



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *R. D. v Canada Employment Insurance Commission*, 2019 SST 1006

Tribunal File Number: GE-19-2829

BETWEEN:

R. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Charline Bourque

HEARD ON: August 28, 2019

DATE OF DECISION: September 6, 2019

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] The Appellant received Employment Insurance benefits and reported earnings received from her employer. However, after receiving the Record of Employment, the Commission determined that the reported earnings were incorrect for the weeks between July 14, 2013, and September 7, 2013. The Commission therefore found that it had 72 months to reconsider the Employment Insurance claim because of the Appellant's false and misleading statements.

[3] The Appellant disagrees with the fact that she made false statements and that the Commission had 72 months to review her claim. Furthermore, she maintains that she correctly reported the earnings received from her employer.

PRELIMINARY MATTERS

[4] After receiving explanations from the Tribunal, the Appellant withdrew her appeal on the issues of sickness benefits and false statements because the Commission had reconsidered its decisions in the Appellant's favour. Therefore, only the issues related to the reconsideration and the earnings are at issue in this appeal.

ISSUES

Reconsideration

[5] Did the Appellant make a false or misleading statement that would enable the Commission to reconsider its decision within 72 months after the benefits were paid or became payable?

Earnings

[6] Do the wages from the employer constitute earnings within the meaning of the *Employment Insurance Regulations* (EI Regulations)?

[7] If so, how should those earnings be allocated?

ANALYSIS

Issue 1: Did the Appellant make a false or misleading statement that would enable the Commission to reconsider its decision within 72 months after the benefits were paid or became payable?

[8] The Tribunal is of the view that the Commission could reconsider the claim within 36 months. The Commission could not reconsider the Appellant's statements after 36 months because the Appellant did not make false or misleading statements given that they corresponded to the earnings she received from her employer.

[9] The Commission indicates that it reconsidered the reports as of July 14, 2013, because it was established that there was a discrepancy between the earnings stated on the Record of Employment (GD3-15) and those the Claimant reported (GD3-22 to GD3-38). The Commission submits that the reconsideration period can be extended to 72 months according to section 52(5) of the Act. The false statements did not have to have been made knowingly. It is enough that the information presented as part of a claim be false.

[10] The Commission indicates that the report from July 14, 2013, to July 27, 2013, was paid or became payable on August 20, 2013 (GD3-39). The Commission had until August 17, 2019, to reconsider that report. The Commission submits that, when it gave the initial decision on May 17, 2019, and the administrative review decision on July 11, 2019, it was adhering to the deadlines established by section 52(5) of the Act.

[11] The Commission may reconsider a claim for benefits within 36 months after the benefits have been paid or would have been payable. However, if, in the Commission's opinion, a false or misleading statement or representation has been made in connection with a claim, the Commission has 72 months within which to reconsider the claim.¹

[12] To reconsider a claim within 72 months, the Commission does not have the burden of proving "that the claimant knowingly made false statements." The legislation requires only that

¹ *Employment Insurance Act* (EI Act), ss 52(1) and 52(5).

“in the opinion of the Commission, a false or misleading statement ... has been made.” To reach this conclusion, the Commission must be satisfied that an appellant has made a false or misleading statement or representation in connection with a claim. Therefore, the mere existence of a false or misleading statement is enough, if the Commission is reasonably satisfied of this fact, to trigger the application of that section without the need to find intention in the person making the statement.²

[13] The Appellant stated that, given the time, she was not able to confirm the amounts indicated on the Record of Employment. She argues that she reported her income in accordance with the time sheets she submitted to her employer. The Appellant explained that it was possible that the employer paid her wages that were withheld when she started.

[14] The Tribunal notes that the Commission relied on the Record of Employment to determine whether a false statement had been made. Based on its analysis, the Tribunal is of the view that the Appellant correctly reported the earnings she received from her employer.

[15] The Tribunal is of the view that the payment from the employer was late in comparison with the work completed.

[16] First, the Tribunal notes that the wages paid on July 25, 2013, (GD3-73) correspond to the period from June 30 to July 13, 2013. To begin with, the Appellant received a mileage allowance, as claimed on her time sheet (GD3-104). The Tribunal notes that she was also paid statutory holiday pay. It is therefore impossible that those wages are connected with the weeks from July 15 to 27, 2013, as the Commission determined. Furthermore, that amount corresponds to block 17 of the Record of Employment, which corresponds to the 15-day pay period beginning on June 30, 2013 (GD3-15).

[17] Therefore, for the weeks of July 14 and 21, 2013, the Appellant reported earnings of \$42.00 per week. The Record of Employment shows earnings of \$82.00 in block 16, which corresponds to the pay period beginning on July 14, 2013 (GD3-15). This corresponds to the

² *Canada (Attorney General) v Dussault*, 2003 FCA 372.

wages paid on August 8, 2013 (GD3-74), and the time sheets the Appellant submitted for the weeks of July 15 and 22, 2013 (GD3-105/106).

[18] For the week of July 28, 2013, the Appellant reported earnings of \$42.00, and she reported earnings of \$0 for the week of August 4. The Record of Employment shows earnings of \$41.00 in block 15, which corresponds to the pay period beginning on July 28, 2013 (GD3-15). This corresponds to the wages paid on August 22, 2013 (GD3-75).

[19] For the week of August 11, 2013, the Appellant reported earnings of \$52.00, and she reported earnings of \$63.00 for the week of August 18, 2013. The Record of Employment shows earnings of \$112.75 in block 14, which corresponds to the pay period starting on August 11, 2013 (GD3-15). This corresponds to the \$115.50 in wages paid on September 5, 2013 (GD3-76).

[20] For the week of August 25, 2013, the Appellant reported earnings of \$0, and she reported earnings of \$0 for the week of September 1, 2013. The Record of Employment shows earnings of \$0 in block 13, which corresponds to the pay period beginning on August 25, 2013 (GD3-15).

[21] Therefore, based on this determination, the Tribunal is of the view that the Appellant correctly reported the earnings she received from her employer. Her reports correspond to the time sheets submitted to the employer and to the pay statements and the Record of Employment it issued.

[22] The Tribunal notes that, under section 36(4) of the *Employment Insurance Regulations*, the earnings must be allocated to the period in which the services were performed. Therefore, even if the employer pays later on for hours worked, the Appellant must report those hours during the period in which the work was completed, which she did.

[23] Concerning the reconsideration of a claim, the Tribunal does not have to determine whether an omission was made with the intention of deceiving the Commission, but simply whether the Commission could reasonably consider it a false or misleading statement.

[24] However, in this case, the Tribunal is of the view that the Appellant's statements are correct. The Tribunal is therefore of the view that the Commission could not be reasonably

satisfied as to the existence of false or misleading statements in order to reconsider the claims within 72 months, as section 52(5) of the Act sets out.

[25] The Tribunal is therefore of the view that the Commission could not reconsider the reports after 36 months. As a result, the Commission could not amend the allocation of earnings, particularly as the Tribunal is of the view that the Appellant's reports correspond to the earnings she received from her employer.

[26] The Tribunal is of the view that it does not need to rule specifically on the issue of earnings because the Commission could not reconsider it after 36 months. Therefore, the appeal is allowed on the issue of the reconsideration and the allocation of earnings.

CONCLUSION

[27] The appeal is allowed.

Charline Bourque
Member, General Division – Employment Insurance Section

HEARD ON:	August 28, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. D., Appellant