Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *J. F. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 156

Tribunal File Numbers: GE-16-1339/GE-16-1340/GE-16-1341/
GE-16-1342/GE-16-1343/GE-16-1344

BETWEEN:

J. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Charline Bourque

HEARD ON: October 4, 2016

DATE OF DECISION: December 21, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

Mr. J. F., the Claimant, participated in the teleconference hearing. Ms. S. G., who acted as his representative and witness, accompanied him.

INTRODUCTION

[1] The Commission rendered decisions in six appeal files. On June 6, 2016, the Tribunal attached the files because it had determined that they contained common issues in law or in fact and that it was improbable that the parties would suffer a prejudice. The six appeal files were heard during the hearing held on October 4, 2016, and can be summed up as follows:

File GE-16-1339—Benefit Claim Effective December 7, 2008

[2] The Appellant made an Employment Insurance claim effective December 7, 2008. On September 11, 2014, the Employment Insurance Commission (Commission) advised the Claimant that, following the receipt of new information, it had reconsidered his claim for benefits. The Commission determined that false or misleading statements had been made and that the reconsideration timeframe could be 72 months. More specifically, the Commission indicated that the Claimant had submitted a Record of Employment containing false information regarding the number of hours worked to establish an Employment Insurance file.

[3] The Commission also specified that the Claimant did not qualify for regular Employment Insurance benefits because he had accumulated only 490 hours of insurable employment between December 9, 2007, and December 6, 2008. The Commission specified that the Claimant needed to have 630 hours of insurable employment to qualify for benefits.

[4] The Commission also advised the Claimant that he had submitted a Record of Employment containing incorrect information regarding the number of hours worked at the time of establishing his Employment Insurance claim effective December 7, 2008. The Commission concluded that the Claimant had knowingly made a false statement, and it imposed a non-monetary penalty on the Claimant.

[5] On March 2, 2016, after his request for reconsideration, the Commission advised the Claimant that the decision corresponding to the non-established benefit period had been upheld. The Commission specified that the benefit period could not be established at December 7, 2008, because he had accumulated only 490 hours of insurable employment out of 630 hours between December 9, 2007, and December 6, 2008. The Commission specified that the Claimant needed 630 hours, because his economic region was Montreal.

[6] The Commission also specified that the decision on the reconsideration timeframe had been upheld. The Commission specified that the reconsideration of the file had been done according to the 72-month timeframe from the week in which benefits had been paid because a false or misleading statement or claim had been made with respect to a claim for benefits.

[7] Finally, the Commission specified that the decision on false statements had been upheld. A non-monetary penalty was imposed as a warning.

File GE-16-1341—Benefit Claim Effective December 6, 2009

[8] The Appellant established an Employment Insurance claim effective December 6, 2009. On September 11, 2014, the Commission advised the Claimant that, following the receipt of new information, it had reconsidered the claim for benefits. The Commission determined that false or misleading statements had been made, and that the reconsideration timeframe could be 72 months. More specifically, the Commission specified that the Claimant had submitted a Record of Employment containing false information regarding the number of hours worked to establish an Employment Insurance file.

[9] The Commission also specified that the Claimant did not qualify for regular Employment Insurance benefits because he had accumulated only 315 hours of insurable employment between December 7, 2008, and December 5, 2009. The Commission specified that the Claimant needed to have 560 hours of insurable employment to qualify for benefits.

[10] The Commission also advised the Claimant that he had submitted a Record of Employment containing incorrect information regarding the number of hours worked when the Employment Insurance file was established effective December 6, 2009. The Commission

concluded that the Claimant had knowingly made a false statement, and it imposed a non-monetary penalty on the Claimant.

[11] On March 2, 2016, following his request for reconsideration, the Commission advised the Claimant that the decision corresponding to the non-established benefit period had been upheld. The Commission specified that the benefit period could not be established at December 6, 2009, because he had accumulated only 315 hours of insurable employment out of 560 between December 7, 2008, and December 5, 2009. The Commission specified that the Claimant needed 560 hours, because his economic region was Montreal.

[12] The Commission also specified that the decision on the reconsideration timeframe had been upheld. The Commission specified that the reconsideration of the file had been done according to the 72-month timeframe from the week in which benefits had been paid since a false or misleading statement or claim had been made about the benefit claim.

[13] Finally, the Commission specified that the decision on the false statements had been upheld. A non-monetary penalty was imposed as a warning.

File GE-16-1340—Benefit Claim Effective December 12, 2010

[14] The Appellant established an Employment Insurance benefit claim effective December 12, 2010. On September 11, 2014, the Commission advised the Claimant that, following the receipt of new information, it had reconsidered the claim for benefits. The Commission determined that false or misleading statements had been made, and that the reconsideration timeframe could be 72 months. More specifically, the Commission indicated that the Claimant had submitted a Record of Employment containing false information regarding the number of hours worked to establish an Employment Insurance file.

[15] The Commission also specified that, given his situation (the Claimant how to work or worked sporadically or part-time or resumed working after a long absence from the labour force), the Claimant did not qualify for regular Employment Insurance benefits because he had accumulated only 345 hours of insurable employment between December 13, 2009, and December 11, 2010. The Commission specified that the Claimant needed to have 910 hours of insurable employment to qualify for benefits.

[16] The Commission also advised the Claimant that he had submitted a Record of Employment containing incorrect information regarding the number of hours worked at the time of the establishment of the Employment Insurance file effective December 12, 2010. The Commission concluded that the Claimant had knowingly made a false statement, and it imposed a non-monetary penalty on the Claimant.

[17] On March 2, 2016, following his request for reconsideration, the Commission advised the Claimant that the decision corresponding to the non-established benefit period had been upheld. The Commission specified that the benefit period could not be established at December 12, 2010, because he had accumulated only 345 hours of insurable employment out of 910 between December 13, 2009, and December 11, 2010.

[18] The Commission also specified that the decision on the reconsideration timeframe had been upheld. The Commission specified that the reconsideration of the file had been done according to the 72-month timeframe from the week in which benefits had been paid up until the time that the false or misleading statement or claim was made about the benefit claim.

[19] Finally, the Commission specified that the decision on the false statements had been upheld. A non-monetary penalty was imposed as a warning.

File GE-16-1342—Benefit Claim Effective December 11, 2011

[20] The Appellant established an Employment Insurance benefit claim effective December 11, 2011. On September 11, 2014, the Commission advised the Claimant that, according to its records, the Claimant had neglected to provide information. The Commission specified that the Claimant had submitted a Record of Employment that contained false information regarding the number of hours worked to establish an Employment Insurance file. The Commission concluded that the Claimant had knowingly made this false statement, and it imposed a penalty of $1,278.00. A notice of violation was also issued.

[21] The Commission also specified that, given the situation (the Claimant how to work or worked sporadically or part-time or resumed working after a long absence from the labour force), the Claimant did not qualify for regular Employment Insurance benefits because he had accumulated only 315 hours of insurable employment between December 12, 2010, and

December 10, 2011. The Commission specified that the Claimant needed to have 910 hours of insurable employment to qualify for benefits.

[22] On March 2, 2016, following his request for reconsideration, the Commission advised the Claimant that the decision corresponding to the non-established benefit period had been upheld. The Commission specified that the benefit period could not be established at December 11, 2011, because he had accumulated only 315 hours of insurable employment out of 910 between December 12, 2010, and December 10, 2011.

[23] The Commission also specified that the decision with respect to the penalty had been upheld. The Commission specified that the penalty of $1,278 was consistent and that it remained recoverable.

[24] Finally, the Commission specified that the decision on the violation had been upheld.

File GE-16-1343—Benefit Claim Effective December 16, 2012

[25] The Appellant established an Employment Insurance benefit claim effective December 16, 2012. On September 11, 2014, the Commission advised the Claimant that, according to its records, the Claimant had neglected to provide information. The Commission specified that the Claimant had submitted a Record of Employment that contained false information regarding the number of hours worked to establish an Employment Insurance file. The Commission concluded that the Claimant had knowingly made this false statement, and it imposed a penalty of $1,455.00. A notice of violation was also issued.

[26] The Commission also specified that, given the situation (the Claimant how to work or worked sporadically or part-time or resumed working after a long absence from the labour force), the Claimant did not qualify for regular Employment Insurance benefits because he had accumulated only 740 hours of insurable employment between December 18, 2011, and December 15, 2012. The Commission specified that the Claimant needed to have 910 hours of insurable employment to qualify for benefits.

[27] On March 2, 2016, after his request for reconsideration, the Commission advised the Claimant that the decision corresponding to the non-established benefit period had been upheld. The Commission specified that the benefit period could not be established at December 16, 2012, because the Claimant had accumulated only 740 hours of insurable employment out of 910 between December 18, 2011, and December 15, 2012.

[28] The Commission also specified that the decision with respect to the penalty had been upheld. The Commission specified that the penalty of $1,544.00 was consistent and remained recoverable.

[29] Finally, the Commission specified that the decision on the violation had been upheld.

File GE-16-1344—Benefit Claim Effective December 15, 2013

[30] The Appellant established an Employment Insurance benefit claim effective December 15, 2013. On September 11, 2014, the Commission advised the Claimant that, according to its records, the Claimant had neglected to provide information. The Commission specified that the Claimant had submitted a Record of Employment that contained false information regarding the number of hours worked to establish an Employment Insurance file. The Commission concluded that the Claimant had knowingly made this false statement, and it imposed a penalty of $1,503.00. A notice of violation was also issued.

[31] The Commission also specified that the Claimant did not qualify for regular Employment Insurance benefits because he had accumulated only 385 hours of insurable employment between December 16, 2012, and December 14, 2013. The Commission specified that the Claimant needed to have 595 hours of insurable employment to qualify for benefits.

