



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Z. T. v Canada Employment Insurance Commission*, 2019 SST 1611

Tribunal File Number: GE-19-2233

BETWEEN:

Z. T.

Appellant (Claimant)

and

Canada Employment Insurance Commission

Respondent (Commission)

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Solange Losier

HEARD ON: July 29, 2019 and August 19, 2019

DATE OF DECISION: September 16, 2019

DECISION

[1] The appeal is dismissed.

[2] The Claimant was not a victim of identity fraud. The Commission correctly cancelled both benefit periods.

[3] The Commission has proven¹ that the Claimant knowingly provided false or misleading information.

[4] The Commission has properly decided to impose a warning letter, the penalty amount of \$5,000.00, and the notice of violation.

OVERVIEW

[5] The integrity department of Service Canada commenced an investigation which revealed that several records of employment issued under nine different company names were fraudulent. There was no evidence of any bona fide business, or any work performed for any of these companies.

[6] The Commission alleges that the Claimant submitted fraudulent records of employment to establish two claims for benefits in 2009 and 2010 (GD3-108 to GD3-121). As a result, the Commission cancelled the previous benefit periods commencing on October 11, 2009 and November 10, 2012.

[7] The Commission imposed a \$5,000.00 and \$447.00 monetary penalties for making 23 misrepresentations and issued a notice of violation classified as “serious” (GD3-87-GD3-89). A notice of debt was issued to the Claimant (GD3-90). However, on reconsideration, the Commission removed the \$447.00 monetary penalty for the misrepresentation and changed it to a non-monetary “warning letter” instead because it was imposed in error and fell outside of the 36 month time limit (GD3-285-286).

¹ The Claimant has to prove this on a balance of probabilities, which means it is more likely than not.

[8] The Claimant says that the Commission was wrong as he has never applied, or collected employment insurance benefits because he has been self-employed for thirty years. The Claimant argued that his last name was misspelled on the documentation and alleges that the fraudster was a woman named I. C. who completed his taxes in 2010 and stole his identity information to establish two claims for employment insurance benefits.

PRELIMINARY MATTERS

[9] This matter was heard on two dates: July 29, 2019 and August 19, 2019. The first hearing date was adjourned after approximately two hours of testimony because the Claimant's legal representative identified that he had not received all of the documents sent by the Tribunal. The file indicates that the documents were sent to the legal representative's email, however because of an issue with his computer server, he did not receive them in advance of the hearing. For this reason, the Claimant and his legal representative were not prepared to proceed with the hearing because they had not reviewed all of the documents. At a later date, the Tribunal sent another copy of the documents to an alternate email for the Claimant's legal representative and a hardcopy of the missing documents were mailed.

[10] An interpreter attended the hearing in-person on both dates.

[11] At the conclusion of the hearing on August 19, 2019, the Claimant's legal representative commenced his final oral submissions, however due to time constraints at the hearing location, there was inadequate time to hear the entirety of his submissions. As a result, the Claimant and his legal representative consented to submitting written final submissions after the hearing date.

[12] The Claimant's final written submissions were received by the Tribunal on August 26, 2019 and a copy was sent to the Commission on August 27, 2019 (GD7-1 to GD7-3). The Commission replied with their submissions on August 30, 2019 and a copy was sent to the Claimant and his legal representative on the same date (GD8-1 to GD8-4).

ISSUES

[13] Issue 1: Was the Claimant a victim of identity fraud?

[14] Issue 2: Were the benefit periods commencing October 11, 2009 and November 28, 2010 correctly cancelled by the Respondent?

[15] Issue 3: Did the Claimant knowingly provided false or misleading information on his application for benefits, records of employment and claim reports?

[16] Issue 4: Did Commission exercise their discretion in a judicial manner when they imposed a warning letter, monetary penalty of \$5,000.00 and notice of violation classified as “very serious”?

ANALYSIS

Issue 1: Was the Claimant a victim of identity fraud?

[17] No, the Claimant was not a victim of identity fraud because I find it was more likely than not, that he was involved in the employment insurance benefits fraud.

