimant's explanations are not plausible because he changed his address shortly after his benefits claim was established. Also, he still rents the same apartment at the same address as he did on July 1, 2012. In addition, he confirms that his address for his driver's licence, as well as his auto insurance, is the Québec address.

[34] The Tribunal determined that the claimant's place of ordinary residence was La Malbaie when he filed his employment insurance claim.

[35] The Commission has the burden of proof to demonstrate that the claimant knowingly made false or misleading statements. Then, the claimant must explain why these statements were made (*Canada (Attorney General) v. Purcell*, FCA A-694-94).

[36] The Tribunal notes that the claimant stated that his place of ordinary residence was La Malbaie. Based on the evidence and observations produced by the parties, the Tribunal is not satisfied that the claimant made a false or misleading statement. In fact, despite the fact that the claimant might have modified his place of residence after his employment insurance claim started, these changes cannot be considered a false or misleading statement. The claimant was living in La Malbaie and tried to follow the guidelines received. Nevertheless, these changes do not change the place of ordinary residence when he filed his claim.

[37] Therefore, the Tribunal finds that on a balance of probabilities, the Commission did not demonstrate that the claimant had made a false or misleading statement and therefore, the Tribunal finds that no penalty can be imposed.

CONCLUSION

[38] The Tribunal finds that when his employment insurance claim was filed, the claimant's place of ordinary residence was La Malbaie. Therefore, the claimant's regular benefits claim must be re-established from July 21, 2013. The claimant was entitled to 25 weeks of regular benefits and was eligible for sick benefits for the period of February 23, 2014 to May 24, 2014 because this issue was not appealed by the parties.

[39] The Tribunal also finds that on a balance of probabilities, the Commission did not demonstrate that the claimant had made a false or misleading statement and therefore, the Tribunal finds that no penalty can be imposed.

[40] The appeal is allowed.

Charline Bourque
Member, General Division - Employment Insurance Section