



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. C. v Canada Employment Insurance Commission*, 2019 SST 955

Tribunal File Number: GE-19-2823

BETWEEN:

J. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

HEARD ON: August 21, 2019

DATE OF DECISION: August 29, 2019

DECISION

[1] I am dismissing the Claimant's appeal. I do not have the authority to order the Commission to forgive his debt.

OVERVIEW

[2] The Claimant received employment insurance sickness benefits. He continued collecting sickness benefits after he returned to work. However, he did not report any earnings on his biweekly claimant reports. The Canada Employment Insurance Commission (Commission) learned that the Claimant did not report his earnings. The Commission asked the Claimant to repay the benefits he should not have received. The Commission also decided that the Claimant knew that the information on his biweekly claimant reports was incorrect. The Commission decided that the Claimant also had to pay a penalty. The Claimant asked the Commission to review its decision. The Commission reduced the penalty. The Claimant appealed to the Tribunal.

[3] I am dismissing the Claimant's appeal. The Claimant knew that the information on his biweekly claimant reports was incorrect. He knowingly made false statements. The Commission set the penalty amount at \$374. This is a reasonable amount for a penalty. I do not have the authority to order the Commission to forgive the entire debt.

PRELIMINARY MATTERS

[4] The Commission argues that the Claimant never asked it to review its decision about his earnings. At the hearing, the Claimant said that he believed the employer's information about his earnings was trustworthy. He said that he agreed that the earnings the employer reported were correct.

[5] Because the Claimant agrees with the earnings information, I will not make a decision about the earnings the Commission applied to each week. I will only consider whether the Claimant knowingly made false statements, whether the Commission acted fairly when it set the penalty amount, and whether I have the power to forgive the Claimant's debt.

ISSUES

[6] Issue 1 – Did the Claimant knowingly make false statements on his biweekly claimant reports?

[7] Issue 2 – Did the Commission exercise its discretion judicially when it set the penalty amount?

[8] Issue 3 – Do I have the authority to order the Commission to write off the Claimant's debt?

ANALYSIS

[9] You must give the Commission correct information when you complete your biweekly claimant reports. If you give the Commission information that you know is not correct when you complete your biweekly claimant reports, but you submit the report cards to the Commission anyways, then you have knowingly made false statements.¹

[10] If you knowingly make a false statement on your biweekly claimant reports, you must repay the benefits you were not supposed to receive.² The Commission may also make you pay a penalty.³ The penalty is an extra fine you must pay in addition to repaying the benefits you were not entitled to receive.

[11] The Commission makes its own decisions about the penalty amount. This is called a discretionary power.⁴

[12] Even though the Commission has discretionary power to set the penalty amount, the Commission must make its decision fairly. The Commission must look at all of the information

¹ The Federal Court of Appeal says this in its decision *Mootoo v. Canada (Minister of Human Resources Development)*, 2003 FCA 206.

² Section 43 of the *Employment Insurance Act*.

³ Section 38(1)(a) of the *Employment Insurance Act*.

⁴ The Federal Court of Appeal says this in its decision *Canada (Attorney General) v. Gauley*, 2002 FCA 219, at paragraph 7.

when it makes a decision. The Commission should pay attention to important information about your situation and ignore things that are not important.⁵

[13] I must respect the Commission's discretionary power. Usually, this means that I cannot change the Commission's decision about the penalty amount. However, if the Commission did not make its decision fairly, then I can step into the Commission's role. Then, I may make a decision about the amount of the penalty. However, I cannot reduce a penalty to zero if the Commission has decided that there should be some penalty.⁶

Issue 1: Did the Claimant knowingly make false statements on his biweekly claimant reports?

[14] At the hearing, the Claimant agreed that he had given the Commission false information on his biweekly claimant reports. He said that he knowingly gave the Commission false information about his work and earnings. He said that he was afraid his benefits would stop if he told the Commission about his income.

[15] The Claimant knew he was working when he completed his biweekly claimant reports. He knew he had earnings from his work. He knew that he was supposed to report his earnings to the Commission. He deliberately chose not to report his earnings to the Commission. This means that he knowingly made false statements on his biweekly claimant reports.