[32] On October 30, 2015, the Commission informed the Claimant that he did not qualify for Employment Insurance benefits, because he had accumulated only 490 hours of insurable employment when he needed 595 hours of insurable employment between December 16, 2012, and December 14, 2013. -8 -

[33] On March 2, 2016, following his request for reconsideration, the Commission advised the Claimant that the decision corresponding to the non-established benefit period had been upheld. The Commission specified that the benefit period could not be established at December 15, 2013, because the Claimant had accumulated only 385 hours of insurable employment out of 595 hours between December 16, 2012, and December 14, 2013. The Commission specified that the Claimant needed 595 hours because his economic region was Montreal.

[34] The Commission also specified that the decision with respect to the penalty had been upheld. The Commission specified that the penalty of $1,503.00 was consistent and remained recoverable. Finally, the Commission indicated that the decision with respect to the violation had been upheld.

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

a) The complexity of the issue or issues;

b) The information in the file, including the need for additional information.

c) This method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and as quickly as circumstances, fairness and natural justice permit.

ISSUES

[36] The Claimant contested the reconsideration of the applications for benefits effective December 7, 2008, December 6, 2009, and December 12, 2010, under section 52 of the Act (GE-16-1339; GE-16-1341; GE-16-1340).

[37] The Claimant appealed the Commission's decision with respect to the non-established benefit periods because he had not accumulated enough hours of insurable employment under section 7 of the *Employment Insurance Act* (Act) for each of the benefit periods, in addition to the place of residence determined by the Commission under section 17 of the *Employment Insurance Regulations* (Regulations).

[38] The Claimant contested the warnings imposed under section 41 of the Act because he had made false or misleading statements (GE-16-1339; GE-16-1341; GE-16-1340). The Claimant contested the penalties and the notice of violations imposed under sections 38 and 7.1 of the Act because he had made false or misleading statements (GE-16-1342; GE-16-1343; GE-16-1344).

EVIDENCE

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

a) Record of Employment from D&S G. Inc. from September 1 to December 6, 2008, specifying a total of 980 hours of insurable employment (GE-16-1339/GD3-13).

b) Record of Employment from D&S G. Inc. from October 5 to December 5, 2009, specifying a total of 756 hours of insurable employment (GE-16-1341/GD3-13).

c) Record of Employment from D&S G. Inc. from October 4 to December 12, 2010, specifying a total of 980 hours of insurable employment (GE-16-1340/GE3-13).

d) Record of Employment from D&S G. Inc. from October 2 to December 10, 2011, specifying a total of 980 hours of insurable employment (GE-16-1342/GD3-12).

e) Record of Employment from 9150-4969 Québec Inc. from August 20 to 31, 2012, specifying a total of 80 hours of insurable employment, and it was issued due to voluntary leaving/alternative employment (GE-16-1343/GD3-12).

f) Record of Employment from SG M. from September 30 to December 15, 2012, specifying a total of 924 hours of insurable employment (GE-16-1343/GD3-13).

g) Record of Employment from SG M. from September 9 to December 14, 2013, specifying a total of 1,140 hours of insurable employment (GE-16-1344/GD3-12).

h) Confirmation from the RCMP dated from February 2, 2010, specifying that the address indicated on the Appellant's driver's licence is X X, Louiseville, QC (GE-16-1340/GD3-15).

a) Excerpt from 411.ca dated from December 3, 2010, specifying that the address from J. F. is in Verdun (GE-16-1340/GD3-16).

b) Excerpt from 411.ca dated January 10, 2014, specifying that the address of J. F. is in Longueil (GE-16-1340/GD3-20).

c) The Commission specified that the bank account of the Claimant was situated in Caisse Desjardins of Trois-Rivières dated September 29, 2011 (GE-16-1340/GD3-17).

i) Decision by the Canada Revenue Agency (CRA) dated December 11, 2012, specifying that, for the periods from October 12 to December 6, 2008, from October 11 to December 5, 2009, from October 10 to December 4, 2010, and from October 9 to December 10, 2011, the Claimant was considered an employee, despite having a dependency relationship with D&S G. (GE-16-1340/GD3-18/19). The CRA established the compensation and insurable hours for the periods in question as follows:

Periods	Hours	Compensation
October 12 to December 6, 2008	480	$10,192.00
October 11 to December 5, 2009	480	$9,434.88
October 10 to December 4, 2010	480	$10,483.20$
October 9 to December 10, 2011	540	$10,701.60$

j) On March 27, 2014, the CRA specified that, following the appeal that Vertes G&S filed concerning the Claimant's number of insurable hours in the service of Vertes D&S Inc. for the periods from October 12 to December 6, 2008, from October 11 to December 5, 2009, from October 10 to December 4, 2010, and from October 9 to December 10, 2011, the following insurable hours were determined (GE-16-1340/GD3-21).

Periods	Hours
October 12 to December 6, 2008	490
October 11 to December 5, 2009	315
October 10 to December 4, 2010	350
October 9 to December 10, 2011	315

k) On February 26, 2013, the CRA specified that, for the period from September 30 to December 15, 2012, the Claimant was an employee, despite his reliance on SG M. The CRA established the insurable compensation at $11,771.76 and the hours of insurable employment at 660 (GE-16-1343/GD3-18/19).

l) On April 29, 2014, the CRA specified that, for the period from September 9 to 28, 2013, the Claimant had no work contract with K. G., doing business under SG M. As a result, he held no insurable employment. Furthermore, for the period from September 29 to December 14, 2013, the Claimant was an employee, despite his dependency relationship with K. G. doing business under SG M. The CRA established the insurable hours at 385 for the period from September 29 to December 14, 2013 (GE-16-1344/GD3-19/20).

m) On October 15, 2015, following the Claimant's appeal to the CRA, the CRA concluded that for the period from September 9 to 28, 2013, the employment was insurable. For the period from September 9 to December 14, 2013, the hours of insurable employment were 490 hours (GE-16-1344/GD3-35/36).

n) On May 7, 2015, the employer 9150-4969 Québec Inc. (M. Landscaping Company) specified that the Claimant had a Record of Employment of two weeks and that he had left this employment voluntarily. The Claimant had been hired full-time as a landscaper. The active season is from May to October. The address given to the employer was Longueil (GE-16-1340/GD3-22).

o) On May 7, 2014, the owner of the building in Longueil specified that he had been the owner since 2009. He confirmed that the Claimant had had a lease at this address since September 2010 and that his lease had been renewed for 2013–14. There had not been a lease termination between 2009 and today (GE-16-1340/GD3-23).

p) On January 19, 2016, the Claimant asked for a reconsideration of his decision on his place of residence between 2008 and 2013, because he confirmed that he had been staying in Cascapédia and not in Montreal. He confirmed that he had had a lease in Longueil since 2010, but he said that he had not been staying there. The Claimant said he had a residence in Montreal, but that it was his wife who resided there, because she was studying in Montreal. The Claimant was staying with his in-laws in Gaspésie, because he was working there. The Claimant said he was working in the fall only and for the rest of the year he was unemployed. While he was unemployed, he stayed with his in-laws in Gaspésie—even when his wife was in Montreal. The Claimant said there was no law in Québec preventing him from having a lease for someone else, and that is exactly what he did. The Claimant said he had Internet bills addressed to his Gaspésie residence that prove he was residing there. Furthermore, he said that the address on his driver's licence had been in Gaspésie since May 29, 2013. The Claimant said he had won his appeal with the Tax Court of Canada for the employment period of 2013 when he wanted to have his 2013 benefit period established. The Claimant was informed that the Tax Court of Canada decision was that he had worked 490 hours between September 9 and December 14, 2013 (GE-16-1340/GD3-34).

q) On February 1, 2016, the Claimant called back to find out exactly which document he had to provide to prove his place of residence between 2008 and 2013. The Claimant was informed that proof of bank transactions covering the period from 2008 to 2013 were required to see where he had been. He said he would check if it was possible to provide that document. However, he said that there would be transactions in Montreal and in Gaspésie for the years 2011–12 and 2013, because he had a joint bank account with his wife and she was doing her studies in Montreal, with him in Gaspésie. He said he could provide letters from the government, as well as his passport, marriage licence and Internet invoices, all of which were in his name and had the address in Gaspésie.

The Claimant mentioned that when he had worked for D&S G. between 2008 and 2013, he had worked on the ground. He said he had picked up branches, provided tables and delivered branches. He said he had been working 7 days a week from 6 am to 6 pm and that he had been working between 72 and 84 hours per week. He said the work schedule had been set by the employer, according to the contracts. He recalled that his wage had been around $12 per hour, but he was not sure. The Claimant said the hours specified on his Records of Employment represented the actual hours worked (GE-16-1340/GD3-36).

r) For the week starting on December 7, 2008, the unemployment rate for the Montreal region was 7.6%, and it was 19.3% for the Gaspésie/Les Îles Region (GE-16-1339/GD8-1).

s) For the week starting on December 6, 2009, the unemployment rate for the Montreal region was 9.2%, and it was 15.2% for the Gaspésie/Les Îles Region (GE-16-1339/GD8-1).

t) For the week starting on December 12, 2010, the unemployment rate for the Montreal region was 8.7%, and it was 14.4% for the Gaspésie/Les Îles Region (GE-16-1339/GD8-1).

u) For the week starting on December 11, 2011, the unemployment rate for the Montreal region was 8.2%, and it was 13.7% for the Gaspésie/Les Îles Region (GE-16-1339/GD8-1).

v) For the week starting on December 16, 2012, the unemployment rate for the Montreal region was 8.2%, and it was 13.9% for the Gaspésie/Les Îles Region (GE-16-1339/GD8-1).

