



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. P. v. Canada Employment Insurance Commission*, 2018 SST 358

Tribunal File Number: GE-17-2647

BETWEEN:

**D. P.**

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: Teresa Jaenen

HEARD ON: March 14, 2018

DATE OF DECISION: April 30, 2018

## **DECISION**

[1] The appeal is dismissed. The Tribunal finds the Respondent properly imposed a penalty because the Appellant knowingly made a false or misleading statement when she filed her Teledec reports and failed to advise the Respondent she had been out of Canada during the reporting periods.

## **OVERVIEW**

[2] The Appellant established a claim for employment insurance benefits and an investigation by the Canada Employment Insurance Commission (Respondent) revealed the Appellant had been outside of Canada while on claim. The Respondent notified the Appellant that a penalty was imposed because she had made a false misrepresentation when he failed to report that she had been outside of Canada. The Appellant conceded she has been outside of Canada to visit a sick relative and did not complete her reports until she was back in Canada. She argued that she did not knowingly make false representations and she was unaware that travelling outside Canada to see her parents and grandparents would invalidate her claim. She argues that she made several calls to Service Canada prior to leaving Canada because there was a delay in processing her claim and at no time was she advised she was unable to travel.

## **ISSUE**

[3] Should a penalty be imposed on the Appellant?

[4] Did the Appellant make a false or misleading statement? If so, was it made knowingly?

[5] Did the Respondent exercise its direction properly with respect to the penalty amount?

## **ANALYSIS**

[6] The relevant legislative provisions are reproduced in the Annex to this decision.

**Issue 1: Should a penalty be imposed on the Appellant?**

[7] Penalties may be imposed for false statements made "knowingly". "Knowingly" is determined on the balance of probabilities based on the circumstances of each case or the evidence of each case (*Gates* A-600-94).

[8] The Tribunal finds a penalty is warranted because on the balance of probabilities the Appellant knowingly made false or misleading statements when she completed her Teledec cards knowing she was out of Canada during the reporting period.

**Issue 2: Did the Appellant make a false or misleading statement and was it made knowingly?**

[9] It is not enough for the representation to be false or misleading; for a penalty to apply it must be made by the claimant with the knowledge that it is false or misleading (*Mootoo* A-438-02). There is no requirement to show that there was a mental element, such as the intention to deceive, when concluding that a false statement was knowingly made (*Gates* A-600-94).

[10] The onus of proof is on the Respondent to show that the Appellant knowingly made a false or misleading statement or representation.

[11] The Respondent submitted evidence of the Teledec reporting system questions asked and the answers made by the Appellant proving that the Appellant knowingly made a false or misleading statement (*Lavoie* A-83-04); (*Caverly* A-211-0).

[12] The Tribunal finds the Respondent met the onus because it proved the Appellant made false statements when she completed her reports for weeks starting on July 3, 2016, to July 31, 2016. She was asked the simple question: "Where you outside of Canada between Monday and Friday during the period of this report?" to which she responded "No", when she knew she had travelled outside of Canada when she completed her reports yet on her return to Canada.

[13] The Tribunal finds the Teledec reports prove the Appellant knowingly made a false and misleading statement when she reported she was not outside Canada when she knew she was.

[14] The burden of proof now shifts to the Appellant to prove the statements were not made knowingly and provide a reasonable explanation for the incorrect information.

[15] The Tribunal finds on the balance of probabilities the Appellant knew she was not reporting correctly because she conceded that she was outside of Canada.

[16] The Tribunal must make a decision based on the facts presented in relation to the issue before it and finds the Appellant knowingly made false statements when she completed her report cards. She was not able to provide any reasonable explanation as to why she did not answer the questions correctly when it simply asked "Where you outside of Canada between Monday and Friday during the period of this report? The Appellant conceded that she was already back in Canada when she completed her reports and she knew she was completing the reports for specific periods.

[17] The Appellant argues that she was not aware of the regulations and made several attempts to contact Service Canada before she left Canada as there was a delay in processing her claim; however she provided contradictory statements that she tried several times to contact Service Canada but was unsuccessful. Her representative later stated that the Appellant discussed her situation with Service Canada while she away, which contradicts the Appellant's statements.