Issue 2: Did the Commission exercise its discretion judicially when it set the penalty amount?

[16] The Commission should have considered the Claimant's current financial situation when it set the penalty amount. However, the Commission set the penalty at \$374. This is a suitable amount for a penalty because it balances the Claimant's financial situation with the seriousness

⁵ In *Canada (Attorney General) v. Purcell*, A-694-94, the Federal Court of Appeal states that, when exercising discretionary power, the Commission must consider all relevant factors, ignore irrelevant factors, act in good faith, and act in a manner that is not discriminatory.

⁶ The Federal Court of Appeal says this in its decision *Canada (Attorney General) v. Gauley*, 2002 FCA 219, at paragraphs 11 and 12.

of the fact that he knowingly made false statements on his biweekly claimant reports. I will not change the penalty amount.

[17] The Commission considered the following things when it set the penalty amount:

- When the Claimant made the false statements on his biweekly claimant reports, he was on painkillers because he had gout;
- It was difficult for the Claimant to make ends meet. He had severe financial problems;
- The Claimant had to sell his car for money. He was worried that he might lose his home.
- This was the first time the Claimant had made false statements to the Commission.

[18] After considering all of these factors, the Commission decided to set the penalty at \$374. The Commission chose this amount because the Claimant received \$3742 in employment insurance benefits when he did not report his earnings to the Commission. The Commission set the penalty at 10% of the overpaid benefits.

[19] The Claimant showed his bank statements at the hearing. When he was claiming employment insurance benefits, his bank balance was very low. Even after he started working, his bank balance was often close to zero. At the hearing, the Claimant also said that he had just had a baby. It would be difficult for him to support his family and also repay his debt to the Commission.

[20] The Commission did not consider the Claimant's current situation when it set the penalty. The Commission should have considered the fact that the Claimant has just had a baby. The Commission should have considered whether it would be difficult for the Claimant to repay the debt because of his financial obligations to his family. The Commission ignored these important factors, and so I have the power to step into the Commission's role and make a decision about the penalty amount.

[21] I understand that the Claimant was in a very difficult financial situation when he made the false statements on his biweekly claimant reports. I understand that he was afraid that he

might become homeless or that he would not be able to buy food if his benefits stopped. I also understand that he has a baby now. I understand that it will be difficult for him to repay the debt to the Commission. However, making false statements on biweekly claimant reports is very serious. It is reasonable for a claimant to pay a penalty if they knowingly make false statements when they complete their biweekly claimant reports.

[22] Weighing all of these factors together, I find that \$374 is a reasonable amount for a penalty. I will not change the Commission's decision to set the penalty at \$374.

Issue 3: Do I have the authority to order the Commission to write off the Claimant's debt?

[23] I do not have the authority to order the Commission to write off the entire amount of the Claimant's debt.

[24] At the hearing, the Claimant said that he wanted the Commission to forgive the entire debt. He said that the goal of his appeal was to ask the Commission to erase his debt.

[25] The Commission makes its own decisions about debts. The Commission may choose to write off a debt. However, I do not have the power to order the Commission to write off any debt. The Federal Court of Appeal has been very clear on this issue: only the Commission has the authority to make decisions about its debts. Appeal bodies, like the Social Security Tribunal, do not have the authority to order the Commission to write off or forgive a debt.⁷

[26] I understand that it will be difficult for the Claimant to repay his debt to the Commission. I understand that he was in a very difficult financial situation when he collected benefits. I understand that he has a child now. The Commission may wish to consider these factors. The Commission might decide to write off the debt. However, I do not have the authority to order the Commission to forgive the Claimant's debt.

⁷ The Federal Court of Appeal says this at paragraph 1 of its decision *Canada (Attorney General) v. Woods*, 2002 FCA 91.

CONCLUSION

[27] I am dismissing the Claimant's appeal. I do not have the authority to order the Commission to forgive his debt.

Amanda Pezzutto

Member, General Division - Employment Insurance Section

HEARD ON:	August 21, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	J. C., Appellant