



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. E. v Canada Employment Insurance Commission*, 2019 SST 894

Tribunal File Number: GE-18-3772

BETWEEN:

R. E.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

HEARD ON: February 13, 2019 and March 6, 2019

DATE OF DECISION: March 19, 2019

DECISION

[1] The appeal on all issues is dismissed. I find that the claimant be imposed a penalty for knowingly providing false or misleading statements to the Commission In addition, the Commission did exercise its discretion properly when it imposed a serious notice of violation.

OVERVIEW

[2] The Appellant, R. E., whom I will refer to as the claimant made a renewal claim for employment insurance benefits (EI) on December 11, 2016. At the time, he filed his renewal application he stated that he had not worked since his last application that he had filed on January 5, 2016.

[3] The Canada Employment Insurance Commission, whom I will refer to as the Commission performed an investigation and it was revealed that the claimant had worked for X and lost his employment because he was unable to drive due to a driving under the influence (DUI). The Commission provided the claimant an opportunity to explain why he had failed to disclose this employment on his renewal application for benefits.

[4] The claimant explained he had received a DUI on December 5, 2016, and he was let go from his job because he lost his drivers licence and the employer had no other jobs available to him.

[5] The Commission determined that the claimant had provided a false or misleading statement when he renewed his application for knowingly failing to report that he had worked since his last application and that he had lost his job because he received a DUI. The Commission imposed a penalty and a very serious notice of his violation.

[6] The claimant appealed the decision to the *Social Security Tribunal* (Tribunal) arguing that he provided the Commission with a record of employment that listed his reason for separation as “K Other” and now two years later is being reviewed. In addition, he argues that he never filed a renewal application but an initial claim.

PRELIMINARY MATTERS

[7] A hearing was scheduled for January 16, 2019; however, the claimant did not attend because he had never received his notice of hearing. An adjournment was granted and a hearing was scheduled for February 13, 2019. The claimant attended the hearing but did not have his docket. He agreed to proceed with the hearing. However, this hearing was disconnected due to a technical difficulty. The claimant had been advised at the beginning of the hearing that if there was a disconnection during the hearing, the claimant was to call back and/or call the Tribunal at the telephone number of his notice of hearing. The claimant did not call back, and several attempts were made by the Tribunal to contact him. On February 15, 2019, a second adjournment was granted and a hearing was scheduled for March 6, 2019. On March 4, 2019, the Tribunal contacted the claimant who confirmed he received the notice of hearing and his docket.

ISSUES

[8] Should a penalty be imposed on the claimant?

[9] Did the claimant make a false or misleading statement? If so, was it made knowingly?

[10] Did the Commission exercise its direction properly with respect to the penalty amount?

[11] Did the Commission exercise its discretion properly when it imposed a Notice of Violation?

ANALYSIS

Issue 1: Should a penalty be imposed on the claimant?

[12] Penalties may be imposed for false statements made "knowingly".¹ "Knowingly" is determined on the balance of probabilities based on the circumstances of each case or the evidence of each case.²

¹ Section 38 of the EI Act is the provision that allows the Commission to impose a penalty for any misrepresentation, which is knowingly made the claimant.

² Gates A-600-94

[13] I find a penalty is warranted because on the balance of probabilities, the claimant knowingly made false or misleading statements to the Commission when he failed to disclose that he had worked for X and for disclosing the reason he lost his employment.

Issue 2: Did the claimant make a false or misleading statement and was it made knowingly?

[14] Yes, I find that the claimant knowingly provided false or misleading statements to the Commission because on the balance of probabilities, he knew that he had worked since his last application for benefits. In addition, he knew, the reason he was no longer working, was that he had lost his driver's licence due to a DUI.

[15] It is not enough for the representation to be false or misleading; for a penalty to apply it must be made by the claimant with the knowledge that it is false or misleading.³ There is no requirement to show that there was a mental element, such as the intention to deceive, when concluding that a false statement was knowingly made.⁴ The onus of proof is on the Commission to show that the claimant knowingly made a false or misleading statement or representation.

