



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

V. A. v Canada Employment Insurance Commission, 2018 SST 1325

Tribunal File Number: GE-18-945

BETWEEN:

V. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Frenette

HEARD ON: November 19, 2018

DATE OF DECISION: November 27, 2018

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Canada Employment Insurance Commission (Commission) contacted the Appellant about irregularities in the reports of a claimant who accused her of completing his reports. The evidence shows that the Appellant submitted reports online on behalf of the claimant without reporting his income for periods he worked. The Commission determined that the Appellant had made false statements on the claimant's behalf, and it imposed a penalty of \$820. The Appellant disputes the Commission's decision because she believes that the claimant was aware of her actions. The Tribunal must therefore determine whether the Appellant knowingly made false or misleading statements on the claimant's behalf.

ISSUES

[3] Did the Appellant knowingly make false or misleading statements on the claimant's behalf?

[4] If so, did the Commission act judicially in imposing a monetary penalty on the Appellant?

ANALYSIS

[5] The Commission may impose a penalty on a claimant, or any other person acting for a claimant, if the claimant or other person has made a representation that the claimant or other person knew was false or misleading in relation to a claim for benefits (section 38(1) of the *Employment Insurance Act* (Act)).

Did the Appellant knowingly make false or misleading statements on the claimant's behalf?

[6] Firstly, the onus is on the Commission to prove that the claimant or the person acting for them—in this case, the Appellant—knowingly made a false or misleading statement (*Canada (Attorney General) v Purcell*, [1996] 1 FCR 644). Then, if the Commission meets its burden, it is

on the claimant or the person acting for them to explain why their responses were inaccurate (*Purcell, supra*).

[7] For a statement to be false or misleading, the claimant or the person acting for them must have subjective knowledge of the fact that they were making a false or misleading statement (section 38(1) of the Act; *Purcell, supra*; *Mootoo v Canada (Minister of Human Resources Development)*, 2003 FCA 206).

[8] The use of the term “knowingly” in section 38(1) of the [sic] ensures that unwittingly making false or misleading statements is not subject to administrative penalties. This notion, therefore, restricts the Commission’s power of imposing penalties to only those false or misleading statements made by a person in full knowledge of the facts (*Canada (Attorney General) v Gates*, A-600-94).

[9] The notion of “knowingly making” a false statement does not imply a dimension of fraud or an intention to defraud the Commission (*Canada (Attorney General) v Bellil*, 2017 FCA 104).

[10] The Commission provided as evidence the claimant’s reports on file for the period of February 5, 2017, to May 6, 2017. During this period, the claimant did not report any hours worked or any amount of money, although the Record of Employment X showed that he worked 835 hours between February 22, 2017, and July 21, 2017.

[11] Because of this, the Commission contacted the claimant. The claimant indicated that the Appellant was his former partner and that he had asked her to complete his Employment Insurance reports. The claimant had given her the access code to his Employment Insurance account on the Service Canada website.

[12] According to the claimant, the Appellant had his bank cards and she had access to his bank account. Furthermore, since the claimant had a habit of spending money, the Appellant looked after managing the budget and paying all their expenses. The claimant stayed in an apartment with the Appellant during the employment period. The claimant stated to the Commission that he was not aware that he had been paid benefits. According to the claimant, the

Appellant transferred the entire payment of his Employment Insurance benefits the same day he received them in his bank account, as is evident from the bank statement.

[13] On August 3, 2017, the Commission contacted the Appellant. She confirmed that the claimant was her former partner. According to the Appellant, she completed the claimant's reports and transferred the benefits into her own account, but the claimant was aware of this. She added that the claimant was not concerned about his Employment Insurance benefits. For example, when he was called to a meeting, the claimant did not attend because he was working. Furthermore, when the Commission cut his benefits, the claimant was indifferent because he was working. The Appellant confirmed that she managed the budget and that the wages and the benefits were transferred to her own bank account. The Appellant confirmed that the claimant had a habit of spending money, that he had nothing to his name, and that she managed all the expenses, including the rent, telephone, cable, and cell phone in her name that the claimant used. The Appellant also mentioned that she transferred not only the benefits, but also the claimant's wages, to her account. The Appellant had had the claimant's permission to transfer these amounts of money. The Appellant confirmed that the claimant asked her to falsify the reports, and she did so. The Appellant explained to the Commission that she was aware that what she was doing was not right but that it was the claimant's problem.

