



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *M. L. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 82

Tribunal File Number: GE-16-3598

BETWEEN:

**M. L.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Bernadette Syverin

HEARD ON: March 20, 2017

DATE OF DECISION: June 8, 2017

## REASONS AND DECISION

### PERSONS IN ATTENDANCE

The Appellant, M. L., participated in the hearing. The Canada Employment Insurance Commission (Commission) did not attend.

### INTRODUCTION

[1] The Appellant worked for Béton Brunet Ltée, and lost his job on November 13, 2015, because of a work shortage. The Appellant filed a claim for Employment Insurance benefits and a benefit period was established. During his benefit period, the Appellant decided to take a training course, which was scheduled to run from February 11, 2016, to June 15, 2016. In a decision rendered in March 2016, the Commission determined that the Appellant was disentitled from receiving benefits during his training period (from February 11, 2016, to June 15, 2016).

[2] Shortly after this decision, the Commission discovered that the Appellant had voluntarily left his job with Béton Brunet Ltée on April 4, 2016. Individuals who voluntarily leave their employment are not entitled to benefits unless they can prove that they had no reasonable alternative to leaving. In the Appellant's case, the Commission determined on June 21, 2016, that the Appellant had voluntarily left his employment without just cause, and the Appellant was disqualified from receiving benefits a second time, this time as of April 3, 2016.

[3] This disqualification resulted in an overpayment of \$2,224.00, and a notice of debt was issued on June 25, 2016. The Appellant filed a request for reconsideration of this notice of debt. In a reconsideration decision rendered on August 26, 2016, the Commission informed the Appellant that the June 21, 2016, decision was upheld. In addition, in accordance with section 56 of the *Employment Insurance Regulations*, the possibility of writing off the debt could not be considered because the benefits had been paid less than 12 months before.

[4] The Appellant appealed to the Tribunal, asserting that the debt was incurred as a result of the Commission's error and that he should not be held responsible for this debt.

[5] The appeal was heard by videoconference for the following reasons:

- The availability of videoconferencing where the Appellant lives; and
- This type of hearing respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness, and natural justice permit.

## **ISSUE**

[6] Does the Tribunal have the jurisdiction to make a decision on the request to write off the debt?

## **EVIDENCE**

[7] A Record of Employment shows that the Appellant worked for Béton Brunet Ltée from June 8, 2015, to November 13, 2015, and that the reason for separation from employment was a work shortage (GD3-18). The employer stated that the Appellant had been temporarily laid off on November 13, 2015. However, the Appellant resigned on March 1, 2016 (GD3-19). Also, the employer confirmed that had he not left voluntarily, the Appellant would have been called back to work on April 4, 2016 (GD3-26).

[8] The Appellant informed the Commission that he was taking a training course that began on February 11, 2016, and would end on June 15, 2016 (GD3-11). The Appellant also reported to the Commission that he had voluntarily left his employment to go back to school (GD3-20).

[9] On March 31, 2016, the Commission informed the Appellant that it could not pay him benefits from February 11, 2016, to June 15, 2016, because he was taking a training course and was not available for work (GD3-22).

[10] On May 2, 2016, the Appellant informed the Commission that he had finished his training on April 22, 2016 (GD3-24).

[11] On June 21, 2016, the Commission informed the Appellant that he was disqualified from receiving benefits as of April 3, 2016, because he had voluntarily left his employment on April 4, 2016, without just cause within the meaning of the Act. This disqualification resulted in an overpayment of \$2,224.00, and a notice of debt was issued (GD3-27 to GD3-29).

[12] The Appellant requested that the notice of debt be reconsidered. The Appellant explained that he had informed the Commission of the end date of his training course, that the Commission had advised him to continue filing his reports, and that he had continued to receive benefits. During a conversation with the Commission, the Appellant said that he agreed with the decision rendered on June 21, 2016, which concluded that he had voluntarily left his employment without just cause. However, even though he continued to receive benefits to which he was not entitled, the Appellant maintains that he should not be held responsible for the overpayment because it was the Commission that continued to pay him benefits. During this conversation, the Commission informed the Appellant that his debt could not be written off because the benefits in question had been paid less than 12 months before (GD3-32 and 33).

[13] In a reconsideration decision rendered on August 26, 2016, the Commission informed the Appellant that the June 21, 2016, decision was upheld. In addition, under section 56 of the *Employment Insurance Regulations*, the possibility of writing off the debt could not be considered because the benefits had been paid less than 12 months before.