[16] The Commission submits that in the case at hand, it has met the onus of establishing that the claimant made a misrepresentation when he submitted biweekly reporting declarations to claim benefits having knowingly omitted to furnish information that he had worked for X on his application and had lost that job due to a DUI. The Commission submits that the claimant knew that he had worked for this employer and provided no reasonable explanation for failing to disclose that information as fact.

[17] I am satisfied that the Commission has met the onus as it provided a copy of the claimant's renewal application for benefits where the claimant answered "No" to the question, "Have you worked since you completed your last application for Employment Insurance Benefits?" The claimant accepted that he agreed that accepted his rights and responsibilities and that he accepted the attestation to submit his application for EI benefits.

³ Mootoo A-438-02

⁴ Gates A-600-94

[18] The burden of proof now shifts to the claimant to prove the statements were not made knowingly and provide a reasonable explanation for the incorrect information.

[19] The claimant stated to the Commission that when he filed his application for benefits the record of employment (ROE) indicated the reason for his separation was "K Other" and it should have been determined at that time he did not qualify for benefits. He stated that he did not file a renewal application but rather a new claim with a new ROE.

[20] In a further conversation with the claimant, the Commission explained to the claimant that he had filed a renewal application and he answered no to the question, "Have you worked since you last completed your last application for Employment Insurance Benefits?" Because of this answer, his claim was renewed and he started receiving benefits. In addition, the Commission asked the claimant why he would not contact the Commission if he knew the reason for separation was a dismissal due to losing his driver's licence because of a DUI. The claimant's response is that he had no intention to defraud the government.

[21] The claimant testified that in regards to the misrepresentation he does not believe he did anything wrong. He stated he got a DUI on December 5th and he was issued an ROE on December 11th. He stated that he went to apply for EI and he asked the agent what K stood for and she explained it meant other. He stated that in the comment box, it stated that he had received a DUI. The claimant stated that after he filed, he received his benefits quickly and until April 2017. He stated that when his claim ended he was going back to work.

[22] The claimant testified that he does not believe he opened an existing claim and he wants dates of when he started this claim and when it ended. He stated that he wants to know whom he was working for when this claim started because he cannot remember. He stated that the Tribunal should have all his information on his past claims and his past employers and he is not going to pay this money back and he does not know why the Tribunal cannot tell him, as they are to have all the answers.

[23] The claimant testified that he does not know why he answered "No". In addition, he does not understand how answering this question wrong can make a difference. He stated that he has

been on EI 100 times and have never had an issue. He stated that the next time he does not understand a question he will ask.

[24] The claimant testified that he does not recall making a claim for EI on July 24, 2017, and he answered “No” to the same question as being alleged by the Commission. He stated that he was issued an ROE electronically from X, but did not have enough hours. In addition, he is not sure if he applied for EI because he thinks he started working on August 1, 2017, for X.

[25] I considered the claimant’s argument that he believes I should know or be able to provide him with all the information as it related to his past employment insurance claims and where he worked in the past. However, I am tasked with rendering a decision on the issue before me, and in this case, if the claimant should be issued a penalty for knowingly providing false or misleading information to the Commission. As well, the burden is on the claimant to prove the statements were not made knowingly and provide a reasonable explanation for the incorrect information. As, is the claimant to prove if and where he worked.

[26] I am not satisfied that the claimant provided a reasonable explanation, in that he did not know he was filing an existing claim because he is very experienced with the EI program. As he conveyed that, he has had 100 claims for employment insurance over the years and the question is very simple. “Have you worked since you completed your last application for Employment Insurance Benefits?”

[27] I find from the claimant’s statements that the Commission should not have paid him if he was not eligible for benefits because he lost his job due to a DUI would suggest, on the balance of probabilities, he should have known to disclose this information to the Commission.

[28] The claimant argued that he does not think he did anything wrong and he cannot understand how marking the answer incorrectly could cause him all this trouble. He stated his ROE indicated “K” and in the comment box, it stated he had gotten a DUI, and he asked the agent what it meant so the Commission should have known.

