



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *BT v Canada Employment Insurance Commission*, 2019 SST 1724

Tribunal File Number: GE-19-2150

BETWEEN:

**B. T.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Teresa M. Day

HEARD ON: September 5, 2019

DATE OF DECISION: September 5, 2019

## **DECISION**

[1] The appeal is dismissed. The Respondent, the Canada Employment Insurance Commission (Commission) has correctly adjusted and accounted for the Appellant's entitlement to the family supplement while on claim.

## **OVERVIEW**

[2] The Appellant was paid employment insurance benefits (EI benefits) from the week of April 1, 2018 to March 2, 2019 (the 2018 claim). The Appellant was overpaid on the 2018 claim because the Commission calculated the Appellant's entitlement based on two Records of Employment issued by the Appellant's employer for the same period. After the Commission adjusted the Appellant's weekly benefit rate and the number of weeks of EI benefits she was entitled to, there was an overpayment on her 2018 claim of \$182.00. The Appellant appealed to the Social Security Tribunal (Tribunal) and questioned both the reduction in her entitlement and whether the Commission had correctly calculated her family supplement. She also questioned her responsibility for the overpayment given the fact that it arose from someone else's mistake. The Tribunal dismissed her appeal.

[3] The Appellant appealed to the Appeal Division of the Tribunal (the AD). The AD confirmed the reduced rate of weekly benefits and the reduced number of weeks of benefit entitlement for the 2018 claim. The AD also confirmed that the Appellant was liable to repay the overpayment on the 2018 claim. However, the AD referred the question of the Appellant's family supplement back to the Tribunal for a new hearing before a different Member.

[4] Prior to scheduling the new hearing, the Member asked the Commission to provide detailed evidence and submissions addressing the issue of whether the Appellant's family supplement was correctly included and accounted for in the 2018 claim. The Commission responded (RGD3) and the response was shared with the Appellant, who was also given an opportunity to submit fresh evidence and submissions. There was no response from the Appellant.

[5] The new hearing took place on September 5, 2019 by teleconference.

## **PRELIMINARY MATTERS**

[6] The Appellant has a related appeal in file number GE-19-2543 which relates to a prior claim she established in 2016 (the 2016 claim). The issues in the 2016 claim arose from similar facts to the 2018 claim, and were also appealed by the Appellant to both the Tribunal and the AD. For the 2016 claim, the AD similarly referred the question of whether the Appellant's family supplement was correctly accounted for back to the Tribunal for a new hearing before a different Member.

[7] The related appeals were scheduled to be heard together on September 5, 2019. However, this decision concerns only the 2018 claim. A separate decision has been issued for the 2016 claim.

## **ISSUE**

[8] The only issue before the Tribunal on the new hearing is whether the Commission correctly accounted for the Appellant's family supplement on the 2018 claim.

## **ANALYSIS**

[9] Where a claimant (or their spouse) is in receipt of the Child Tax Benefit under the *Income Tax Act* during the benefit period *and* the claimant's net family income does not exceed \$25,921.00, the weekly rate of EI benefits payable to a claimant is increased by a "family supplement" in accordance with section 16 of the *Employment Insurance Act* (EI Act) and section 34 of the *Employment Insurance Regulations* (EI Regulations).

[10] The eligibility and amount of the family supplement is calculated automatically based on a two-way data exchange between the Commission and Canada Revenue Agency (CRA), with the result that when CRA re-assesses a claimant's income, the Family Supplement amount will change accordingly.

**Issue 1: Did the Commission correctly calculate and account for the Appellant's family**

**supplement in her 2018 claim.**

[11] The Appellant has provided no evidence to dispute the Commission's calculation of her family supplement.

[12] The Appellant testified that she does not dispute the Commission's evidence in RGD3.

[13] The Tribunal has reviewed the evidence and analysis in the Commission's representations at RGD3, including the detailed payment history with adjustments at RGD3-10 to RGD3-12. The Tribunal finds that the Commission correctly included the Appellant's family supplement in its calculation of the weekly benefit rate on her 2018 claim. The Tribunal further finds that the Commission correctly reduced the Appellant's family supplement based on the updated information provided by CRA for the week starting August 5, 2018. This led to corresponding reductions in her weekly rate of benefits.

[14] The Tribunal therefore confirms the family supplement amounts utilized by the Commission in its calculations for the 2018 claim.

**Issue 2: Is the Appellant responsible for the overpayment on the 2018 claim.**

[15] The Appellant testified that she does not think she should be responsible for the resulting overpayment on the 2018 claim because she has been "tortured by the Phoenix pay system" and is being "punished" for someone else's mistake.

[16] This question is not before the Tribunal on this appeal, as the AD upheld the Tribunal's original confirmation of the Appellant's liability for the overpayment and did not refer this issue for a new hearing. The Tribunal explained this to the Appellant, who advised it was her "only" issue. As the Appellant appeared to be unaware of the statutory basis for her liability, the Tribunal will address the issue briefly.

[17] The Tribunal understands that the Appellant was hoping there was some room for discretion by the Tribunal regarding her liability for the overpayment given that the problem did not arise from any wrongdoing on her part. However, neither the EI Act nor the EI Regulations allow any discretion with respect to the calculation of the Appellant's weekly benefit rate, the subsequent adjustments to her weekly benefits, or the resulting overpayment on her claim.

[18] Section 43 of the EI Act explicitly establishes that liability for an overpayment is on the claimant. The Appellant is the claimant.

[19] Section 44 of the EI Act clearly states that it is the person who received EI benefits in excess of their entitlement who must return the excess amount without delay. The Appellant is the person who received EI benefits she was not entitled to on her 2018 claim. Therefore, she is the person responsible for repaying the benefits she was overpaid.

[20] The Tribunal acknowledges the Appellant's frustration at how the overpayment arose, as well as her compelling testimony that she had no way of knowing she was being overpaid. However, it does not have any discretion to waive the liability for an overpayment or to otherwise vary the clear wording in the legislation, no matter how compelling the circumstances. The Tribunal is supported in this analysis by the Supreme Court of Canada's statement in *Granger v. Canada (CEIC)*, [1989] 1 S.C.R. 141, that an adjudicator is bound by the law and cannot refuse to apply it, even on grounds of equity.

## **CONCLUSION**

[21] The Tribunal finds that the Commission correctly adjusted and accounted for the Appellant's entitlement to the family supplement on the 2018 claim. The Tribunal therefore confirms the family supplement amounts utilized by the Commission in its calculations for the Appellant's 2018 claim.

[22] The appeal is dismissed.

**Teresa M. Day**

**Member, General Division - Employment Insurance Section**

HEARD ON:	September 5, 2019
METHOD OF PROCEEDING:	Teleconference

APPEARANCES:	B. T., Appellant
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