[18] The Claimant denies that he was involved and argues that the fraudster is a woman named I. C. who completed his 2010 taxes. He noted that his regular accountant was not available to do his taxes that year, so a friend referred him to I. C.. He paid for her services, but does not have a receipt. He stated that his regular accountant has been doing his taxes for the last 15-20 years, with the exception of 2010 when they were completed by I. C..

[19] The Claimant said that I. C. stole his personal information from his tax return and must have initiated two employment insurance claims in his name. However, he noted that there were errors because his last name was not spelled correctly in the various documentation (“e” instead of an “a”), he was not in a common-law relationship with I. C. as noted in his 2010 taxes and the signature on his taxes is fake.

[20] The Claimant argues that the Commission has failed to prove that the employment insurance benefits were deposited in his bank account.

[21] The Commission called the investigation “Project Unleaded” and it revealed that various records of employment issued under nine different companies were fraudulent and there was no evidence of a bona fide business, or that any work was performed at the businesses.

[22] The Commission argues that the Claimant was willing participant in the employment insurance fraud with I. C.. The fraudulent records of employment were used by the Claimant to establish two claims for employment insurance benefits in 2009 and 2010. Both benefit periods in 2009 and 2010 were cancelled by the Commission which resulted in significant overpayments being issued to the Claimant.

[23] The Commission relied on their investigation notes, statements and declarations from the two of the business owners identified on the records of employment used to establish the claims in 2009 and 2010. Both owners denied issuing records of employment for the Claimant, as well as others identified during their investigation.

[24] The following includes some of the documentary evidence that the Commission relied on to support their allegations:

a) A statement from the owner of the business identified on the record of employment was interviewed. She attested that she did not complete or authorize any of the records of employment, including the one used to establish a claim for benefits (GD3-61 to GD3-78).

b) A statement from the owner of the business identified on the record of employment was interviewed. He attested that he has been the sole owner of the business for 26 years, that the business closed 4 years ago, he did not have any employees and did not issue any records of employment, including the one used to establish a claim for benefits (GD3-118 to GD3-121).

c) Detailed notes from their fraud investigation for all nine businesses (GD3-45 to GD3-51).

[25] The Commission disputes that the Claimant was a victim of identity fraud because he has not acted like someone who is alleging identity theft. They note that he did not provide all of the required documentation when they requested, he took no prior action to report the identity theft and had to be told on multiple occasions to file a police report and to request a social insurance fraud package to initiate an investigation.

[26] The Commission argues that there was significant evidence of activity by the Claimant. Specifically, he exercised his rights and responsibilities by reporting absences from Canada, he attended a client information session where his identity was verified and changed his address on multiple occasions while on claim.

[27] The Commission states that he signed and filed his 2011 taxes which included reporting employment insurance income from 2010. The Claimant has not asked Canada Revenue Agency to re-evaluate or recalculate his 2010 or 2011 tax returns even though he disputes receiving any employment insurance monies as reported in his taxes.

[28] The Commission argues that to establish a claim for benefits, an individual would need their mother's maiden name which is not information available to I. C. from his 2010 tax return.

[29] The Commission agrees with the Claimant that the employment insurance monies were not directly deposited to his personal bank accounts, but they argue that they were deposited to I. C.'s bank account, who was listed as his common-law spouse on his taxes and signed for the completion of the taxes.

[30] I was not persuaded by the Claimant's testimony on this issue because I did not find it persuasive, or credible for the following reasons.

[31] I asked the Claimant what was the urgency to complete his taxes for 2010 and why he would have his taxes completed by an unknown woman named I. C.. I noted that he appeared to have a lengthy history with his regular accountant for almost two decades. The Claimant provided no clear response or explanation to my question except that he needed to do his taxes in 2010. He could not explain why his regular accountant was not available to do his taxes and he provided no supporting evidence from his accountant to show that he was not available to do his taxes at that time.