w) For the week starting on December 15, 2013, the unemployment rate for the Montreal region was 8.1%, and it was 17% for the Gaspésie/Les Îles Region (GE-16-1339/GD8-1).

x) Documents from the authority of financial markets specifying the types of documents that could be used as proof of residence (GE-16-1339/GD9-2).

y) T4 from V&V F. for the year 2006 (GE-16-1339/GD9-7).

z) 2007 income tax return with a Verdun address. The Claimant had no employment income (GE-16-1339/GD10-5/6).

aa) 2008 income tax return with a Cascapédia address (GE-16-1339/GD9-6; GD10-2).

bb) Letters from S.C. Accounting Services Inc. dated April 10, 2009, and addressed to the Claimant at the Cascapédia address (GE-16-1339/GD10-4).

cc) T4E for the 2007, 2008, and 2013 years (GE-16-1339/GE11-3 and GD10-8/9)

dd) Mortgage financing application addressed to the Claimant at his Cascapédia address and dated August 23, 2010 (GE-16-1339/GD9-4/5).

ee) Credit notice for the goods and services tax/harmonized sales tax (GST/HST) dated April 29, 2011, and addressed to the Claimant's Cascapédia address (GD9-9; GD10-7).

ff) Credit notice for the goods and services tax/harmonized sales tax (GST/HST) dated July 4, 2014, and addressed to the Claimant's Cascapédia address (GD9-11).

gg) Access code for the income tax return for 2012, addressed to the Claimant's Cascapédia address (GD9-10).

hh) Invoice from Navigue.com addressed to the Claimant's Cascapédia address and dated September 21, 2010, August 22, 2011, May 18, 2012, and August 19, 2013 (GE-16-1339/GD11-5; GD11-8 to GD11-9; GD9-3) and statements of transactions between May 20, 2011, and April 22, 2014 (GD11-6/7).

ii) Notice of new CRA contribution dated for the 2013 year and addressed to the Claimant's Cascapédia address (GD9-8).

jj) Ticket dated January 2, 2014 (GE-16-1339/GD11-4)

[40] The evidence submitted at the hearing by the Appellant's testimony reveals that:

a) The Claimant specified that, when he called the bank, he was informed that the transactions were archived for 3 years. After that period of time, the name of the location where the transaction had taken place would not be entered, only the transaction amounts would be entered. Consequently, it would not have given this information to the Commission. He advised the Commission of this situation and it told him that it would get back to him. They had registered people with Caisse Populaire to be able to confirm that the details did not appear on the statements.

b) The Claimant specified that his income tax returns had been done where he was living. They moved to Longueil in 2015.

c) He specified that he believed he had lived in Gaspésie from 2008 until the end of 2014, beginning of 2015.

d) They rented a small lodging in Longueil. He specified that it was for his wife. She explained that she was attending school at Concordia University. he would not live in Longueil.

e) Before 2008, he worked for V&V F. The company where he had been working filed for bankruptcy. They moved to Gaspésie in 2008, because they had both lost their jobs and could work there. In 2008, he did not think of claiming unemployment in between jobs. He did not believe that he had the Record of Employment after the employer's bankruptcy. He had employment hours in 2007.

f) The Claimant received Employment Insurance benefits until May 20, 2007. December 3, 2006, was the date that his benefits had begun. He had 23 weeks of benefits and was paid over 23 weeks.

g) With respect to the confirmation about his address on the driver's licence, the Claimant specified that the agent had not accounted for the address change because he had done it in Gaspésie. The conversation in which he asked to look on the back of his licence for the change of address was recorded.

[41] The evidence submitted at the hearing through Mrs. S. G.'s testimony revealed the following:

a) The document in GD3-13 refers to a direct deposit by V&V F., but the Claimant had stayed in Montreal in 2006–07, then he moved to Gaspésie in 2008. The second item of evidence used is proof from 411.ca that J. F., not X, had resided on X Street. It specified that, since 2008, he had no longer been living at this location and that even today, if you did a search, it would continue to appear that way. This document therefore proves nothing.

b) GD3-16 the Commission used a document from Caisse X to show that his bank account was in Trois-Rivières. It specified that the Claimant had no reason to change this account, that he had had it since he was young, so he had a good relationship and would have no reason to change it.

c) The Commission had asked them to provide bank statements from 2009 to 2013. It explained that it could not go to the end of 2013, but that it had fees for having prior statements. Furthermore, they had explained that the transactions in Gaspésie and in Montreal could appear at the same time. The Caisse informed them that the cost of the documents sought by the Commission would be $600, but they did not have the means to pay that amount.

d) She had also explained to the Commission that she could provide insurance invoices, BMO statements, Internet invoices and cable bills. The Commission specified that that was not enough and that it wanted to have bank statements. She explained that it was not easy to obtain copies of invoices for prior years. She made the effort and succeeded in obtaining some. Furthermore, the statements showed transactions in two locations—Longueil, because she was attending school in Montreal and, for example, in New Richmond, as the Claimant was in Gaspésie. She proposed providing her marriage licence, but the Commission wanted only bank statements. The Commission did not want the other documents she suggested.

e) The Claimant allegedly made false statements only to be eligible for Employment Insurance benefits. She did a search and the Claimant qualified for two regions according to the hours that appeared on his Record of Employment.

f) Despite the Caisse's explanations regarding the fact that only the amounts would remain on the statements once they were archived, the Commission nonetheless requested the bank statements and had no interest in receiving other documents.

g) Furthermore, the Commission asked them questions about work, work hours and they found that puzzling, because they did not know what the Commission wanted.

h) She specified that they had a police report because individuals were squatting in their residence for the period when they had gone back to Gaspésie.

i) When they moved from Verdun, they did not have a lease. From 2005 to 2008, they had no lease. The lease in Verdun was in her name because she was living there alone. The Claimant was residing in Louiseville. She signed the lease alone. The Claimant was there for the signing of the lease, but it was she who signed it. All the invoices at this location were in her name. The Claimant's invoices were in Gaspésie, as he lived there.

j) The owner knew the Claimant. She was the only one on the lease until 2014 when the Claimant moved to Montreal as well. From that moment on, the lease was in both of their names. From 2008 to 2010, they had no lease. In 2010, she signed a lease to resume her studies. They specified that the new owner bought the lease in 2010 so it was impossible to confirm a lease before then.

PARTIES' SUBMISSIONS

[42] The Appellant argued that:

a) The Claimant disagreed with the decision rendered with respect to the place of residence for the period from 2008 to 2013.

b) The decisions were rendered without respect for the law or any legal principles.

c) The Claimant was of the opinion that he had not been heard on the subject. The evidence was presented to Service Canada and Revenue Canada, but it was not used in the determination of his innocence or that of the 80 employees.

d) The Claimant maintained that it was easy to prove, based on the documents that the agents had, that the number of hours specified on the Record of Employment is the hours actually worked.

e) The Claimant maintained that at the first appeal, the agent revised his hours, without just cause, going from an average of 75 hours per week to 60 hours per week. Then, another agent's decision reduced the hours to 35 per week. This agent claimed to have contacted similar companies to prove his data, but could not prove it.

f) The agents based their decision on false facts provided by employees. Some employees specified that they did not know how their hours were calculated, while the Claimant specified that he had the same schedule each week. His testimony was never taken into consideration.

[43] The Respondent maintained that:

Non-Established Benefit Period

a) Subsection 7(20) of the Act specified that, to qualify for Employment Insurance benefits, a person must have (a) stopped receiving compensation from their employment and (b) during the qualifying period, carried out insurable employment during the fewest number of hours specified in the table based on the regional unemployment rate in the region where they normally live.

b) The Claimant's qualifying period was established from December 9, 2007, to December 6, 2008, under subsection 8(1) of the Act (GD16-1339).

c) The Claimant's qualifying period was established from December 7, 2008, to December 5, 2009, under subsection 8(1) of the Act (GD16-1341).

d) The Claimant's qualifying period was established from December 13, 2009, to December 11, 2010, under subsection 8(1) of the Act (GD16-1340).

e) The Claimant's qualifying period was established from December 12, 2010, to December 10, 2011, under subsection 8(1) of the Act (GD16-1342).

f) The Claimant's qualifying period was established from December 15, 2012, to December 14, 2013[1], under subsection 8(1) of the Act (GD16-1344).

g) The Commission claimed to have determined that the Claimant had been residing in the economic region of Montreal and not in the Gaspésie/Les Îles region because the Claimant had not shown that he had resided in Gaspésie without his wife and that the Commission claimed to have found much information leading it to conclude that he resided in the economic region of Montreal.

h) According to the table in subsection 7(2) of the Act, the minimum number of insurable employment hours for a claimant to receive Employment Insurance benefits is 595, based on an unemployment rate of 7.6% (2008), 9.2% (2009), 8.7% (2010), 8.2% (2011), 8.2%[2] (2013) of the region in which the Claimant lived.

i) The Commission specified that the evidence showed that the Claimant had accumulated only 490 (2008), 315 (2009), 350 (2010), 315 (2011) and 490 (2013) hours of insurable employment during his qualifying period. As a result, the Commission maintained that the Claimant had not shown that he qualified for Employment Insurance benefits under subsection 7(2) of the Act.

