



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. B. v Canada Employment Insurance Commission*, 2019 SST 578

Tribunal File Number: AD-18-565

BETWEEN:

K. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Pierre Lafontaine

DATE OF DECISION: June 11, 2019

DECISION AND REASONS

DECISION

[1] The Tribunal allows the appeal only on the issue of penalty.

OVERVIEW

[2] The Appellant, K. B. (Claimant), filed an application for employment insurance benefits. The Canada Employment Insurance Commission (Commission) conducted an investigation that revealed that the Claimant was employed during the benefit period. The Commission determined that the wages that the Claimant received constituted earnings according to subsection 35(2) of the *Employment Insurance Regulations* (EI Regulations) and according to subsection 36(4) of the EI Regulations, allocated this money to the weeks in which the work was performed. This decision resulted in an overpayment of \$8,084.00. Furthermore, the Commission imposed a penalty for \$4,042.00 because the Claimant made 11 misrepresentations by knowingly providing false or misleading information.

[3] The General Division found that the Claimant knowingly made false and misleading statements when she reported that she did not work and did not earn any money. It also found that the Commission exercised its discretion judiciously when calculating the penalty amount.

[4] The Appeal Division granted the Claimant leave to appeal. She puts forward that the General Division ignored evidence that supports her position that she did not knowingly provide false and misleading statements. She puts forward that the General Division only considered the Commission's position in deciding the issue. She also submits that the General Division decision contains conclusions that are contrary to its own findings.

[5] The Tribunal must decide whether the General Division erred when it concluded that a penalty was justified pursuant to section 38 of the *Employment Insurance Act* (EI Act).

[6] The Tribunal allows the appeal only on the issue of penalty.

ISSUE

Did the General Division err when it concluded that a penalty was justified pursuant to section 38 of the EI Act?

ANALYSIS

Appeal Division's mandate

[7] The Federal Court of Appeal has determined that when the Appeal Division hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act), the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act.¹

[8] 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.²

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

Issue: Did the General Division err when it concluded that a penalty was justified pursuant to section 38 of the EI Act?

[10] The Claimant is not contesting that the money she received where earnings and that said earnings had to allocated pursuant to sections 35 and 36 of the EI Regulations.

[11] The only issue before the Appeal Division is whether the General Division erred when it concluded that a penalty was justified under section 38 of the EI Act.

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

² *Idem*.

[12] The Claimant argues that she did not knowingly provide false information to the Commission because she was following the employer's instructions. She puts forward that the employer told her to collect the benefits because it was a temporary job and to put the money aside in case she would be obliged to reimburse the benefits.

[13] The Commission puts forward that the General Division erred in law when it found that the electronic reports proved that the Claimant knowingly made false and misleading statements when she reported that she did not work and did not earn any money and therefore a penalty had to be imposed. It argues that the reports only support that the Claimant incorrectly completed the reports but does not automatically prove that the Claimant had the subjective knowledge that she knew she was making false or misleading statements.

[14] In appeal, the Commission concedes that it is unable to support that it exercised its discretion in a judicial manner when imposing the penalty pursuant to section 38 of the EI Act.

[15] In light of the above, and after review of the file, the Tribunal agrees with the Commission's representations and allows the Claimant's appeal on the issue of penalty.

[16] The Claimant argues that she should not have to repay the benefits she received since her employer misinformed her, and later released her before she had sufficient hours to re-qualify for EI benefits. She was then obliged to use the benefits she had initially set aside to support herself financially.

[17] Unfortunately for the Claimant, the Federal Court of Appeal case law has clearly establishes that a claimant who receives an amount without being entitled to it, even as a result of a mistake by the employer, is not excused from repaying the amount.³

[18] The Claimant further argues that that the Commission should deduct the taxes and employment insurance premiums from the overpayment. As suggested by the Commission, the Claimant may wish to contact the Canada Revenue Agency regarding

³ *Lanuzo v Canada (Attorney General)*, 2005 FCA 324.

the possible refund of the income taxes paid on the employment insurance benefits that must now be repaid, thereby recovering the difference between the gross and the net amount of the overpayment.

CONCLUSION

[19] The Tribunal allows the appeal only on the issue of penalty.

Pierre Lafontaine
Member, Appeal Division

HEARD ON:	June 4, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	K. B., Appellant X, representative of the Appellant