[32] I asked the Claimant why his 2010 tax return reported I. C. as his common law spouse and included a T4E slip which is a "Statement of Employment Insurance and Other Benefits"(T4E). It shows that he received employment insurance benefits paid totalling \$17,183.00 in 2009 (GD3-235 to GD3-249; GD3-250). The Claimant said he did not notice that I. C. was listed as his common law spouse, or that a T4E was submitted with his taxes. However,

I was not persuaded because the first page of the tax return identifies the name I. C. as his common-law spouse which is clearly stated and can be easily seen as it was not hidden within his tax documents. Also, the T4E was an additional document added to his taxes, so the Claimant must have had a copy of it in order to submit it with his 2011 taxes.

[33] I asked the Claimant whether he contacted Canada Revenue to re-assess his taxes since he is alleging identity fraud by I. C. and argued that the information contained in his tax returns is not accurate. He said no and provided no explanation for not taking those steps. I note that the Commission asked him to submit his tax returns from 2009 to 2011, the notice of assessments and re-assessments, but he only submitted his tax returns (GD3-282). The Claimant offered no explanation for his failure to obtain and submit documents that he either had in his possession, or that he could have easily obtained from Canada Revenue Agency.

[34] The Claimant was unable to explain how I. C. obtained his mother's maiden name. His mother's maiden is not part of his 2010 taxes. This information is required to establish a claim for employment insurance benefits. A claim for benefits was established in 2009 and 2010 and the Commission says that his mother's maiden was used to establish those claims. The Claimant's initial response was that I. C. stole his personal information from his tax return to establish the fraudulent claim. However, he changed his response when I advised him that the Commission said his mother's maiden name was needed to establish a claim for benefits. The Claimant then said that I. C. may have asked for his mother's maiden name and he would have provided that information. I was not persuaded by the Claimant's response because he had no specific recollection and it seems that he changed his answer only after he was told that his mother's maiden name was not information available in his tax return.

[35] I note that the Claimant failed to take prompt steps to report the identity fraud after he became aware. The Commission told him on multiple occasions to report it to the police, but he delayed reporting it (GD3-138; GD3-140). The police incident report dated June 22, 2017 states the following information: "Complainant received a letter from Canada Revenue stating that he owes \$35,000.00 to employment insurance. Complainant stated that in 2010 he had his income tax done and since that time has been finding problems with his identity"(GD2-8 to GD2-12). The Claimant explained that the delay in reporting it to the police occurred because he had to go

to different police stations. When he finally reported it to the police, he included specific details such as, employment insurance, canada revenue agency, \$35,000.00 owing and income, however he does not mention the name I. C. as the person who allegedly stole his identity. He offered no reasonable explanation for this particular omission when I raised it. I asked him if he took steps to follow up with the police or investigator listed on the incident report to find out the status and outcome of the fraud investigation. He said no, which I find bizarre given the seriousness of his allegation and because he was referred to I. C. thru a friend. The Claimant could have provided the police with her name, this would have been important evidence for their investigation. This important omission might suggest that he may not have wanted to identify I. C. to the police because of their relationship.

[36] The Claimant argued that I. C. was a known fraudster who was in jail, but provided no evidence to support this statement. Even if she was known fraudster he offers no explanation for his failure to tell the police this information.

[37] The police incident report that he submitted is also partially redacted. There is information I cannot read because it is marked off in black colour. I asked the Claimant about this at the first hearing date and he said he did not know what information it contained and did not inquire. At the second hearing date, the Claimant said that he went back to the police station to inquire about the redacted information and was told that he could submit a freedom of information request to find out what it contained. I asked him if he submitted a freedom of information request. He said no, but suggested that the Tribunal or Commission could make the request.

[38] The Claimant argued that the Commission has not proven the banks accounts the employment insurance funds were deposited were not in his name. The Commission does not dispute that the employment insurance funds may not have been deposited to his personal bank account, however they argued that their investigation revealed a similar pattern where payments were not deposited into the accounts of the applicants. More specifically, they noted that three or four payments were directed to I. C.'s account, but after four or eight weeks, the individual was given their access codes which allows them to update the system to reflect their own bank account and/or residential address (GD4-5 to GD4-6).