[1] The Tribunal notes that the Commission committed a clerical error since it is not about dates for the right qualifying period. The Commission indicates that the qualifying period is from December 12, 2010, to December 10, 2011, while the benefit claim became effective on December 15, 2013 (GE-16-1344/GD4-3).
[2] The Tribunal considers that the Commission committed a clerical error since it indicated that the unemployment rate was 8.2% (GE-16-1344/GD4-3), while it was actually 8.1% (GE-16-1344/GD8-1).

d) The Commission referred to Federal Court of Appeal decisions, indicating that they supported its decision. More specifically, the Commission referred to *Canada (Attorney General) v. Lévesque*, 2001, FCA 304, and to *Canada (Attorney General) v. Didiodato*, 2002, FCA 345.

j) For the 2012 year, the Commission specified that subsection 7(3) of the Act indicates that a new entrant or re-entrant must a) have stopped receiving compensation from their employment and b) have, during their qualifying period, done insurable work for at least 910 hours.

k) The Commission determined that the Claimant was a new arrival, because he had only 490 hours of insurable employment in the 52 weeks preceding his qualifying period. The Claimant needed 910 hours of insurable employment to qualify for Employment Insurance benefits. The Commission specified that the Claimant had accumulated 740 hours during his qualifying period, from December 18, 2011, to December 15, 2012. The Commission maintained that it had demonstrated that the Claimant did not qualify for Employment Insurance benefits under paragraph 7(3)(*b*) of the Act.

l) The Commission indicated that it did not have a Record of Employment for the period from December 10, 2016, to December 8, 2017, and that the Claimant required 910 hours to qualify for a claim. The Commission indicated that, considering the 7.6% unemployment rate for the Montreal region, the Claimant had to have 630 hours of insurable employment in order to qualify, while Revenue Canada determined that the Claimant had only 480 hours of insurable employment for D&S G. (GE-16-1339/GD8-1).

Place of Residence

The Commission provided the same arguments in each of the files (GE-16-1339; GE-16-1340; GE-16-1341; GE-16-1342; GE-16-1343; GE-16-1344/GD13).

m) The Commission found that the Claimant had been living in the Montreal region rather than the Gaspésie / Les Îles region based on several pieces of evidence already included in the 6 records.

n) Since 2006, the Claimant's direct deposit has been done at Desjardins X Caisse, X Boulevard X, Trois-Rivières, QC X. The information is still valid today and has not changed during the benefit periods in question (GD3-14 and GD3-17).

o) The RCMP confirmed that the Claimant's address specified on his driver's licence, issued in July 2009, was X X, Louiseville in Mauricie (GD3-15).

p) In December 2010, the address found on the Canada411 site (GD3-16) was X X Street in Verdun (region of Montreal)—the same address that the Claimant had entered in his benefit claim that he had filed in 2006.

q) In 2012, a Record of Employment issued by the employer 9150-4969 QC Inc. was issued to X X Road in Longueil in Montérégie, on the Montreal South Shore, for a work period of 80 hours from August 20 to 31, 2012. In January 2014, Canada411.ca still specified this address (GD3-20) and, when the investigator spoke to the employer in May, it confirmed that it was a landscaping company in the Montreal region and that the address the Claimant had given was the one on X Road in Longueil (GD3-22). Furthermore, the owner of X X (since 2009) attested that the Claimant had signed a lease for 2010–11 to 2013–14 (GD3-23).

r) The Record of Employment issued in December 2014 by SG M. also specified that the Claimant's address was X X Road in Longueil. He would reside there at least until November 2015, according to the information appearing on the Record of Employment issued by the employer M. V. registered in Montreal.

s) On January 19, 2016, during a phone conversation following up on his request for an administrative review, the Claimant claimed to be living in Gaspésie year-round with his in-laws, even though he worked only 2 months out of 12 and his wife lived in Montreal. He claimed to have Internet invoices in his name with the Gaspésie address, and that his driver's licence had specified the Gaspésie address since 2013 (GD3-34). However, on February 1, he called back to find out which documents he could provide to prove his place of residence (GD3-36) and, on March 1, his spouse informed us that they would not be providing anything, that they had no more time to waste on us, and that that was all there was to it (GD3-37). He currently resides on X Street in Longueil (GD2).

t) The evidence on file shows that his main place of residence was, and still is, in the Montreal region. The Claimant was incapable of providing proof to the contrary even though the Commission had given him an opportunity to do so. For all these reasons, the Commission was of the opinion that the decision had to be upheld.

Reconsideration

u) The Commission maintains that the Act makes it possible to reconsider a benefit claim in the 36 months after the benefits were paid or became payable. Furthermore, if it considers that a false or misleading statement or claim has been made, this period can be extended to 72 months.

v) The Commission specified its belief that a false or misleading statement had been made. The Commission specified that the Record of Employment sent contained incorrect information on the number of hours worked.

Warnings and Penalties

w) In compliance with section 38 of the Act, the Commission could impose a penalty for any false representation made knowingly by the Claimant. Knowingly means that the Commission could reasonably conclude that the Claimant had known that the information he was providing was wrong when he provided it or that he failed to report certain information. There is no element of intent in this consideration.

x) The Commission had the initial onus to prove that there had been a misrepresentation. Once the Commission could reasonably conclude that benefits had been paid as a result of an act or omission, the onus shifted to the Claimant or to the employer to show that the events could be interpreted as having occurred unintentionally. An act or omission must be proved on a balance of probabilities standard. It is not enough to simply not believe a claimant who proclaims his or her innocence. To be able to conclude that a misrepresentation was made knowingly, the evidence must make it possible to show that: (1) objectively, there was an act or omission; (2) it mislead the Commission; (3) it led to the payment of actual or potential benefits for which the Claimant did not qualify; (4) and at the time of the representation, the Claimant knew that he was not properly reporting the facts.

y) The Commission argued that it showed that the Claimant had made false statements when he submitted a Record of Employment specifying the wrong number of insurable hours and an address in Gaspésie. The Commission argued that the Claimant had known that the information transmitted was false.

z) The Commission submitted that the case law supports its decision. The Court confirmed the principle that there is no false or misleading statement unless claimants subjectively know that the information they have given or the statements they have made (or statements that have been made about them) were false (*Mootoo v. Canada (Attorney General)*, 2003 FCA 206, and *Canada (Attorney General) v. Gates*, A-600-94).

aa) The Commission specified that, 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.

bb) Since June 1, 2005, the Commission has had the following policy on calculating penalties: For an initial act or omission, the amount of the penalty May be set at up to 50% of the amount of the overpayment originating in this act or omission. For a second act or omission, the amount of the penalty May be set at up to 100% of the amount of the overpayment. For the third act or omission, the amount of the penalty May be set at up to 150% of the amount of the overpayment. The Commission specified that these

were maximum amounts that it had established by policy, and that it was only after taking into consideration all the mitigating circumstances that the penalty amount was calculated.

cc) The Federal Court of Appeal confirmed that the Commission had been justified in having its own guidelines on the imposition of penalties, in order to guarantee some consistency nationally and to avoid arbitration in such matters (*Canada (Attorney General) v. Gagnon*, 2004, FCA 351).

dd) The Commission argued that it had exercised its discretion judicially by considering all the relevant circumstances of the case at the time it determined the penalty amount.

ee) The Commission submitted that the case law supported its decision. The Federal Court of Appeal had confirmed the principle that the Commission had the sole discretion to impose a penalty under subsection 38(1) of the Act. Further, the Court had stated that no court, umpire or tribunal is authorized to interfere with a penalty decision by the Commission as long as the Commission could prove that it had exercised its discretion "judicially." In other words, the Commission had to show that it had acted in good faith, had considered all the relevant factors and had disregarded irrelevant factors (*Canada (Attorney General) v. Uppal*, 2008 FCA 388; *Canada (Attorney General) v. Tong*, 2003 FCA 281).

Violations

ff) Since July 8, 2010, a notice of violation is no longer signalled automatically when the Commission imposes a penalty, issues a warning letter or takes legal action. When the decision is made to impose a sanction because of a false statement, the Commission must determine whether a notice of violation should be issued in accordance with subsection 7.1(4) of the Act.

gg) In making the decision to issue a notice of violation, the mitigating circumstances must have been taken into account. Another factor to consider was the overall impact of issuing a notice of violation to the Claimant, including his ability to establish a benefit claim in the future.

hh) The Commission argued that the discovery of an act or omission creates an overpayment of $15,762 (2011) (GE161342/GD45), from $16,490 (2012) (GE16 1343/GD45) and $16,490 (2013) (GE161344/GD45). As a result, the Claimant received a very severe notice of violation. Subsection 7.1(5) of the Act classifies violations on the basis of the seriousness of the act or omission. The classification of the violation is determined based on the amount of the overpayment originating in the act or omission. The amount of the penalty is not a factor taken into consideration in the determination of this classification.

ii) The Commission argued that it had exercised its discretion judicially in this case in making the decision to issue a notice of violation. After taking into consideration the overall impact of issuing a notice of violation to the Claimant, including the extenuating circumstances, the previous violations and the impact of the notice of violation on the Claimant's ability to qualify in future claims, it determined that a notice of violation was applicable in this case.

jj) To intervene in the Commission's decision, the Tribunal must determine that the Commission did not exercise its discretion judicially when it served the Claimant with a notice of violation.

kk) The Commission submitted that the jurisprudence supported its decision. The Federal Court of Appeal confirmed the principle that the purpose of section 7.1 of the Act is "to deter abuse of the employment insurance scheme by imposing an additional sanction on claimants who attempt to defraud the scheme." The Court also specified that the decision of issuing a notice of violation under the terms of section 7.1(4) of the Act comes from a discretionary power that only the Commission could exercise. It is the jurisdiction of the Tribunal and of the Umpire to determine whether the Commission exercised its discretionary power judicially in its decision to issue a notice of violation *(Gill v. Canada (Attorney General)*, 2010, FCA 182).

ANALYSIS

The relevant legislative provisions are reproduced in the appendix of this decision.

Reconsideration: *(Files GE-16-1339, GE-16 and GE-16-1341)*

[44] Subsection 52(5) of the Act states that if, in the opinion of the Commission, a false or misleading statement or representation has been made in connection with a claim, the Commission has seventy-two (72) months to reconsider the claim.

