



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. T. v Canada Employment Insurance Commission*, 2018 SST 1352

Tribunal File Number: GE-17-3577

BETWEEN:

A. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Solange Losier

HEARD ON: May 22, 2018

DATE OF DECISION: May 31, 2018

DECISION

[1] The appeal is allowed because the Respondent had no legal basis to maintain a notice of violation after they overturned their decision on the penalty imposed.

OVERVIEW

[2] The Appellant established a benefit period for employment insurance regular benefits (benefits). While collecting benefits, the Appellant was also employed. An investigation by the Respondent revealed that the Appellant had failed to declare his earnings. The Respondent allocated the earnings that the Appellant had received, which resulted in an overpayment; and imposed a penalty for knowingly making false or misleading representations; and issued a notice of violation. The Appellant requested a reconsideration, and told the Respondent that he made a mistake when he filed his claimant reports online by following the sample provided. At reconsideration, the Respondent accepted that the Appellant did not knowingly make misrepresentations and rescinded the penalty, but maintained their decision about the notice of violation, which would require the Appellant to work additional hours in order to qualify for benefits. The Appellant appealed only the notice of violation to the Tribunal.

ISSUE

[3] Did the Respondent properly decide to maintain a notice of violation after they overturned the penalty at reconsideration?

ANALYSIS

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

[5] At the reconsideration level, the Respondent overturned the penalty imposed, but maintained their decision on the notice of violation (GD3-212 to GD3-213). Therefore, the only issue under appeal is the notice of violation (GD3-198).

[6] Subsection 7.1(4) of the *Employment Insurance Act* states the following:

(4) 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;

(b) the person is found guilty of one or more offences under section 135 or 136 as a result of acts or omissions mentioned in those sections; or

(c) the person is found guilty of one or more offences under the *Criminal Code* as a result of acts or omissions relating to the application of this Act.

Issue 1: Did the Respondent properly decide to maintain the notice of violation after the penalty was overturned?

[7] No, the Respondent did not properly decide to maintain the notice of violation, because they did not have the legal basis on which to impose a notice of violation after they overturned their decision on the penalty.

[8] The decision to impose a notice of violation is a discretionary decision of the Respondent (*Gill v. Canada (Attorney General)*, 2010 FCA 182). However, the Respondent is only entitled to make that discretionary decision if one of the circumstances in subsection 7.1(4) of the Act exists.

[9] The decision to impose a notice of violation is a discretionary decision of the Respondent (*Gill v. Canada (Attorney General)*, 2010 FCA 182). However, the Respondent is only entitled to make that discretionary decision if one of the circumstances in subsection 7.1(4) of the Act exists.

[10] I note that none of the circumstances listed in paragraphs 7.1(4)(a), (b), or (c) of the Act apply to the Appellant. When the Respondent initially made the discretionary decision to issue the notice of violation, it had the legal authority to do so because a penalty had been imposed pursuant to section 38 of the Act. Once the penalty was overturned, none of the circumstances set out in subsection 7.1(4), which allow for a notice of violation to be issued, existed. Therefore,

the notice of violation cannot be maintained, as the Respondent had no legal basis on which to exercise its discretion to issue one.

[11] It is therefore unnecessary to determine whether the Respondent exercised their discretion judicially when they issued the notice of violation, because the Respondent did not have a legal basis on which to exercise that discretion.

CONCLUSION

[12] The appeal is allowed.

Solange Losier
Member, General Division - Employment Insurance Section

HEARD ON:	May 22, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. T., Appellant

ANNEX

THE LAW

Employment Insurance Act

7.1 (1) The number of hours that an insured person requires under section 7 to qualify for benefits is increased to the number set out in the following table in relation to the applicable regional rate of unemployment 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 / <i>Taux régional de chômage</i>	Violation			
	<i>minor / mineure</i>	<i>serious / grave</i>	<i>very serious / très grave</i>	<i>subsequent / subséquente</i>
6% and under/ <i>6 % et moins</i>	875	1050	1225	1400
more than 6% but not more than 7%/ <i>plus de 6 % mais au plus 7 %</i>	831	998	1164	1330
more than 7% but not more than 8%/ <i>plus de 7 % mais au plus 8 %</i>	788	945	1103	1260
more than 8% but not more than 9%/ <i>plus de 8 % mais au plus 9 %</i>	744	893	1041	1190
more than 9% but not more than 10%/ <i>plus de 9 % mais au plus 10 %</i>	700	840	980	1120
more than 10% but not more than 11%/ <i>plus de 10 % mais au plus 11 %</i>	656	788	919	1050
more than 11% but not more than 12%/ <i>plus de 11 % mais au plus 12 %</i>	613	735	858	980
more than 12% but not more than 13%/ <i>plus de 12 % mais au plus 13 %</i>	569	683	796	910
more than 13%/ <i>plus de 13 %</i>	525	630	735	840

(2) [Repealed, 2016, c. 7, s. 210]

(2.1) A violation accumulated by an individual under section 152.07 is deemed to be a violation accumulated by the individual under this section on the day on which the notice of violation was given to the individual.

(3) A violation may not be taken into account under subsection (1) in more than two initial claims for benefits under this Act by an individual if the individual who accumulated the violation qualified for benefits in each of those two initial claims, taking into account subsection (1), subparagraph 152.07(1)(d)(ii) or regulations made under Part VIII, as the case may be.

(4) 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;

(b) the person is found guilty of one or more offences under section 135 or 136 as a result of acts or omissions mentioned in those sections; or

(c) the person is found guilty of one or more offences under the *Criminal Code* as a result of acts or omissions relating to the application of this Act.

(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.

(6) The value of a violation is the total of

(a) the amount of the overpayment of benefits resulting from the acts or omissions on which the violation is based, and

(b) if the claimant is disqualified or disentitled from receiving benefits, or the act or omission on which the violation is based relates to qualification requirements under section 7, the amount determined, subject to subsection (7), by multiplying the claimant's weekly rate of benefit by the average number of weeks of regular benefits, as determined under the regulations.

(7) The maximum amount to be determined under paragraph (6)(b) is the amount of benefits that could have been paid to the claimant if the claimant had not been disentitled or disqualified or had met the qualification requirements under section 7.