[39] The documentary evidence shows that the bank accounts and addresses were updated several times, including one attempt made by telephone when I. C. called the Respondent. I find that Respondent's theory more persuasive because it has already been established that the money was deposited to I. C.'s account and since it appears that they were common-law status, it was more likely than not, he knew and either directly or indirectly benefited.

[40] The Claimant argued that he did not reside at the any of the listed addresses in 2009, 2010 or 2011. I note that in at least one instance, he lived in the same building, but a different apartment number was listed. I was not persuaded by the Claimant's testimony because I find improbable that his identity was stolen and I. C. used an address in the same building, or always near his home. Furthermore, the Claimant did not provide a timeline of his addresses from 2009 and there was no supporting evidence of his addresses, except for what was listed in his tax returns. I note that the Commission also tried to obtain this information from him, but without success.

[41] The Claimant's identity was also verified during a client information session in January 2010. This Commission's practice is to validate the identity before permitting a claimant to enter the session.

[42] The Claimant not acted like a victim of identity theft might reasonably act when their identity is stolen and they become aware of a significant notice of debt for approximately \$35,000.00. He has not cooperated with the Commission and to-date has not provided tax return information such as notice of assessments or re-assessments for 2009 to 2011. In his view, he does not feel it necessary to have his income taxes re-assessed, even though he alleges that it contains inaccurate information and reports receiving employment insurance monies that he says was not received.

[43] The Claimant has failed to provide a reasonable explanation for his failure to take immediate steps. Many of his answers were that "nobody told him he had to do things". This is not true because the Commission told him on more than one occasion verbally and in writing what needed to be done. I also asked the Claimant at the first hearing date why the police report

was redacted and why he had not inquired about the contents. The Claimant could have made a freedom of information request, but did not do so. This conduct is not demonstrative of someone who is victim of identity fraud, but rather someone who is limiting his exposure and disclosure.

[44] I find that the Claimant has failed to proven that he was a victim of identity fraud. I did not find his testimony credible and he has not provided any reliable or other supporting evidence, either in the form of documents, or witnesses to support his version of events.

[45] It was more likely than not, that he was a willing participant with I. C. in the scheme, even if he did not receive the funds in his personal bank account and his personal address was not used. The Claimant permitted I. C. to commit the fraud by providing her with access to his personal information, specifically his mother's maiden name and other relevant information which allowed her to initiate employment insurance claims in his name in 2009 and 2010.

[46] Overall I preferred the evidence from the Commission because it was detailed, reliable and thorough. The Commission provided several witness statements, investigation notes, an investigation theory based on patterns and other relevant documents to prove their case.

Issue 2: Were the benefit periods commencing October 11, 2009 and November 28, 2010 correctly cancelled and voided by the Respondent?

[47] Yes, I find that the benefits periods commencing on October 11, 2009 and November 28, 2010 were correctly cancelled and voided by the Respondent because there was evidence of fraud by the Claimant.

[48] To establish an "initial claim for benefits" a claimant must complete an application form and provide a record of employment as proof that he qualifies to receive employment insurance benefits.² Before benefits are payable, claimants must have the minimum number of hours of insurable employment and an interruption of earnings from employment.³ The Claimant must prove that he qualified to receive benefits for both benefit periods.

² Section 6 of the *Employment Insurance Act* (Act)

³ Subsections 7(1) and 7(2) of the Act

[49] The Commission can reconsider a claim for benefits within 36 months after the benefits would have been paid or would have been payable.⁴ There is an exception in cases where false or misleading information is suspected because they have up-to 72 months to reconsider a claim after the benefits have been paid or would have been payable.⁵

[50] I find that the benefit periods were correctly cancelled by the Commission because the records of employment submitted by the Claimant to establish the claims were false. The investigation and evidence submitted by the Commission clearly shows that there were no bona fide businesses, or any work performed by the Claimant. Therefore, the Claimant failed to prove that he accumulated the required hours of insured employment during the qualifying periods.

[51] The decision was upheld by the court where an applicant had no insurable employment during his qualifying period based of false records of employment and the insurability ruling of Revenue Canada.⁶

Issue 3: Did the Claimant knowingly provided false or misleading information on his application for benefits, records of employment and claim reports?

