



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. S. v. Canada Employment Insurance Commission*, 2018 SST 1113

Tribunal File Number: GE-18-170

BETWEEN:

R. S.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent/Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Candace R. Salmon

HEARD ON: August 23, 2018

DATE OF DECISION: September 20, 2018

DECISION

[1] The appeal is dismissed. I find the Claimant's weekly benefit rate was calculated in compliance with the provisions set out in Section 14 of the Act.

OVERVIEW

[2] A benefit period was established for the Claimant effective December 11, 2016, which was subsequently antedated to November 6, 2016. Once antedated, the Commission recalculated the Claimant's weekly benefit entitlement based on the ROE which had an undetected typographical error on one earning period which caused the Claimant to be overpaid on a weekly basis. The Canada Employment Insurance Commission (Commission) discovered the error when the amended ROE was submitted, and advised the Claimant she had been overpaid EI benefits. The Claimant requested reconsideration and submitted the mistake was not her fault and she could not afford to repay the overpayment. The Commission upheld its decision. The Claimant appeals to the Social Security Tribunal (Tribunal) to overturn the Commission's decision.

ISSUE

[3] Has the rate of weekly benefits been correctly calculated?

ANALYSIS

[4] A claimant's rate of weekly benefits is calculated as 55% of their weekly insurable earnings (*Employment Insurance Act* (Act), subsection 14(1)). The maximum weekly earnings for claims starting after the year 2000 is the maximum yearly insurable earnings divided by 52, representing the number of weeks in a year (Act, subsection 14(1.1)(b)).

[5] The Claimant resided in the Huron region at the relevant time, and the rate of unemployment in this region was 8.0% from November 6, 2016, to December 3, 2016, and 7.6% from December 4, 2016 to January 7, 2017. The weekly insurable earnings are the insurable earnings in the calculation period divided by a certain number of weeks, where the number of weeks (the divisor) is determined by reference to the applicable regional rate of unemployment in the Claimant's area of residence and a chart at subsection 14(2) of the Act. A benefit period was established effective December 11, 2016 and was subsequently antedated to November 6,

2016. Based on subsection 14(2), the divisor for both the original and antedated benefit periods was 20 weeks, meaning the Commission used the best 20 weeks in the Claimant's qualifying period to establish the rate of weekly benefits.

[6] The Claimant was issued a handwritten ROE dated January 5, 2017, which states she accumulated \$9,614.61 in insurable earnings and 1309 hours of insurable employment. Unfortunately, on the copy electronically submitted to the Commission by the employer, the hours and insurable earnings are the same, but box 25 of the insurable earnings at section 5C of the ROE states the Claimant made \$54,912.00 in the relevant period. On the handwritten copy of the ROE, this is only \$549.12. The employer issued an amended electronic ROE on July 7, 2017, fixing the error in box 25 of section 15C, as it should have read \$549.12.

[7] As the EI system automatically used the best—highest earning—20 weeks of insurable earnings to calculate the Claimant's rate of weekly benefits, when the Claimant's claim was antedated and the block indicating she earned \$52,912.00 in two weeks was factored in, the Claimant's rate of weekly benefits was calculated to be \$537.00 per week. By letter dated August 11, 2017, the Commission informed the Claimant that it had received an amended ROE and her weekly benefit rate would be reduced to \$237.00. By separate letter, the Claimant was informed that she was overpaid, and was required to repay the overpayment.

[8] The Claimant submitted that it was not her fault that she received an overpayment of benefits. She testified that she contacted the Commission and asked whether she was entitled to the benefits she received, because she recognized the weekly amount had increased significantly after her claim was antedated. The Claimant testified that a Service Canada agent returned her call and confirmed she could deposit the cheques, as she was entitled to the benefits. The Claimant submitted that her employer made the first mistake, on her ROE, and the Commission made the second, by overpaying benefits after checking her file and failing to notice the error on the ROE. The Claimant submitted that as the fault is not hers, it is unfair to expect her to repay the overpayment.

[9] The Commission submitted there is no evidence the Claimant contacted Service Canada to express concern that she received a higher rate of weekly benefits. There is evidence the Claimant called the Commission on August 22, 2017, with the Service Canada agent noting the

Claimant disagreed with the benefit rate reduction due to the new ROE. The Claimant testified at the hearing that she called multiple times, beginning in April, and requested her claim be reviewed to confirm she was eligible to receive the benefits provided to her, and was told by the Service Canada agent that she was entitled to the benefits. I prefer the Claimant's evidence as it was directly received via oral testimony, and she gave the testimony in a forthright manner and was consistent throughout. I accept that she did contact the Commission in an effort to confirm the benefits were properly paid to her.