[14] The Appellant appealed to the Tribunal. In his notice of appeal, the Appellant indicated that he had informed the Commission of the end of his studies so that his benefit period would be cancelled, but that the Commission continued to pay him benefits. Therefore, the debt should be written off, because he should not be held responsible for it. The Appellant is not contesting the fact that he was disqualified from receiving benefits for voluntarily leaving his job.

## **SUBMISSIONS**

[15] At the hearing, the Appellant maintained that he had contacted the Commission at the end of his training period to cancel his benefit period. However, the Commission continued to pay him benefits. Therefore, the resulting overpayment is not his fault and he should not be held responsible for it. He asks that the debt be written off.

[16] The Commission submits that the Tribunal does not have the jurisdiction to decide on the issue of the Commission's refusal to write off the overpayment. This issue can be decided only by the Federal Court, in accordance with the relevant case law (*Canada (AG) v. Villeneuve*, 2005 FCA 440; *Canada (AG) v. Mosher*, 2002 FCA 355; *Canada (AG) v. Filiatrault*, A-874-97).

[17] In addition, pursuant to section 112.1 of the Act, Commission decisions on the write-off of any amounts owed to the Commission are not subject to review under section 112 of the Act.

[18] Finally, the Commission acknowledges that an error was made in the file in terms of the date on which the disqualification should apply. The Commission confirms that the overpayment should not have been established; the Appellant received benefits for a reason beyond his control. The Commission recommends that the Tribunal dismiss the appeal, and that it change the disqualification date to June 19, 2016, which will nullify the overpayment.

## **ANALYSIS**

[19] The relevant legislative provisions are reproduced in an appendix to this decision.

[20] The Appellant is asking the Tribunal to decide on the write-off of the overpayment created by the Commission's decision.

[21] Does the Tribunal have the jurisdiction to decide on the Appellant's request?

[22] The Commission argues that the Tribunal does not have the jurisdiction to decide on this appeal because debt write-off decisions are not subject to appeal before the Tribunal.

[23] In accordance with section 113 of the Act, the Tribunal has the jurisdiction to hear an appeal on a reconsideration decision rendered under section 112 of the Act. However, in this case, the evidence shows that a reconsideration decision was not rendered on the issue of debt write-off. In addition, according to the provisions of section 112.1, “A decision of the Commission made under the *Employment Insurance Regulations* respecting the writing off of any penalty owing, amount payable or interest accrued on any penalty owing or amount payable is not subject to review under section 112.” Therefore, the Tribunal would not have jurisdiction because under section 113 of the Act, in order for it to have that jurisdiction, a reconsideration decision must have been issued by the Commission pursuant to section 112 of the Act. This does not appear to be the case for the issue of debt write-off.

[24] In light of the above, the Tribunal does not have the jurisdiction to decide on the issue of the Commission’s refusal to write off the overpayment. This issue can be decided only by the Federal Court (*Canada (AG) v. Villeneuve*, 2005 FCA 440; *Canada (AG) v. Mosher*, 2002 FCA 355; *Canada (AG) v. Filiatrault*, A-874-97).

[25] Despite the above, the Tribunal must analyze the Commission’s recommendation that the Tribunal change the disqualification date to June 19, 2016, in order to nullify the overpayment.

[26] The Commission stated that the Appellant had been paid benefits for a reason beyond his control. Therefore, the overpayment should not have been established. To correct its error, the Commission recommends that the Tribunal change the disqualification date from April 4, 2016, to June 19, 2016. This will nullify the \$2,224.00 debt. Since the overpayment will no longer exist, the Appellant will not have to repay anything.

[27] The Tribunal notes that it is not bound by this recommendation, and must consider it an argument by the Commission. The Tribunal’s role is to assess all the evidence submitted by the parties and to render a decision that complies with the Act, the Regulations, and the applicable law.

[28] The Tribunal finds that the Commission's recommendation to change the disqualification date in order to nullify the overpayment is not supported by the evidence on file and is contrary to the Act. Therefore, the Tribunal cannot change the disqualification date, for the reasons that follow.

[29] The evidence shows that the disqualification in question was imposed because the Commission decided that the Appellant had left his employment without just cause, and the Appellant clearly indicated that he agreed with that decision. Also, the Appellant does not contest the fact that he received monies, and that these monies were paid to him when he was no longer entitled to benefits. The Appellant maintains that although he received these monies, he should not be responsible for repaying them. However, the law requires that overpayments be repaid.

