



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *PM v Canada Employment Insurance Commission*, 2018 SST 1427

Tribunal File Number: GE-18-177

BETWEEN:

**P. M.**

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: Lucie Leduc

DATE OF DECISION: August 7, 2018

## **REASONS AND DECISION**

### **OVERVIEW**

[1] In February 2010, the Appellant applied for Employment Insurance parental benefits. He then converted his benefits to regular benefits. He received a total of eight weeks of parental benefits and 34 weeks of regular benefits. After an investigation by the Canada Employment Insurance Commission (Commission), the Commission determined that the Appellant had had employment earnings from X while he was receiving benefits. The Commission therefore allocated the Appellant's earnings to his weeks of benefits, causing an overpayment. The Appellant wishes to challenge the debt claimed from him.

### **ISSUE**

[2] The Tribunal has to decide whether the appeal the Appellant filed must be summarily dismissed.

### **ANALYSIS**

[3] Section 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[4] Section 22 of the *Social Security Tribunal Regulations* (Regulations) states that, before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions. The Tribunal proceeded in this manner, sending the Appellant a letter on April 5, 2018, to inform him of its intention to summarily dismiss the appeal and give him the opportunity to provide his submissions to the Tribunal. On May 28, 2018, the Tribunal received from the Appellant a request for an extension of time to provide his submissions. The Tribunal accepted and gave the Appellant until July 6, 2018, to file new documents and submissions. To date, the Appellant has not made any submissions other than those already in the file before the letter of intent.

[5] In this case, after its investigation, the Commission determined that the Appellant had worked at X and had had earnings while he was receiving Employment Insurance benefits

between May 2 and December 25, 2010. The Commission therefore allocated the Appellant's earnings as reported by the employer to his weeks of Employment Insurance benefits, creating an overpayment. On December 19, 2016, the Appellant asked the Commission to reconsider, indicating that Canada Revenue was claiming \$14,381 from him and that he had never received an explanation about the origin of this debt. He says he asked for clarifications on several occasions without success and therefore asks that the alleged debt be cancelled.

[6] The Commission submits that the Tribunal does not have jurisdiction to decide on an overpayment.

[7] I agree with the Commission about that. According to section 113 of the *Employment Insurance Act* (Act), the Tribunal is able to hear appeals about decisions that were previously reconsidered by the Commission under section 112 of the Act. Since issues about the existence of earnings and their allocation during the Appellant's weeks of benefits are not subject to a reconsideration decision included in this file, the Tribunal has no jurisdiction to decide them. Addressing issues outside its jurisdiction would be an error of law. Before the Tribunal can address these issues, the Appellant must file a request for reconsideration with the Commission, specifying which decision it wishes to challenge (include the letter for the decision he wishes to challenge).

[8] Furthermore, if the Appellant really wishes to address the debt on its own, he must then apply to the Federal Court of Canada to ask for judicial review.

[9] I note that the Appellant indicated in his request for reconsideration that, despite his repeated requests, he had not been able to receive an explanation about his debt of \$14,381. I remain puzzled about this argument because the Commission sent a letter to the Appellant on April 14, 2016, explaining to him the employment earnings that it had allocated and indicating each week involved. I note that this letter was sent to the same address the Appellant indicated on his December 19, 2016, request for reconsideration. I assume then that he did receive explanations about the overpayment that the Commission imposed, and I cannot accept his argument.

[10] I note, however, that the file covered a period of several years and seems to be the object of confusion on both sides. I also note that the response to the Appellant's reconsideration request appears to have been given approximately one year after his request. On the face of the record, it is difficult to find that the Appellant had no real intention to challenge the decisions that led to the overpayment (earnings/allocation). Unfortunately, he seems to have been quite confused about the right procedure to follow. Although the Appellant is not exempt from his obligations under the Act and in procedural matters, I find that the time that has elapsed in this case has not made the process easy and accessible. In the circumstances, I find that the Commission should have reconsidered the issues concerning the earnings and the allocation, and I accept the Appellant's request to return the file to the Commission so it can make a decision on these issues under section 112 of the Act.

## **CONCLUSION**

[11] The Tribunal finds that the appeal relating to the Appellant's debt has no reasonable chance of success. The appeal is summarily dismissed. The file is however returned to the Commission so it can make a decision under section 112 on the issues of the earnings and the allocation of the amounts the Appellant received during his benefit period.

Lucie Leduc  
Member, General Division – Employment Insurance Section

**ANNEX**

**APPLICABLE LAW**

**Employment Insurance Act**

**Reconsideration — Commission**

**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.

**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*.