[45] The Commission claimed it believed a false or misleading statement had been made. The Commission specified that the transmitted Record of Employment contained incorrect information on the number of hours worked.

[46] The decisions initially rendered by the Commission state that: [Translation] "We believe that a false or misleading statement or claim was made. More specifically, you submitted a Record of Employment containing false information regarding the number of hours worked to establish an Employment Insurance file." (GE-16-1339/GD3-26; GE-16-1340/GD3-26; GE-16-1341/GD3-26).

[47] The evidence shows that the Canada Revenue Agency made changes to the Records of Employment by amending the number of hours of insurable employment carried out for each of the periods in this appeal.

[48] In *Dussault*, the Federal Court of Appeal cites *Langelier* and specified that:

> With respect, I consider that the Umpire misdirected himself when he imposed on the Commission a burden pursuant to s. 43(6) of proving [translation] "that the Claimant knowingly made false statements." That is actually the burden imposed by s. 33(1), dealing with penalties. All Parliament requires in s. 43(6) is that "in the opinion of the Commission, a false or misleading statement . . . has been made."... Of course, in order to arrive at this conclusion the Commission must be reasonably satisfied that "a false or misleading statement or representation has been made in connection with a claim.

> In other words, the mere existence or presence of a false or misleading statement suffices, to the degree that the Commission was reasonably satisfied of this fact, to trigger the application of subsection 43(6) without the need to find intention of the person making the statement. Its existence is inferred objectively from the fact. *(Canada (Attorney General) v. Dussault*, 2003, FCA 372).

[49] The Tribunal is of the opinion that the Commission could determine whether there was a false or misleading statement because the Records of Employment turned out to be false. Thus, the Tribunal is of the opinion that the Commission was reasonably satisfied of the existence of this false or misleading statement, whether the latter had been made knowingly or unknowingly, in order to be able to apply subsection 52(5) of the Act.

[50] As a result, the Tribunal is satisfied that the Commission could reconsider the Claimant's applications for benefits within 72 months as provided for by the Act.

Place of Residence

[51] The Commission did not identify this issue in the reconsideration decisions. Nevertheless, the Commission specified on several occasions that the place of residence that it considered for the establishment of the benefit period is Montreal. The Claimant expressed his disagreement with the Commission's decision on his place of residence. The question was discussed during his reconsideration request (GE-16-1340/GD3-34; GD3-36/37). Furthermore, the Commission specified in its arguments to the Tribunal that an investigation had revealed that the Claimant was in the Montreal region (GD4-1).

[52] Finally, the Tribunal noticed that the issue of place of residence is bound to the issue of the establishment of the benefit period. As a result, at the Tribunal's request, the Commission submitted an argument in line with this issue for each of the files.

[53] The Claimant attended the hearing to discuss this issue and he specified that the Commission had refused to consider the evidence that he wanted to submit to it on that subject. He argued that the Commission was satisfied with requesting a copy of the bank statements that, according to him, did not establish his place of residence, since the transactions in

Montreal and in Gaspésie could appear simultaneously, as his wife studying in Montreal while he was working and living in Gaspésie.

[54] Based on the evidence and the parties' submissions, the Tribunal is of the opinion that it is apparent that the decision on the place of residence was subject to a request for reconsideration on the part of the Claimant. As a result, the Tribunal is of the opinion that it has to do with the issues in this appeal. Furthermore, the place of residence is one of the factors that makes it possible to determine the establishment of a benefit period.

[55] Paragraph 17(1)(*a*) of the Regulations specifies that for the application of sections 7, 7.1, 12 and 14 of the Act, the usual place of residence must be considered in order to determine the applicable regional unemployment rate at the time the Claimant's Employment Insurance application is established.

[56] Thus, although the legislation does not specify what place of residence means, it is generally a place where a claimant has settled, where he or she chooses to live. Subjective as well as objective facts are considered in this determination. It is the Appellant's most significant residence, due to habit, regularity or continuity (CUB64683). Furthermore, the facts that must be taken into consideration are those existing at the moment where there is an interruption in earnings (CUB69529 and CUB66469).

[57] The Commission established the Claimant's Employment Insurance applications according to subsection 17(1) of the Regulations by using Montreal as the Claimant's usual place of residence. The Claimant argued that it was not his usual place of residence when he submitted his Employment Insurance applications; his usual place of residence was Gaspésie/Les Îles.

[58] The Commission argued that the evidence on file showed that his main place of residence was, and still is, in the Montreal region. It specified that the Claimant was incapable of showing proof to the contrary, even though the Commission had given him the opportunity to do so (GD13).

[59] The Commission relied on the following elements:

- Since 2006, the Claimant's direct deposit has been done at Desjardins X Caisse, X Boulevard X, Trois-Rivières, QC, X. Information is still valid today and has not changed during the benefit periods in question (GD3-14 and GD3-17).

- The RCMP confirmed that the Claimant's address entered on his driver's licence, issued in July 2009, was X X, Louiseville in Mauricie (GD3-15).

- In December 2010, the address found on the Canada411 site (GD3-16) was X X Street in Verdun (region of Montreal), namely the same address that the Claimant had entered on his benefit claim that he had filed in 2006.

- In 2012, a Record of Employment issued by the employer 9150-4969 Québec Inc. was issued to X X Street in Longueil in Montérégie, on the Montreal South Shore, for a period of 80 hours from August 20 to 31, 2012 (page 3 attached).

- In January 2014, Canada411.ca specified this same address (GD3-20) and, when the investigator spoke to the employer in May, it confirmed to him that it was a landscaping company in the Montreal region and that the address that the Claimant had given was really the one at X Street in Longueil (GD3-22).

- Furthermore, the landlord at X X (since 2009), attests that the Claimant signed a lease for the years 2010–11 and 2013–14 (GD3-23).

- The Record of Employment issued in December 2014 by SG M. also specified that the Claimant's address is X, X Street in Longueil (page 4 attached). He allegedly stayed there until at least November 2015 according to the information appearing in the Record of Employment issued by the employer M. V. registered in Montreal (page 5 attached).

- On January 19, 2016, during a phone conversation after his request for an administrative review, the Claimant claimed to live year-round in Gaspésie with his in-laws, even though he worked only 2 months out of 12 and his wife lived in

> Montreal. He claimed to have Internet invoices in his name bearing the Gaspésie address and that his driver's licence has shown the Gaspésie address since 2013 (GD3-34). However, on February 1, he called back to find out which documents he could provide to prove his residence (GD3-36) and, on March 1, his wife informed us that they would not provide anything, that they had no more time to waste on us, and that it ended there (GD3-37). He was staying on X Street in Longueil (GD2) at the time.

[60] The Tribunal considers that the Claimant and Mrs. S. G. specified that the Commission had not wanted to receive the documents showing that the Claimant had been living in Gaspésie. The Claimant specified that the Commission was asking only for the bank statements from prior years, which cost them $600. Furthermore, the Claimant did not see the use in these statements since, after 3 years, only the amounts of the transactions appeared on them, as these were archived by the financial institution. Finally, the Claimant and his wife emphasized that the transactions could have taken place on the same day in Montreal and in Gaspésie, since the Claimant was in Gaspésie while Mrs. S. G. was studying in Montreal.

[61] The Commission specified that the Claimant's direct deposit had been done at X Desjardins Caisse in Trois-Rivières since 2006. The Claimant emphasized that he had not seen the use in changing branches since he had been receiving good service at that location. The Tribunal is of the opinion that it is possible to keep a bank account in another region or even another province despite a move since numerous transactions can be done by automatic teller machine, direct deposit or telephone.

[62] As for the RCMP's confirmation, according to which the Claimant's driver's licence issued in July 2009 was at the Louiseville address, the Tribunal is of the opinion that it cannot show that the Claimant was staying in Montreal or in Gaspésie, since it is in the Mauricie region.

[63] The Commission relied on the fact that, in 2010, the address found on Canada411 was the same one entered on his benefit claim in 2006. Furthermore, in January 2014, a Longueil address was entered and it matched the address given to the employer 9150-4969 Québec Inc. where the Claimant worked from August 20 to 31, 2012 (GD13-3). The Commission

emphasized that this address appeared on the Record of Employment from SG M. issued in December 2014 (GD13-4) and on the one from M. V. incorporated where the Claimant had worked from March 22 to November 21, 2015 (GD13-5).

[64] The Claimant confirmed that Mrs. S. G. had been renting a place in the Montreal region, because she was doing her studies there. He specified that the lodging was rented from 2010 to 2014. Mrs. S. G. specified that she had begun her studies in the fall of 2010. She said that the landlord to whom the Commission had spoken had made a mistake because he had bought the building in 2010 and not in 2009 as he had said. Furthermore, she specified that she was the only signatory of the lease until the end of 2014 when the Claimant moved permanently to Montreal. She specified that no rental took place between 2008 and 2010. Finally, the Claimant confirmed that he had settled in Montreal permanently at the end of 2014, beginning of 2015.

[65] The Commission specified that the Claimant signed a lease for the years 2010–11 to 2013–14 (GD13-1).

[66] The Tribunal notes that the Claimant did not send a copy of the lease for the building rented in Montreal. He had specified that he maybe had such a copy in hand and that it would show that only Mrs. S. G. had signed the lease until he permanently moved to Montreal. Furthermore, Mrs. S. G. had specified that she had in her hands a police report that was issued after their lodging was "squatted" In. The Tribunal is of the opinion that, even without these leases, it remains that the Claimant and/or his spouse were renting a lodging in the Montreal region during the period in question.

[67] Nevertheless, the Tribunal notes that the fact that the Claimant had a Record of Employment in 2014 and 2015 does not demonstrate that the Claimant had the Montreal region as his usual place of residence during the period in question. Nevertheless, this tends to show continuity in the rental of the lodging situated in Longueil. This rental is also explained by the fact that Mrs. S. G. was pursuing her studies in Montreal.