[18] The Tribunal finds the Appellant's attempts to contact Service Canada were successful or not it does not change the fact she did not correctly complete her reports and advice Service Canada she had been outside of Canada.

[19] The Appellant's representative questioned the fact of the penalty and reference a letter sent to them saying there was no penalty and the Appellant has been given the benefit of the doubt.

[20] I find, the letter the representative refers to is reconsideration decision and it clearly states the penalty had been reduced and that it was the notice of violation that was overturned. As well, the benefit of doubt was given to the Appellant regarding her availability while she was outside of Canada, which is not an issue before the Tribunal.

**Issue 3: Did the Commission exercise its discretion properly in determining the amount of the penalty?**

[21] Yes, the Tribunal finds the Commission correctly determined that a penalty be imposed in accordance to section 38 of the *Employment Insurance Act* (Act).

[22] The Commission submits that it rendered its decision in this case in a judicial manner, as all the pertinent circumstances were considered when assessing the penalty amount (*Canada (AG) v. Uppal*, 2008 FCA 388; *Canada (AG) v. Tong*, 2003 FCA 28).

[23] The Respondent imposed a monetary penalty amount calculated as follows:

The overpayment was \$1,497.00. As this was a first misrepresentation the Appellant could be subject to a 50% penalty (\$749.00). However the Respondent took into consideration the Appellant's mitigating circumstances namely her financial situation and obligation to her family and reduced the penalty amount to \$400.00.

[24] If the Tribunal maintains that a penalty is warranted, it must then determine whether the Commission exercised its discretion in a judicial manner when it determined the quantum of the penalty.

[25] The Tribunal finds the Commission exercised its discretion in a judicial manner because it considered the Appellant reasons that existed at the time and subsequently the new mitigating financial circumstances and an obligation to her family that were relevant to determining the amount of the penalty be further reduced to \$400.00 (*Morin A-681-96*).

[26] The Tribunal sympathies with the Appellant's situation; however a person is not exempt from the legislation because they have paid into the program. The Tribunal considered the representative's agreement of humanity; however the Tribunal does not find the Appellant was treated unfairly or that she was prevented in any way from contacting Service Canada if she did not understand her rights and obligations either at the time she completed her application or when she completed her reports after she returned to Canada.

[27] The Tribunal finds the Appellant completed an application for benefits, she agreed she understood her rights and obligations, which included she must report any absences from Canada and if she knowingly withholds information or make a false or misleading statement, she will have committed an act or omission could result in an overpayment of benefits as well as severe penalties or prosecution.

[28] The Appellant's representative stated that the Appellant has paid into employment insurance and has been disheartened by the whole process. She returned to work as expected. He believes humanitarian reasons such as undue stress and language issues should be considered.

[29] The amount of a penalty is a discretionary decision within the exclusive authority of the Commission (*Uppal* 2008 FCA 388; *Gill* 2010 FCA 182).

[30] There is no authority to interfere with discretionary decisions of the Commission unless it can be shown the Commission exercised its discretionary power in a non-judicial manner or acted in a perverse or capricious manner without regard to the material before it (*Uppal* 2008 FCA 388; *Mclean* 2001 FCA 5; *Rumbolt* A-387-99).

[31] The Appellant argues that she should not be treated the same as Canadians who have family here. She had an expensive trip to go out of Canada to see her family. She is making this case for herself and other immigrants that the government should adjust the regulations for them and account for the basic needs of family. She does not agree with the application and forms and that there should be clearer communication between Service Canada and the people.

[32] The Tribunal sympathizes with the Appellant's situation; however the Tribunal does not have the authority to alter the requirements of the Act and must adhere to the legislation regardless of the personal circumstances of the Appellant (*Canada (AG) v. Levesque*, 2001 FCA 304).

**CONCLUSION**

[33] The appeal is dismissed.

Teresa Jaenen

Member, General Division - Employment Insurance Section

HEARD ON:	March 14, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. P., the Appellant  D. R., Representative for the Appellant

## ANNEX

### THE LAW

#### Employment Insurance Act

**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;

**(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.