[29] I do not find that the evidence can support his argument because a claimant has a responsibility to provide the Commission with correct information and/or make them aware of their own situation. In this case, the claimant acknowledged on his renewal application that the

information was correct and in doing so, the Commission took his information to be truthful and proceeded with his claim in a prompt manner as confirmed by the claimant. However, the facts are the claimant had worked since he last filed a claim, which he answered wrong. He never advised the Commission as to the reason he had become unemployed, and in particular, that he received a DUI. I accept the Commission's submission that the record of employment was issued by the employer via the internet and was not a disclosure by the claimant,

Issue 3: Did the Commission exercise its direction properly with respect to the penalty amount?

[30] Yes, I find the Commission exercised its discretion properly in determining the amount of the penalty because it considered all the information and explanations and the claimant did not provide any mitigating circumstances to the Commission or to me at the hearing.

[31] I considered the claimant's argument that he did not know he had an existing claim if I would consider a mitigating circumstance. However, I am not convinced the claimant did not know because as he testified he is a frequent user of the EI program. He knew his benefits came quickly and he was only allowed to collect for 16 weeks. I am of the view that a person who has used the EI program at least 100 times, as stated by the claimant would know he was activating a renewal claim or a new claim. In addition, I am of the view that the claimant would know how to answer the questions correctly.

[32] There is no authority to interfere with discretionary decisions of the Commission unless it can be shown 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.⁵

[33] The Commission submits that in the case at hand, it has met the onus of establishing that the claimant made a misrepresentation when he submitted biweekly reporting declarations to claim benefits having knowingly omitted to furnish information that he had worked for X on his application and had lost that job due to a DUI. The Commission submits that the claimant knew

⁵ *Uppal* 2008 FCA 388; *Mclean* 2001 FCA 5; *Rumbolt* A-387-99

that he had worked for this employer and provided no reasonable explanation for failing to disclose that information.

[34] I accept the Commission's submission that the penalty was imposed at a rate of 50% of the related \$8,384.00 overpayment for a first offence for making a false statement on an application for benefits and then collecting eight claims for benefits based on that false statement. This resulted in a penalty of \$4,192.00 being imposed.

Issue 4: Did the Commission exercise its discretion properly when it imposed a Notice of Violation?

[35] I have the jurisdiction to determine whether the Commission has exercised its discretion in a judicial manner when issuing the notice of violation.⁶ In order for me to intervene with the Commission's decision, I must determine that the Commission did not exercise its discretion in a judicial manner when it decided to issue the notice of violation.

[36] I cannot intervene, because I find, that the Commission did exercise its discretion properly when it imposed a serious notice of violation. I find the Commission acted judicially because it considered the overall impact to the claimant of issuing a notice of violation, including mitigating circumstances, prior offences and the impact on the ability of the claimant to qualify on future claims, it is determined that a violation is applicable in this case.

[37] The Commission submits the discovery of a misrepresentation resulted in an overpayment of \$8,384.00. Consequently, the claimant accumulated a violation qualified as very serious.⁷

[38] The claimant testified that if he did make a mistake it was an honest one and he had no reason to try to commit fraud against the government. He stated that there were no mitigating circumstance to consider. He stated that he does not plan on going on EI for a long time. He

⁶Gill v. Canada (AG), 2010 FCA 182

⁷ Section 7.1(5) categorizes the violation according to the severity of the misrepresentation. The classification of the violation will be determined only in accordance with the amount of the overpayment resulting from the misrepresentation. The amount of the penalty is not a factor in the determination of the said classification.

stated that if he loses this employment he would be able to find other work, as things in BC are good right now.

[39] I am convinced of this because the claimant did not provide any mitigating circumstances during the hearing to be considered and he testified that he did not feel he would need EI again for a very long time, I find the Notice of Violation would not have an impact on his ability to qualify for a future claim.

CONCLUSION

[40] The appeal is dismissed.

Teresa Jaenen

Member, General Division - Employment Insurance Section

HEARD ON:	March 6, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. E., Appellant