[68] For his part, the Claimant sent the following documents to the Tribunal:

- Income tax statement from 2008 addressed to Cascapédia (GE-16-1339/GD9-6; GD10-2).

- Letter from S.C. Accounting Services Inc. dated April 10, 2009, and addressed to the Claimant at the Cascapédia address (GE-176-1339/GD10-4).

- Mortgage financing application addressed to the Claimant at the Cascapédia address and dated August 23, 2010 (GE-16-1339/GD9-4/5).

- Credit notice for the GST/HST dated April 29, 2011, and addressed to the Claimant at the Cascapédia address (GD9-9; GD10-7).

- Access code for the 2012 income tax return and addressed to the Claimant at the Cascapédia address (GD9-10).

- Notice of new contribution from the CRA dated for the 2013 year and addressed to the Claimant at the Cascapédia address (GD9-8).

- Notice of credit for the GST/HST dated July 4, 2014, and addressed to the Claimant at the Cascapédia address (GD9-11).

- Invoice from Navigue.com addressed to the Claimant at the Cascapédia address and dated September 21, 2010, August 22, 2011, May 18, 2012, and August 19, 2013 (GE-16-1339/GD11-5; GD11-8 to GD11-9; GD9-3), and transaction statements between May 20, 2011, and April 22, 2014 (GD11-6/7).

- Ticket dated January 2, 2014 (GE-16-1339/GD11-4)

[69] The Tribunal grants more weight to official government documents like income tax returns, contribution notice and the credit notices for the tax on goods and services. Furthermore, the Tribunal notes that the Claimant sent invoices from an Internet Service Provider showing that he had been subscribed to services in September 2010, August 2011, August 2013, and continuously between May 2011 and April 2014, namely the periods in which

the Claimant was unemployed (2013 (GE-16-1339/GD11-5; GD11-8 à GD11-9; GD9-3; GD11-6/7).

[70] Furthermore, the Tribunal notes that, at the hearing the Claimant specified that he settled in Montreal near the end of 2014, beginning of 2015. The Record of Employment from SG M. ending on December 6, 2014, and issued on December 20, 2014, and that of M. V. enr. specified the address in Longueil and confirms the Claimant's version (GD13-4/5).

[71] The Tribunal notes that, at the moment when the Claimant submitted his Employment Insurance applications in December of each year, he was finishing a job in Gaspésie, a job he had held each year between 2008 and 2014. With the exception of 2014, the Records of Employment specify the Claimant's address as being in Cascapédia.

[72] Thus, based on the evidence and the parties' arguments, the Tribunal is of the opinion that, at the moment that his Employment Insurance applications were filed, the Claimant' usual residence was in the Gaspésie/Les Îles Region. The Tribunal is therefore of the opinion that the economic region of Gaspésie/Les Îles must be used to carry out calculations making it possible to establish the Employment Insurance claims for each of the periods in question.

Non-Established Benefit Periods

[73] According to the various decisions rendered by the CRA, insurable earnings and the number of hours of insurable employment for the various periods are as follows:

Periods	Hours	Earnings
October 12 to December 6, 2009	490	$10,192.00
October 11 to December 5, 2009	315	$9,434.88
October 10 to December 4, 2010	350	$10,483.20
October 9 to December 10, 2011	315	$10,701.60
September 30 to December 15, 2012	660	$11,771.76
September 9 to December 14, 2013	490	

[74] The Claimant had also received a Record of Employment of 80 hours of insurable employment for the period from August 20 to 31, 2012, for the company 9150-4969 Québec Inc. (GD13-3).

[75] In *Romaro*, the Federal Court of Appeal refers to *Haberman (Canada (Attorney General) v. Haberman*, 2000, FCA 258), in which it was established, by the majority opinion expressed by Judge Sexton, that the Minister of National Revenue has the exclusive power to determine the number of hours of insurable employment accumulated by a claimant for the enforcement of the *Employment Insurance Act (Canada (Attorney General) v. Romano* 2008 FCA 117).

A new entrant or re-entrant

[76] Subsections 7(1) to 7(4) of the Act specify:

> (1) Unemployment benefits are payable as provided in this Part to an insured person who qualifies to receive them.
>
> (2) An insured person, other than a new entrant or a re-entrant to the labour force, qualifies if the person
>
> (a) has had an interruption of earnings from employment; and
>
> (b) has had during their qualifying period at least the number of hours of insurable employment set out in the following table in relation to the regional rate of unemployment that applies to the person.
>
> (3) An insured person who is a new entrant or a re-entrant to the labour force qualifies if the person
>
> (a) has had an interruption of earnings from employment; and
>
> (b) has had 910 or more hours of insurable employment in their qualifying period.

(4) An insured person is a new entrant or a re-entrant to the labour force if, in the last 52 weeks before their qualifying period, the person has had fewer than 490

(a) hours of insurable employment;

(b) hours for which benefits have been paid or were payable to the person, calculated on the basis of 35 hours for each week of benefits;

(c) prescribed hours that relate to employment in the labour force; or

(d) hours comprised of any combination of those hours.

[77] The qualifying period for the benefit claim effective December 7, 2008, spans from October 12 to December 6, 2008. As a result, the Claimant must have accumulated at least 490 hours in order to not be considered a new entrant or re-entrant between October 12, 2007, and October 11, 2008.

[78] In its initial decision, the Commission specified that the Claimant had accumulated 490 hours of insurable employment when he had to have 630 hours of insurable employment (GE-16-1339/GD3-24). The Tribunal notes that the Commission considered that the Claimant was not a new entrant or re-entrant.

[79] Nevertheless, in its additional arguments dated September 28, 2016, the Commission claimed not to have the Record of Employment for the 52 weeks preceding the qualifying period, namely between December 10, 2006, and December 8, 2007. It considers that the Claimant had to have 910 hours in order to qualify for Employment Insurance benefits since he is considered a new entrant or re-entrant (GE-16-1339/GD8-1).

[80] The Tribunal notes that the Claimant sent his income tax return and benefits for the year 2007 (GD10-5/6). Line 101 specifies no Record of Employment. Nevertheless, line 119 specifies that the Claimant received $8,050.00 of Employment Insurance or other benefits. The Claimant also sent a T4E for the year 2007 that confirms that amount.

[81] In this way, because the Claimant demonstrated having received Employment Insurance benefits for the year 2007 (GD10-6), the Tribunal once again asked the Commission about this. It confirmed that the Claimant had received 23 weeks of benefits for the period from December 17, 2006, to May 26, 2007. The Tribunal is therefore satisfied that the Claimant received 23 weeks of benefits during the 52-week period preceding his qualifying period.

> Paragraph 7(4)(*b*) of the Act stipulates that an insured person is a new entrant or a re-entrant to the labour force if, in the last 52 weeks before their qualifying period, the person has had:
>
> > b) hours for which benefits have been paid or were payable to the person, calculated on the basis of 35 hours for each week of benefits;

[82] As the Claimant received 23 weeks of Employment Insurance benefits—each one of those weeks consisting of 35 hours—the Tribunal is satisfied that, under paragraph 7(4)(*b*) , the Claimant accumulated 805 hours and, given this fact, he was not considered a new entrant or re-entrant for his benefit claim effective December 7, 2008.

[83] With respect to the benefit applications effective December 6, 2009, the Claimant was not considered a new entrant or re-entrant since he accumulated more than 490 hours during the 52 weeks preceding the benefit period for each of those applications. The Claimant had accumulated 490 hours of insurable employment.

[84] For the claim effective December 5, 2010, the Claimant was considered a new entrant or re-entrant since he accumulated only 315 hours of insurable employment between October 11 and December 5, 2009, namely during the 52 weeks preceding his qualifying period.

[85] For the claim effective December 11, 2011, the Claimant was considered a new entrant or re-entrant since he accumulated only 350 hours of insurable employment between October 10 and December 4, 2010, namely during the 52 weeks preceding his qualifying period.

[86] For the claim effective December 16, 2012, the Claimant was considered a new entrant or re-entrant since he accumulated only 315 hours of insurable employment between October 9 and December 10, 2011, namely, during the 52 weeks preceding his qualifying period.

[87] For the claim effective December 15, 2013, the Claimant was not considered a new entrant or re-entrant because he accumulated 660 hours of insurable employment at SG M. and 80 hours of insurable employment at 9150-4969 Québec Inc. (GD13-3) between August 20 and December 15, 2012, namely, during the 52 weeks preceding his qualifying period.

Establishing the Benefit Period

[88] The table in paragraph 7(2)(*b*) of the Act specifies the number of hours of insurable employment required during the qualifying period for establishing the benefit period:

TABLE

Regional Unemployment Rate	Number of insurable hours required during the qualifying period
6 % or less	700
above 6 %, but no more than 7 %	665
above 7 %, but no more than 8 %	630
above 8 %, but no more than 9 %	595
above 9 %, but no more than 10 %	560
above 10 %, but no more than 11 %	525
above 11 %, but no more than 12 %	490
above 12 %, but no more than 13 %	455
above 13 %	420

Claim effective December 7, 2008

[89] For the application for Employment Insurance benefits effective December 7, 2008, it was established that the Claimant was not a new entrant or re-entrant.

[90] The unemployment rate in the Gaspésie/Les Îles Region was 19.3% (GE-16-1339/GD8-1).

[91] Thus, according to the table depicted in paragraph 7(2)(*b*) of the Act, the Claimant had to have more than 420 hours of insurable employment over the course of the qualifying period.

