



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. G. v Canada Employment Insurance Commission*, 2019 SST 786

Tribunal File Number: AD-19-280

BETWEEN:

C. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: August 20, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant, C. M. (Claimant), applied for Employment Insurance regular benefits. He said that he last worked on September 1, 2017, for X, and that he did not have any employment earnings after this date. The Respondent, the Canada Employment Insurance Commission (Commission), began to pay benefits to the Claimant, but later, it learned that the Claimant had in fact worked after September 1, 2017, for X (doing business as X).¹ The Commission also learned that the Claimant had not declared all of his earnings that he got from X.²

[3] After allocating these additional earnings from both X and X, the Commission determined that it had overpaid Employment Insurance benefits to the Claimant. At the same time, the Commission found that the Claimant had made false representations about his employment and his earnings, so it decided that he had to pay a penalty. It also gave him a notice of violation.³ So, the Claimant ended up with an overpayment, a penalty and a violation. This meant that he had to pay back benefits as well as a penalty and that he would need to work more hours to qualify for any benefits in future. The Commission reduced the amount of the penalty on reconsideration to \$336, but the violation remained against the Claimant.⁴

[4] The Claimant appealed the reconsideration decision to the General Division, but it dismissed his appeal. The Claimant is now appealing the General Division's decision on the ground that the General Division may have failed to provide the Claimant with a full and fair opportunity to present his case regarding the penalty and violation.

¹ See Record of Employment, dated November 6, 2017, from X (doing business as X), at GD3-16. The Record of Employment showed that the Claimant worked and got paid from September 11, 2017 to October 12, 2017. The Commission also requested payroll information from the employer. See Request for Payroll Information, at GD3-41 to GD3-49.

² See Commission's letter dated March 22, 2018, regarding employment at X, at GD3-32 to GD3-34.

³ See Commission's letter dated March 22, 2018, at GD3-22 to GD3-34, and letter dated August 13, 2018, regarding employment at X, at GD3-55 to GD3-58.

⁴ See Commission's reconsideration decision dated December 20, 2018, at GD3-70 to GD3-71.

[5] I find that the General Division may not have fully explained that mitigating factors could affect the amount of the penalty, however, the Claimant gave evidence about any mitigating circumstances anyway, and the General Division considered them. The Claimant does not allege that he had anything else to add. The appeal is dismissed.

ISSUE

[6] Did the General Division fail to observe a principle of natural justice by failing to provide the Claimant with a full and fair opportunity to present his case?

GROUND OF APPEAL

[7] The only three grounds of appeal under subsection 58(1) of the *Department of Employment and Social Development Act* are:

- a. the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b. the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- c. the General Division 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.

ANALYSIS

Did the General Division fail to observe a principle of natural justice by failing to provide the Claimant with a full and fair opportunity to present his case?

[8] The Claimant's focus throughout these proceedings has been whether he had just cause for leaving his employment with X (doing business as X), rather than on the appropriateness and the amount of the penalty and violation that the Commission placed on him. Nevertheless, the Claimant argues that the General Division failed to observe a principle of natural justice by failing to provide him with a full and fair opportunity to present his case. In particular, he claims that the General Division member spoke with him before the hearing, leading him to believe that

he had already proven his case and that he therefore did not have to say anything once the hearing officially started. He also claims that if the General Division member explained what the hearing was about, he would have tried to explain his case better.⁵

[9] I have listened to the audio recording of the General Division hearing. The General Division member explained how the penalty and violation arose. The member also explained that he could not interfere and change the penalty if the Commission had assessed the amount of the penalty in a “judicial manner,” or, in other words, that it had acted in good faith, taking into account all relevant factors and ignoring irrelevant ones. The member also explained that he could look at any mitigating circumstances.⁶

[10] It may not have been evident from the General Division member’s comments that the General Division could consider mitigating factors for both the penalty and violation issues. In this regard, the Claimant may have been left with the impression that the General Division could consider mitigating factors for only the violation. If so, then the Claimant may not have given evidence about any mitigating factors that the member could have considered when it examined the appropriateness of the amount of the penalty.

[11] However, I find that the Claimant gave evidence about his mitigating circumstances anyway. So, although the General Division member gave incomplete remarks by not explicitly mentioning that he could consider mitigating factors when he decided the appropriateness of the amount of the penalty, ultimately, it did not affect the General Division member’s assessment. The General Division found that the Commission had considered all the relevant circumstances when it assessed the amount of the penalty.⁷ The Commission had already reduced the amount of the penalty on reconsideration. It had considered the Claimant’s youth and inexperience with the Employment Insurance process and his financial situation.

⁵ After the hearing on July 18, 2019, I asked the Claimant to clarify what evidence or arguments he would have made about the penalty and violation issues, if there had not been any pre-hearing discussion with the General Division member. The Claimant responded on August 14, 2019, at AD4.

⁶ At approximately 22:22 and 27:08 of audio recording of General Division hearing.

⁷ See General Division decision at paragraph 8. See also Commission’s assessment of penalty and violation, at GD3-51 to 54, and GD3-67 to GD3-69.

[12] In my letter dated August 6, 2019, I asked the Claimant whether there was any additional information that he wanted to give, or what he might have said about the penalty and violation issues at the General Division hearing.

[13] The Claimant did not provide any additional information or suggest that there were any further mitigating factors that either the Commission or the General Division member had not already considered. The Claimant did not suggest that he would have said anything else or said anything differently about the penalty or violation issues, or what led up to them. The Claimant has never denied that he knowingly gave false or misleading statements to the Commission or that he withheld correct information.

[14] I find that the General Division member should have explained that mitigating factors could be considered when examining the amount of the penalty. This way, the Claimant could have known the full extent of the case that he had to meet. However, at the same time, I find that the Claimant did not have any additional mitigating factors to offer that the Commission had not already considered when it reconsidered and reduced the amount of the penalty.

CONCLUSION

[15] The appeal is dismissed.

Janet Lew
Member, Appeal Division

HEARD ON:	July 18, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. M., Appellant S. Prud'Homme, Representative for the Respondent (by way of written submissions only)