



Social Security
Tribunal of Canada
[TRANSLATION]

Tribunal de la sécurité
sociale du Canada

Citation: *N. M. v. Canada Employment Insurance Commission*, 2018 SST 1104

Tribunal File Number: AD-18-204

BETWEEN:

N. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: November 8, 2018

DECISION AND REASONS

DECISION

[1] The Tribunal dismisses the appeal.

OVERVIEW

[2] The Appellant, N. M. (Claimant), established two Employment Insurance benefit periods. He reported no income on his reports from May 11, 2014, to February 7, 2015, and from January 24 to April 3, 2016. The Respondent[, the Canada Employment Insurance Commission] (Commission)[,] told the Claimant that the money he received from his employer as salary constituted earnings and that those earnings had to be allocated to each week that he worked. It also imposed a penalty on him because he made false or misleading statements. The Commission also informed the Claimant that it had issued him a notice of serious violation.

[3] In his request for reconsideration, the Claimant stated that his partner made false declarations after he had given her his access code. He was not comfortable using the internet, and he asked her to make his reports for him, even after their separation. He declared that he did not know that his partner was not declaring his employment income. The Commission informed him that it was upholding its initial decision, except regarding the penalty, which it reduced. The Claimant appealed the Commission's reconsideration decision to the Tribunal's General Division.

[4] In its decision, the General Division found that the ex-partner made the false reports with the Claimant's knowledge and consent. It also found that the Claimant's ex-partner was acting on his behalf when she knowingly made false reports and that he was therefore responsible under section 38(1) of the *Employment Insurance Act* (EI Act). The General Division also found that the Commission had exercised its discretion judiciously by imposing a penalty on the Claimant and by giving him a notice of violation.

[5] The Tribunal granted leave to appeal. The Claimant argues that the General Division erred in law because its analysis does not respect the Federal Court of Appeal's

teachings with regard to a case involving a claimant who did not make his own declarations. He argues that the General Division also erred in its evaluation of the burden of proof with regard to false declarations.

[6] The Tribunal must determine whether the General Division erred by upholding the penalty and the notice of violation.

[7] The Tribunal dismisses the Claimant's appeal.

ISSUE

[8] Did the General Division err by upholding the penalty and the notice of violation in light of the fact that the Claimant argued that he was unaware of the false declarations that his ex-partner was making in his name?

ANALYSIS

Appeal Division's Mandate

[9] The Federal Court of Appeal has established that the Appeal Division has no mandate but the one conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESD Act).¹

[10] The Appeal Division acts as an administrative appeal tribunal for decisions rendered by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[11] Therefore, unless the General Division failed to observe a principle of natural justice, erred in law, or based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

¹ *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

Issue: Did the General Division err by upholding the penalty and the notice of violation in light of the fact that the Claimant argued that he was unaware of the false declarations that his ex-partner was making in his name?

[12] The Claimant's appeal is dismissed.

[13] The Claimant argues that the General Division erred in law by not respecting the Federal Court of Appeal's teachings with regard to a case involving a claimant who did not make his own declarations. He argues that the General Division's conclusions do not take into account the evidence that shows that he was unaware of the declarations that his ex-partner had made.

[14] The Claimant stated that his ex-partner made his reports at his request. However, she did not report his earnings, and she did not stop making reports when he resumed his work as a full-time truck driver. He admits that he gave his access code to his ex-partner because she was always the one who helped him make his reports while they were a couple and even after their separation in January 2016 because he was unable to make his reports online himself.

[15] The Claimant stated that he was not aware that benefits were paid to him because the sums were deposited into their joint account, and he was never the one who took care of the couple's finances. His ex-partner gave him only pocket money for his minor expenses. The excess Employment Insurance payments went to paying for the expenses of the couple, who have three children. The ex-partner also prepared the Claimant's tax returns.

[16] The ex-partner admits that she was always the one making the Claimant's reports while they were a couple and even after their separation in January 2016. She admitted that he gave her his access code so she could make the reports because he could not. She admits that the Employment Insurance payments were deposited in their joint account, even after their separation. She admits that the Claimant worked during all of the weeks in question.