[92] For the benefit claim effective December 7, 2008, the CRA determined that the Claimant had 490 hours of insurable employment. Thus, based on the evidence and parties' submissions, the application for Employment Insurance benefits met the required conditions and the benefit period must be established.

Claim effective December 6, 2009

[93] For the benefit period beginning on December 6, 2009, the Claimant was not considered a new entrant or re-entrant.

[94] The unemployment rate of the Gaspésie/Les Îles Region was 15.2% (GE-16-1341/GD8-1).

[95] Thus, according to the table depicted in paragraph 7(2)(*b*) of the Act, the Claimant had to have more than 420 hours of insurable employment during the qualifying period.

[96] For the benefit claim effective December 6, 2009, the CRA determined that the Claimant had 315 hours of insurable employment. Thus, based on the evidence and the parties' submissions, the application for Employment Insurance benefits did not meet the conditions required by the Act, and the benefit period cannot be established.

Claim Effective December 5, 2010

[97] For the benefit period beginning on December 5, 2010, the Claimant was considered a new entrant or re-entrant.

[98] Paragraph 7(3)(*b*) of the Act:

> An insured person who is a new entrant or a re-entrant to the labour force qualifies if the person:
>
> (b) has had 910 or more hours of insurable employment in their qualifying period.

[99] For the benefit claim effective December 5, 2010, the CRA determined that the Claimant had 350 hours of insurable employment when he had to have 910 hours of insurable employment. Thus, based on the evidence and the parties' submissions, the application for Employment Insurance benefits did not meet the conditions required by the Act, and the benefit period cannot be established.

Claim Effective December 11, 2011

[100] For the benefit period beginning on December 11, 2011, the Claimant was considered a new entrant or re-entrant.

[101] As determined by paragraph 7(3)(*b*) of the Act, the Claimant must have carried out insurable employment for more than 910 hours.

[102] For the benefit claim effective December 11, 2011, the CRA determined that the Claimant had 315 hours of insurable employment when he had to have 910 hours of insurable employment. Thus, based on the evidence and the parties' submissions, the application for Employment Insurance benefits did not meet the conditions required by the Act, and the benefit period cannot be established.

Claim Effective December 16, 2012

[103] For the benefit period beginning on December 16, 2012, the Claimant was considered a new entrant or re-entrant.

[104] As determined by paragraph 7(3)(*b*) of the Act, the Claimant must have carried out insurable employment for more than 910 hours.

[105] For the benefit claim effective December 16, 2012, the CRA determined that the Claimant had 660 hours of insurable employment when he had to have 910 hours of insurable employment. Thus, based on the evidence and the parties' submissions, the application for Employment Insurance benefits did not meet the conditions required by the Act, and the benefit period cannot be established.

Claim Effective December 15, 2013

[106] For the application for Employment Insurance benefits effective December 15, 2013, it was established that the Claimant was not a new entrant or re-entrant.

[107] The unemployment rate in the Gaspésie/Les Îles Region was 17% (GE-16-1344/GD8-1).

[108] Thus, according to the table depicted in paragraph 7(2)(*b*) of the Act, the Claimant had to have more than 420 hours of insurable employment during the qualifying period.

[109] For the benefit claim effective December 15, 2013, the CRA determined that the Claimant had 490 hours of insurable employment. Thus, based on the evidence and the parties' submissions, the application for Employment Insurance benefits did meet the required conditions, and the benefit period must be established.

[110] Based on the evidence and the parties' submissions, the Tribunal is satisfied that the applications for Employment Insurance benefits effective December 7, 2008, and December 15, 2013, can be established since they meet the conditions required by the Act.

[111] The applications for Employment Insurance benefits effective December 6, 2009, December 5, 2010, December 11, 2011, and December 16, 2012, cannot be established since they do not meet the conditions required by the Act.

Warning and Penalties

[112] Subsection 38(1) of the Act specifies 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; […]

[113] Subsection 41.1 of the Act specifies that:

> a) The Commission May issue a warning instead of setting the amount of a penalty for an act or omission under subsection 38(2) or 39(2).

[114] The Claimant argued that the hours specified on his Record of Employment were the actual hours worked for the employer.

[115] The Commission argued that it demonstrated that the Claimant had made false statements when he submitted a Record of Employment specifying the wrong number of insurable hours and specified an address in Gaspésie. The Commission maintained that the Claimant had known that the information sent was false.

[116] The Tribunal accounts for the fact that the Commission had initially specified that it believed [translation] "that a false or misleading statement or claim was made. More specifically, you submitted a Record of Employment containing false information regarding the number of hours worked to establish an Employment Insurance file." (GE-16-1339/GD3-26; GE-16-1340/GD3-26; GE-16-1341/GD3-26). The Commission imposed warnings in these files.

[117] The Commission also specified that [translation] "According to our records, you neglected to provide information once before. We have learned that you submitted a Record of Employment containing false information regarding the number of hours worked to establish your file." The Commission specified that it pertained to the applications for benefits effective December 16, 2012, December 15, 2013, and September 11, 2015. The Commission imposed penalties in these files (GE-16-1342/GD3-25; GE-16-1343/GD3-25; GE-16-1344/GD3-25).

[118] The reconsideration decisions specify that the Commission upheld the initially rendered decisions. In the files where a penalty was imposed, the Commission specified that it remained recoverable.

[119] Thus, the Tribunal is of the opinion that, contrary to what the Commission specified in its arguments, the fact that the Commission believed that the Claimant had made false or misleading statements by specifying his place of residence does not constitute an element that it considered when rendering its decision. In fact, the Commission in no way specified to the

Claimant in the initial decisions or in the reconsideration decisions that the place of residence specified on the application for Employment Insurance benefits constituted an element for which he had made false or misleading statements.

[120] The Tribunal is of the opinion that the place of residence is not a factor in the consideration of the fact that the Claimant made false or misleading statements. Furthermore, the Tribunal has determined that the Claimant's place of residence was the Gaspésie/Les Îles Region and, as a result, it believes that the Claimant made no false or misleading statements by specifying a residential address in this region.

[121] Thus, only the Commission's decision based on the fact that the Claimant had made false or misleading statements by submitting a Record of Employment containing false information is at issue.

[122] As specified by the Canada Revenue Agency, which has the authority to determine the hours of insurable employment, differences were established between the Record of Employment issued by the employer and the number of insurable hours determined by the CRA.

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

[124] In this way, the Tribunal must decide on the issue of whether these false or misleading statements were made knowingly.

[125] The burden of proof, which rests with the Commission, consists of establishing, on a balance of probabilities, that is not beyond a reasonable doubt that the Claimant had made a false statement or representation that he knew was false or misleading (*Canada (Attorney General) v. Gates*, FCA #A-600-94).

[126] Furthermore, the case law established that is not whether the Claimant made a false or misleading statement, but whether it was made knowingly. It is therefore necessary, on a balance of probabilities, for the Claimant to have had the knowledge that he was making a false or misleading statement (*Mootoo v. Canada (Minister of Human Resources Development)* 2003 FCA 206).

[127] In *Gates*, the Court specified that "[i]n deciding whether there was subjective knowledge by a claimant, however, the Commission or Board May take into account common sense and objective factors. In other words, if a claimant claims to be ignorant of something that the whole world knows, the fact finder could rightly disbelieve that claimant and find that there was in fact, subjective knowledge, despite the denial. Not to know the obvious; therefore, might properly lead to an inference that the claimant is lying. This does not make the test objective: it does, however, take into account objective matters in coming to a decision on subjective knowledge. If, in the end, the trier of fact is of the view that the claimant really did not know that the representation was false, there is no violation of subsection 33(1)." (*Canada (Attorney General) v. Gates*, FCA #A-600-94).

[128] The Claimant said he thought that the hours on the Record of Employment had been completed correctly. The documents show that the employer appealed the Canada Revenue Agency's decision and that modifications were made to the hours of insurable employment following these calls.

[129] Subsections 19(2) and 19(3) of the Regulations state:

> (2) Every employer shall complete a Record of Employment, on a form supplied by the Commission, in respect of a person employed by the employer in insurable employment who has an interruption of earnings.
>
> (3) Subject to subsection (4), copies of the Record of Employment completed in paper form in accordance with subsection (2) shall be distributed by the employer in the following manner:

(a) the employee's copy shall be delivered to the insured person not later than five days after the later of

(i) the first day of the interruption of earnings, and

(ii) the day on which the employer becomes aware of the interruption of earnings;

(b) the Commission's copy shall be sent to the Commission within the time limit set out in paragraph (a); and

(c) the employer's copy shall be kept and retained as a part of the employer's records and books of account in accordance with subsection 87(3) of the Act.

[130] In *Whalen* (CUB 44202), the judge specified that Records of Employment are prepared by employers, and the Act and its Regulations do not specify that it is required information on the part of a claimant.

[131] The Tribunal is of the opinion that the Claimant could not have known, on a balance of probabilities, that the information contained in his Record of Employment was false. The information was changed on several occasions, even by the Canada Revenue Agency. Furthermore, the Tribunal is of the opinion that the establishment of a Record of Employment is the employer's responsibility, and that the Claimant did not have subjective knowledge of the fact that he was making false or misleading statements for each of the benefit periods.

[132] Thus, based on the evidence and the parties' arguments, the Tribunal is of the opinion that, on a balance of probabilities, the Claimant did not knowingly make false or misleading statement, and no warning or penalty can be imposed.

Violation

[133] The Commission issued a notice of violation to the Claimant in files GE-16-1342, GE-16-1343 and GE-16-1344.