[14] Given the Appellant's statement and because she was acting for the claimant, the Commission imposed a penalty on her.

[15] As part of the reconsideration request, the Appellant stated that the claimant was never her partner; he was simply someone she let stay in her home. Furthermore, the Appellant stated that she never had access to the claimant's file. The Appellant was not aware that the claimant had gone back to work because he did things on his own. In this way, the Appellant denied the information that she had given to the Commission on August 3, 2017, because she was giving the answers the Commission wanted to hear then. The Appellant denied completing the reports without reporting the claimant's earnings, and she denied taking the money from his benefits.

[16] As part of the notice of appeal, the Appellant stated that she was unaware of the claimant's fraud. The Appellant stated that she was not in a relationship with him and that she

was almost never at home because she worked every day. According to the Appellant, the claimant left without leaving a forwarding address, and he is placing the blame for fraud on her.

[17] The Commission provided as evidence the claimant's bank statements that show that his wages and the Employment Insurance benefits were transferred to another bank account.

[18] According to the Appellant, the bank statements that the claimant provided show only that the claimant transferred his money to another bank account and not that she had stolen from him. The Appellant stated that the claimant himself transferred money to her to pay his share of the rent because he lived at her place. The Appellant stated that she was never home and that she was unaware that he had gone back to work.

[19] At the hearing, the Appellant explained that she and the claimant were initially in a relationship but not when he was receiving benefits. Moreover, the Appellant helped him create a budget and reminded him when he needed to pay the bills. The Appellant stated that she never took money from his account because he made transfers to pay the bills. Furthermore, the Appellant stated that the claimant was aware of the reports that she completed and that he agreed to her completing them. Therefore, the Tribunal asked the Appellant whether by this statement she was confirming that she had completed the reports. The Appellant answered by saying that she had helped the claimant complete his initial report because he did not know how.

[20] The Appellant explained that she did not take money from the claimant's bank account but that he made transfers to her personal account so that she could pay the bills.

[21] The Appellant also explained that she was unaware that the Appellant had gone back to work. After all, he was at their apartment when she left for work and when she got back at the end of the day.

[22] The Tribunal asked the Appellant about her August 3, 2017, statement where she admitted to falsifying the claimant's reports. The Appellant stated that she did not make this statement to the Commission. The Appellant did not give any more detail about this version of events.

[23] According to the Commission, the Appellant knew that she was making false statements because she knew that the claimant had worked between February 22, 2017, and May 6, 2017, even though she reported to Service Canada that he had not worked and that he had not received any earnings. In fact, the Commission [*sic*], the Appellant admitted that she had made false statements on the claimant's behalf but that it was the claimant's problem. After the Commission imposed the penalty, the Appellant denied all of the statements that she had made earlier. According to the Commission, changing the version of events like this is suspicious because a spontaneous statement made before someone gets a detailed understanding of the necessary facts is generally preferred over a statement made after someone has been informed of the outcome. In the Commission's view, more weight must be given to initial and spontaneous statements (*Lévesque v Canada Employment and Immigration Commission*, A-557-96).

[24] The Tribunal is of the view that the Appellant knowingly made false or misleading statements to the Commission.

[25] The Appellant offered two conflicting accounts. The Tribunal accepts the Appellant's first version given to the Commission on August 3, 2017, in which she admits that she made false or misleading statements because this is the most plausible account (GD3-53).

[26] The fact the Appellant mentioned that she told the Commission what the investigator wanted to hear is very unlikely because she admitted facts to the Commission that were not in her favour. Moreover, the Tribunal finds that the fact the Appellant denied the entire statement she made to the Commission after receiving the penalty affects the credibility of her second version. Therefore, the first version is the most plausible and likely account.

[27] Moreover, the Tribunal cannot accept the statement from the Appellant simply claiming that she did not make the first statement on August 3, 2017, because there is insufficient evidence. The Appellant did not question the Commission investigator's credibility and has not pointed to any evidence supporting her claim.