[10] I find the Claimant's rate of weekly benefits was incorrectly calculated due to the error of her employer. In the antedated calculation, the Claimant's insurable earnings in the calculation period amounted to \$977, which yielded a weekly benefit rate of \$537 per week because the error on the ROE had not yet been detected. After the employer submitted an amended ROE correcting the block 5C error in box 25 from \$54,912.00 to \$549.12, the calculation yielded a weekly insurable earnings amount of \$430, which renders a weekly benefit rate of \$237 (55% of the weekly insurable earnings amount.)

[11] I find the calculation of the Claimant's rate of weekly benefits is correctly established at \$237.00 per week, and that the amount of \$537.00 per week which was paid to her was based on erroneous information contained on the ROE before it was amended. This resulted in an overpayment to the Claimant. The overpaid amount must be repaid, as the law states a claimant is liable to repay an amount paid by the Commission to the claimant as benefits, to which the claimant is not entitled (Act, subsection 43(b)). I acknowledge that the Claimant does not believe she should have to repay the benefits because she received incorrect information from Commission agents, but I find the law is clear on this matter and the Claimant must repay the benefits she was not entitled to receive.

[12] With respect to writing off an overpayment, I have no jurisdiction to make a finding or decision on this matter as it is solely within the jurisdiction of the Commission (*Canada (Attorney General) v. Villeneuve*, 2005 FCA 440). The *Employment Insurance Regulations* (Regulations) state that, under certain conditions, an amount payable under section 43 of the Act, or the interest accrued on the amount, may be written off by the Commission (Regulations, subsection 56(1)). I have no power at law to forgive or write off an overpayment.

[13] The Claimant did not dispute the hours accumulated on the ROE, or any details with respect to her region or the regional rate of unemployment. As a result of an undetected typographical error contained on her ROE, the Claimant was paid a higher rate of weekly benefits than she should have been paid. I appreciate the Claimant's submission that the error was not her fault, and understand that she is in a difficult financial position and cannot afford to repay the overpayment amount. However, there is no legal basis for a Claimant to receive more than 55% of their weekly insurable earnings as a weekly benefit (Act, subsection 14(1), *Manoli v. Canada (Attorney General)*, 2005 FCA 178), and I have no jurisdiction to forgive the debt.

CONCLUSION

[14] The appeal is dismissed. I find the Claimant's weekly benefit rate was calculated in compliance with the provisions set out in Section 14 of the Act.

Candace R. Salmon

Member, General Division - Employment Insurance Section

HEARD ON:	August 23, 2018
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	R. S., Appellant

ANNEX

THE LAW

Employment Insurance Act

14 (1) The rate of weekly benefits payable to a claimant is 55% of their weekly insurable earnings.

(1.1) The maximum weekly insurable earnings is

(a) \$750 if the claimant's benefit period begins during the years 1997 to 2000; and

(b) if the claimant's benefit period begins in a subsequent year, the maximum yearly insurable earnings divided by 52.

(2) A claimant's weekly insurable earnings are their insurable earnings in the calculation period divided by the number of weeks determined in accordance with the following table by reference to the applicable regional rate of unemployment.

TABLE

Regional Rate of Unemployment	Number of Weeks
not more than 6%	22
more than 6% but not more than 7%	21
more than 7% but not more than 8%	20
more than 8% but not more than 9%	19
more than 9% but not more than 10%	18
more than 10% but not more than 11%	17
more than 11% but not more than 12%	16
more than 12% but not more than 13%	15
more than 13%	14

(3) Insurable earnings in the calculation period are equal to the total of the following amounts established and calculated in accordance with the regulations:

(a) the claimant's insurable earnings during the calculation period including those from insurable employment that has not ended but not including any insurable earnings paid or payable to the claimant by reason of lay-off or separation from employment in the qualifying period; and

(b) the insurable earnings paid or payable to the claimant, during the qualifying period, by reason of lay-off or separation from employment.

(4) The calculation period of a claimant is the number of weeks, whether consecutive or not, determined in accordance with the table set out in subsection (2) by reference to the applicable regional rate of unemployment, in the claimant's qualifying period for which he or she received the highest insurable earnings.

(4.1) [Repealed, 2012, c. 19, s. 604]