[134] Paragraph 7.1(4)(*a*) of the Act states:

> An insured person accumulates a violation if in any of the following circumstances the Commission issues a notice of violation to the person:
>
> > (*a*) one or more penalties are imposed on the person under section 38, 39, 41.1 or 65.1, as a result of acts or omissions mentioned in section 38, 39 or 65.1;

[135] The Commission argued that the discovery of an act or omission resulted in an overpayment of $15,762 (2011) (GE-16-1342/GD4-5), $16,490 (2012) (GE-16-1343/GD4-5) and $16,490 (2013) (GE-16-1344/GD4-5). As a result, the Claimant received a very severe notice of violation. Subsection 7.1(5) of the Act qualifies the notice of violation based on the severity of the act or omission. The classification of the violation is determined based on the overpayment amount arising from the act or omission. The amount of the penalty is not a factor taken into consideration in the determination of this classification.

[136] The Commission argued that it had exercised its discretion judicially in this case in making the decision to issue a notice of violation. After considering the overall impact of issuing a notice of violation to the Claimant, including the mitigating circumstances, the previous violations and the impact of a notice of violation on the Claimant's ability to qualify on future claims, it determined that a notice of violation is applicable in this matter.

[137] The Tribunal determined that the Claimant had not knowingly made false or misleading statements. As a result, the Tribunal is of the opinion that no act or omission was made and, given this fact, no penalty can be imposed.

CONCLUSION

[138] Based on the evidence and the parties' submissions, the Tribunal is satisfied that the applications for Employment Insurance benefits effective December 7, 2008, and December 15, 2014, can be established since they meet the conditions required by the Act.

[139] The applications for Employment Insurance benefits effective December 6, 2009, December 5, 2010, December 11, 2011, and December 16, 2012, cannot be established because they do not meet the conditions required by the Act.

[140] The Tribunal is of the opinion that, on a balance of probabilities, the Claimant did not knowingly make false or misleading statements and, given this fact, no warning or penalty could be imposed.

[141] Finally, the Tribunal is of the opinion that no act or omission was perpetrated and, as a result, no penalty can be imposed.

[142] The appeal is allowed in part.

Charline Bourque
Member, General Division—Employment Insurance Section

ANNEX

THE LAW

Employment Insurance Act

Reconsideration

Version of document from 2008-01-01 to 2008-06-17:

52 (1) Notwithstanding section 120, but subject to subsection (5), the Commission
May reconsider a claim for benefits within 36 months after the benefits have been paid or would have been payable.

(2) If the Commission decides that a person

(a) has received money by way of benefits for which the person was not qualified or to which the person was not entitled, or

(b) has not received money for which the person was qualified and to which the person was entitled,

the Commission shall calculate the amount of the money and notify the claimant of its decision and the decision is subject to appeal under section 114.

(5) If, in the opinion of the Commission, a false or misleading statement or representation has been made in connection with a claim, the Commission has 72 months within which to reconsider the claim.

Version of document from 2013-12-12 to 2014-06-18:

52 (1) Despite section 111, but subject to subsection (5), the Commission May reconsider a claim for benefits within 36 months after the benefits have been paid or would have been payable.

(2) If the Commission decides that a person has received money by way of benefits for which the person was not qualified or to which the person was not entitled, or has not received money for which the person was qualified and to which the person was entitled, the Commission must calculate the amount of the money and notify the claimant of its decision.

(5) If, in the opinion of the Commission, a false or misleading statement or representation has been made in connection with a claim, the Commission has 72 months within which to reconsider the claim.

Non-Established Benefit Period

Version of document from 2008-01-01 au 2008-06-17:

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

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

(a) has had an interruption of earnings from employment; and

(b) has had during their qualifying period at least the number of hours of insurable employment set out in the following table in relation to the regional rate of unemployment that applies to the person.

TABLE

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

(3) An insured person who is a new entrant or a re-entrant to the labour force qualifies if the person

(a) has had an interruption of earnings from employment; and

(b) has had 910 or more hours of insurable employment in their qualifying period.

(4) An insured person is a new entrant or a re-entrant to the labour force if, in the last 52 weeks before their qualifying period, the person has had fewer than 490

(a) hours of insurable employment;

(b) hours for which benefits have been paid or were payable to the person, calculated on the basis of 35 hours for each week of benefits;

(c) prescribed hours that relate to employment in the labour force; or

(d) hours comprised of any combination of those hours.

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

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

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

Penalties and Warning

Version of document from 2008-01-01 au 2008-06-17:

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.

(3) For greater certainty, weeks of regular benefits that are repaid as a result of an act or omission mentioned in subsection (1) are deemed to be weeks of regular benefits paid for the purposes of the application of subsection 145(2).

41.1 (1) The Commission May issue a warning instead of setting the amount of a penalty for an act or omission under subsection 38(2) or 39(2).

(2) Notwithstanding paragraph 40(b), a warning May be issued within 72 months after the day on which the act or omission occurred.

Violation

Version of document from 2008-01-01 au 2008-06-17:

7.1 (1) The number of hours that an insured person, other than a new entrant or re-entrant to the labour force, requires under section 7 to qualify for benefits is increased to the number provided in the following table if the insured person accumulates one or more violations in the 260 weeks before making their initial claim for benefit.

TABLE / *TABLEAU*

Regional Rate of Unemployment / *Taux régional de chômage*	*Violation*			
	minor / *mineure*	serious / *grave*	very serious / *très grave*	subsequent / *subséquente*
6% and under/ *6 % et moins*	875	1050	1225	1400
more than 6% but not more than 7%/ *plus de 6 % mais au plus 7 %*	831	998	1164	1330
more than 7% but not more than 8%/ *plus de 7 % mais au plus 8 %*	788	945	1103	1260
more than 8% but not more than 9%/ *plus de 8 % mais au plus 9 %*	744	893	1041	1190
more than 9% but not more than 10%/ *plus de 9 % mais au plus 10 %*	700	840	980	1120
more than 10% but not more than 11%/ *plus de 10 % mais au plus 11 %*	656	788	919	1050
more than 11% but not more than 12%/ *plus de 11 % mais au plus 12 %*	613	735	858	980
more than 12% but not more than 13%/ *plus de 12 % mais au plus 13 %*	569	683	796	910
more than 13%/ *plus de 13 %*	525	630	735	840

(5) Except for violations for which a warning was imposed, each violation is classified as a minor, serious, very serious or subsequent violation as follows:

(a) if the value of the violation is

(i) less than $1,000, it is a minor violation,

(ii) $1,000 or more, but less than $5,000, it is a serious violation, or

(iii) $5,000 or more, it is a very serious violation; and

(b) if the notice of violation is issued within 260 weeks after the person accumulates another violation, it is a subsequent violation, even if the acts or omissions on which it is based occurred before the person accumulated the other violation.

Employment Insurance Regulations

17 (1) The regional rate of unemployment that applies to a claimant is

(a) in the case of regions described in sections 2 to 11 of Schedule I, the average of the seasonally adjusted monthly rates of unemployment for the last three-month period for which statistics were produced by Statistics Canada that precedes the week referred to in subsection 10(1) of the Act or, if Statistics Canada does not publish the relevant rate for a region for reasons of confidentiality, the average that Statistics Canada has determined based on the minimum number of unemployed persons required to allow it to publish the rate; and

(b) in the case of regions described in sections 12 to 14 of Schedule I, the greater of the average that would arise under subparagraph (i) and the average that would arise under subparagraph (ii):

(i) the average of the seasonally adjusted monthly rates of unemployment for the last three-month period for which statistics were produced by Statistics Canada that precedes the week referred to in subsection 10(1) of the Act or, if Statistics Canada does not publish the relevant rate for a region for reasons of confidentiality, the average that Statistics Canada has determined based on the minimum number of unemployed persons required to allow it to publish the rate, and

(ii) the average of the seasonally adjusted monthly rates of unemployment for the last 12-month period for which statistics were produced by Statistics Canada that precedes the week referred to in subsection 10(1) of the Act or, if Statistics Canada does not publish the relevant rate for a region for reasons of confidentiality, the average that Statistics Canada has determined based on the minimum number of unemployed persons required to allow it to publish the rate.

(1.1) 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; and

(b) for the purposes of sections 7, 7.1 and 14 and Part VIII of the Act, if the claimant was, during the week referred to in subsection 10(1) of the Act, ordinarily resident outside Canada, the rate produced for the region in which the claimant was last employed in insurable employment in Canada.

(2) If a claimant referred to in paragraph (1.1)(a) ordinarily resides so near to the boundaries of more than one region that it cannot be determined with certainty in which region the claimant resides, the regional rate of unemployment that applies to that claimant is the highest of the regional rates that apply in respect of each of those regions.

(3) If a claimant referred to in paragraph (1.1)(b) was last employed in insurable employment in Canada so near to the boundaries of more than one region that it cannot be determined with certainty in which region the claimant was employed, the regional rate of unemployment that applies to that claimant is the highest of the regional rates that apply in respect of each of those regions.

(4) The seasonally adjusted monthly rate of unemployment referred to in subsection (1) shall be obtained by using the regional rates of unemployment produced by Statistics Canada that incorporate an estimate of the rates of unemployment for status Indians living on Indian reserves.

19 (1) In subsections (2) to (4), “employer” includes a bankrupt employer or the trustee of a bankrupt employer.

(2) Every employer shall complete a Record of Employment, on a form supplied by the Commission, in respect of a person employed by the employer in insurable employment who has an interruption of earnings.

(3) Subject to subsection (4), copies of the Record of Employment completed in paper form in accordance with subsection (2) shall be distributed by the employer in the following manner:

(a) the employee's copy shall be delivered to the insured person not later than five days after the later of

(i) the first day of the interruption of earnings, and

(ii) the day on which the employer becomes aware of the interruption of earnings;

(b) the Commission's copy shall be sent to the Commission within the time limit set out in paragraph (a); and

(c) the employer's copy shall be kept and retained as a part of the employer's records and books of account in accordance with subsection 87(3) of the Act.