[28] Therefore, the Tribunal is of the view that the Appellant knowingly made a false or misleading statement on the claimant's behalf.

[29] First, the Tribunal is of the view that the Appellant acted for the claimant. The Appellant admitted in her August 3, 2017, statement that she had the claimant's access code and that she completed the reports because he asked her to (GD3-53). Furthermore, the Appellant told the Tribunal that she had helped the claimant complete his initial report.

[30] Next, the Tribunal is of the view that the Appellant had subjective knowledge that the reports she was completing were false because she knew that the claimant was working.

[31] In her August 3, 2017, account, the Appellant said more than once that the claimant worked to explain his disregard for his Employment Insurance benefits.

[32] Furthermore, the Appellant admitted that the claimant's wages were transferred to her personal account so that she could pay for housing and other expenses for the claimant. Therefore, the Appellant could not have been unaware that the claimant worked.

[33] Moreover, the Appellant admitted in her August 3, 2017, statement to the Commission that she had falsified the reports and that she had failed to report that he had worked for the employer (GD3-54).

[34] Therefore, the Tribunal is of the view that the Appellant knowingly made false or misleading statements (*Purcell, supra*). The Appellant did not provide any credible explanation for these statements (*Purcell, supra*).

If so, did the Commission act judicially in imposing a monetary penalty on the Appellant?

[35] As a result of a false or misleading statement, the Commission has the discretion to impose a penalty and set the penalty amount.

[36] The Tribunal must determine whether the Commission acted judicially in imposing a monetary penalty on the Appellant (*Purcell, supra*). Therefore, the Commission must not have:

- a) acted in bad faith;
- b) considered irrelevant factors or ignored a relevant factor; or

c) acted in a discriminatory manner (*Purcell, supra*).

[37] The Tribunal can change the penalty amount only if “it can be shown that 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” (*Canada (Attorney General) v Uppal*, 2008 FCA 388; *Canada (Attorney General) v Tong*, 2003 FCA 281).

[38] The Commission may use guidelines to quantify the penalty to impose (*Canada (Attorney General) v Gagnon*, 2004 FCA 351). Therefore, if the Commission relies on these guidelines and on all the extenuating circumstances on file, the Tribunal should not intervene (*Gagnon, supra*).

[39] The Commission explained that the false statements resulted in an overpayment of \$2,732. The Commission set the amount of the penalty at 50% of the overpayment, in accordance with the guidelines for an initial act or omission (*Gagnon, supra*). Then, the Commission considered the fact that the claimant had accumulated debt and did not have the means to borrow and that the Appellant looked after managing his budget as an extenuating circumstance. The Commission therefore reduced the penalty by 20% of the overpayment amount for a total of \$820 ($(2,732 \times 50\%) - (2,732 \times 20\%) = \820).

[40] The Commission is of the view that the Tribunal should not intervene because the Commission imposed the penalty based on its guidelines and the extenuating circumstances on file.

[41] The Tribunal finds that it does not have to intervene in this case because the Commission acted judicially in imposing a monetary penalty.

[42] Firstly, the Commission used the guidelines for setting an initial amount of 50% of the overpayment (*Gagnon, supra*).

[43] Secondly, the Commission considered the extenuating circumstances to reduce the penalty by 20% of the overpayment. Indeed, the Commission considered the fact that the claimant had accumulated debt and did not have the means to borrow and that the Appellant looked after managing his budget.

[44] Thirdly, the Commission did not fail to consider other relevant extenuating circumstances, and it did not consider any irrelevant facts. Moreover, the evidence does not show that the Commission acted in a discriminatory manner or in bad faith in imposing a penalty.

[45] The Tribunal is of the view that the Commission acted judicially when it imposed a penalty of \$820 (*Purcell, supra; Uppal, supra; Tong, supra*).

CONCLUSION

[46] The appeal is dismissed. The Appellant acted for the claimant, and she knowingly made false or misleading statements. A penalty of \$820 is imposed on the Appellant.

Catherine Frenette
Member, General Division – Employment Insurance Section

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| HEARD ON: | November 19, 2018 |
| METHOD OF PROCEEDING: | Videoconference |
| APPEARANCES: | V. A., Appellant |