[17] The ex-partner admitted that she should have reported the Claimant's earnings on the reports in question, but she did not do so because she had been the only one looking after the couple's finances and financial problems for a long time and because she wanted to do as much as she could to look after their three children.

[18] Finally, she confirmed that it was plausible that the Claimant never knew that he was receiving Employment Insurance payments to which he was not entitled. However, she mentioned that he was also responsible for looking after his Employment Insurance file.

[19] The Tribunal finds that the General Division's analysis was guided by the principles established by the Federal Court of Appeal on similar matters. The Court gave a ruling on situations in which the claimant alleges that their Employment Insurance reports were produced by a third party.² The Court held that the question to be answered in all cases **where an overpayment exists** and where the claimant alleges that fraud has taken place is:

- a) whether a third party fraudulently caused the Commission to make overpayments and, if so,
- b) whether the fraud was committed with the claimant's knowledge and with their consent?

[20] The General Division found that the false declarations that the Claimant's ex-partner made led the Commission to make overpayments of Employment Insurance benefits.

[21] The General Division considered that the Claimant freely and voluntarily gave his access code and his Social Insurance Number to his ex-partner so that she could complete his Employment Insurance Reports. The General Division also considered that the overpayments had been deposited into the joint bank account and that the benefits were used to support the family. It therefore found that the Claimant could not claim that his

² *Canada (Attorney General) v Lylander*, 2008 FCA 365.

ex-partner had received all of the overpayments without his knowledge or without his consent.

[22] The General Division, which had the benefit of hearing the Claimant's testimony, evidently did not assign much weight to the Claimant's argument that he received all of the benefits without his knowledge or consent during the periods from May 11, 2014, to February 7, 2015, and from January 24 to April 2, 2016: 23 false declarations generating a total overpayment of \$19,183. The couple was dealing with financial difficulties, and they had to care for their three children. Based on the evidence, the General Division therefore found that the ex-partner's false declarations were made with the Claimant's knowledge and consent.

[23] The General Division also found that section 38(1) is worded such that once it has been established that a person has been designated to provide information on behalf of a claimant and that this person knowingly produces false Employment Insurance reports, the claimant is responsible, whether they know or not that the person presented false information on their behalf.

[24] Did the General Division err by finding that the Claimant was responsible under section 38(1) of the EI Act in that he delegated to another person the task of submitting his Employment Insurance reports and that the evidence on file shows that this person acting on his behalf did knowingly make a false or misleading statement regarding a claim for benefits?

[25] The Tribunal does not believe so.

[26] The Tribunal must make it clear that the issue at hand is not about calculating the amount of benefits that were overpaid to the Claimant. The issue is rather about imposing a penalty on the Claimant for false or misleading statements.

[27] However, the wording of section 38(1) of the EI Act is clear and specifically states that once it has been established that a person has been designated to provide information on behalf of a claimant and that this person knowingly produces false

Employment Insurance reports, the Claimant is responsible, whether they know or not that the person presented false information on their behalf.

[28] The obvious purpose of this provision is to ensure that the claimant remains responsible for the accuracy of statements made to the Commission, even if they are made by a third party.

[29] Case law has also established that when a person has been duly authorized to act on behalf of a claimant, whether that claimant is aware or not of their representative's actions, the claimant will be held responsible for the false or misleading statements made by this representative.³

[30] Because the Claimant assigned his ex-partner the task of completing his Employment Insurance reports, he accepted responsibility for his actions. The evidence on file is sufficient to show that his ex-partner, acting on his behalf regarding an application for benefits, knowingly made a false or misleading statement. It was therefore reasonable to impose a penalty on him under section 38(1) of the EI Act.

[31] The Tribunal also finds that there is no reason to intervene regarding the notice of violation, as the General Division had found.

[32] For the above-mentioned reasons, it is appropriate to dismiss the appeal.

³ CUB 72264, CUB 61264, CUB 58444, CUB 45078A, CUB 37492, CUB 35410, CUB 29896, CUB 26824, CUB 22309.

CONCLUSION

[33] The Tribunal dismisses the appeal.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	October 25, 2018
METHOD OF PROCEEDING:	Teleconference
PERSONS IN ATTENDANCE:	Gilbert Nadon, Representative for the Appellant N. M., Appellant