[30] Section 43 of the Act states, "A claimant is liable to repay an amount paid by the Commission to the claimant as benefits (a) for any period for which the claimant is disqualified; or (b) to which the claimant is not entitled."

[31] In addition, in *Lanuzo v. Canada*, 2005 FCA 324, the Federal Court of Appeal ruled that when a claimant receives money to which they are not entitled, the Commission's error does not exempt them from repaying this amount.

[32] The Tribunal concludes, based on the Act and the case law, that even though the Appellant was misinformed by the Commission's agents, the fact remains that the Appellant received monies to which he was not entitled, and that the resulting overpayment must be repaid.

## **CONCLUSION**

[33] The Tribunal finds that the Appellant has been greatly prejudiced by incorrect information provided by the Commission. However, the Tribunal cannot provide a remedy because the Tribunal has no authority under the Act or the Regulations to nullify the overpayment or come to an arrangement with the Appellant. The Tribunal sympathizes with the Appellant, but he received this amount to which he was not entitled, and the errors made by the Commission's agents do not exempt him from having to repay the debt.

[34] The appeal is dismissed.

Bernadette Syverin  
Member, General Division – Employment Insurance Section

## APPENDIX

### THE LAW

#### *Employment Insurance Act*

**112 (1)** A claimant or other person who is the subject of a decision of the Commission, or the employer of the claimant, may make a request to the Commission in the prescribed form and manner for a reconsideration of that decision at any time within

- (a) 30 days after the day on which a decision is communicated to them; or
- (b) any further time that the Commission may allow.

**(3)** The Governor in Council may make regulations setting out the circumstances in which the Commission may allow a longer period to make a request under subsection (1).

#### **Decision not reviewable**

**112.1** A decision of the Commission made under the *Employment Insurance Regulations* respecting the writing off of any penalty owing, amount payable or interest accrued on any penalty owing or amount payable is not subject to review under section 112.

#### **Appeal to Social Security Tribunal**

**113** A party who is dissatisfied with a decision of the Commission made under section 112, including a decision in relation to further time to make a request, may appeal the decision to the Social Security Tribunal established under section 44 of the *Department of Employment and Social Development Act*.

#### *Employment Insurance Regulations*

**56 (1)** A penalty owing under section 38, 39 or 65.1 of the Act or an amount payable under section 43, 45, 46, 46.1 or 65 of the Act, or the interest accrued on the penalty or amount, may be written off by the Commission if

- (a) the total of the penalties and amounts, including the interest accrued on those penalties and amounts, owing by the debtor to Her Majesty under any program administered by the Department of Employment and Social Development does not exceed \$100, a benefit period is not currently running in respect of the debtor and the debtor is not currently making regular payments on a repayment plan;
- (b) the debtor is deceased;
- (c) the debtor is a discharged bankrupt;
- (d) the debtor is an undischarged bankrupt in respect of whom the final dividend has been paid and the trustee has been discharged;

**(e)** the overpayment does not arise from an error made by the debtor or as a result of a false or misleading declaration or representation made by the debtor, whether the debtor knew it to be false or misleading or not, but arises from

(i) a retrospective decision or ruling made under Part IV of the Act, or

(ii) a retrospective decision made under Part I or IV of the Act in relation to benefits paid under section 25 of the Act; or

**(f)** the Commission considers that, having regard to all the circumstances,

(i) the penalty or amount, or the interest accrued on it, is uncollectable,

(ii) the repayment of the penalty or amount, or the interest accrued on it, would result in undue hardship to the debtor, or

(iii) the administrative costs of collecting the penalty or amount, or the interest accrued on it, would likely equal or exceed the penalty, amount or interest to be collected.

**(2)** The portion of an amount owing under section 47 or 65 of the Act in respect of benefits received more than 12 months before the Commission notifies the debtor of the overpayment, including the interest accrued on it, may be written off by the Commission if

**(a)** the overpayment does not arise from an error made by the debtor or as a result of a false or misleading declaration or representation made by the debtor, whether the debtor knew it to be false or misleading or not; and

**(b)** the overpayment arises as a result of

(i) a delay or error made by the Commission in processing a claim for benefits,

(ii) retrospective control procedures or a retrospective review initiated by the Commission,

(iii) an error made on the record of employment by the employer,

(iv) an incorrect calculation by the employer of the debtor's insurable earnings or hours of insurable employment, or

(v) an error in insuring the employment or other activity of the debtor.