[52] Yes, I find that the Claimant knowingly made false or misleading on his application for benefits, records of employment and claim reports because he was fully aware that he had not performed any work for either of the two businesses and that the records were false.

[53] It is not enough that the information is false or misleading. To be subject to a penalty, the Commission has to show that it is more likely than not that the Claimant knowingly provided it, knowing that it was false or misleading.⁷ To impose a penalty, the Commission has to prove that the Claimant knowingly provided false or misleading information.⁸

⁴ Subsection 52(1) of the Act

⁵ Subsection 52(5) of the Act

⁶ *Kassam v. Canada (Attorney General)*, 2004 FCA 331

⁷ *Bajwa v. Canada*, 2003 FCA 341; the Claimant has to prove this on a balance of probabilities, which means it is more likely than not.

⁸ Section 38 of the *Employment Insurance Act*.

[54] Claimants must have subjective knowledge that the representations made by them or on their behalf were false.⁹

[55] I am satisfied that the Commission has met their burden of proving that the Claimant made 25 false or misleading representations. The Commission submitted copies of two false records of employment and two false applications for benefits (GD3-16; GD3-70; GD3-79; GD3-4 to GD3-15; GD3-92 to GD3-105). The Commission has also proven that he received benefits from December 21, 2010 to September 17, 2011 by direct deposit which required that he complete 21 reports to claim a payment of benefits. A copy of the payment screen was submitted (GD3-41 to GD3-43).

Issue 4: Did Commission exercise their discretion in a judicial manner when they imposed a warning letter, monetary penalty of \$5,000.00 and notice of violation classified as “very serious”?

[56] Yes, I find that the Commission exercised their discretion in a judicial manner because they considered all relevant factors.

[57] The Commission’s decision on the penalty amount is discretionary.¹⁰ This means that it is open to the Commission to set it at the amount it thinks is correct. I have to look at how the Commission exercised its discretion. I can only change the penalty amount if I first decide that the Commission did not exercise its discretion properly when it set the amount.¹¹

[58] In addition to the penalty, the Commission also has the discretion to impose a violation.¹² The violation increases the number of hours of insurable employment that the Claimant requires to qualify for benefits. As with deciding the penalty amount, the decision to impose a violation

⁹ *Mootoo v. Canada (Attorney General)*, 2003 FCA 206; *Canada (Attorney General) v. Gates*, A-600-94

¹⁰ *Canada (Attorney General) v Kaur*, 2007 FCA 287.

¹¹ *Canada (Attorney General) v Kaur*, 2007 FCA 287. The Commission’s decision can only be interfered with if it exercised its discretionary power in a non-judicial manner or acted in a perverse or capricious manner without regard to the material before it: *Canada (Attorney General) v Tong*, 2003 FCA 281. Discretion is exercised in a non-judicial manner if the decision-maker acted in bad faith, or for an improper purpose or motive, took into account an irrelevant factor or ignored a relevant factor or acted in a discriminatory manner: *Attorney General of Canada v Purcell*, A-694-94.

¹² Subsection 7.1(4) of the *Employment Insurance Act*; *Gill v Canada (Attorney General)*, 2010 FCA 182.

is also discretionary. I must review how the Commission exercised its discretion when it decided to impose a violation.

[59] For the benefit period commencing on October 11, 2009, the Commission initially imposed a monetary penalty of \$447.00, but on reconsideration it was removed because it was outside of the 36 month timeframe (GD3-292 to GD3-293). It was substituted with a warning letter.

[60] For the benefit period commencing on November 28, 2010, the Commission maintained the monetary penalty of \$5,000.00 and notice of violation classified as “very serious” (GD3-290 to GD3-291).

[61] I am satisfied that the Commission exercised its discretion in a judicial manner when they rescinded the \$447.00 monetary penalty. The Commission identified that the monetary penalty was imposed in error. They corrected the error and were permitted to impose a warning letter within 72 months and a copy of the decision rationale was submitted (GD3-128).¹³

[62] I am satisfied that the Commission exercised its discretion in a judicial manner when they imposed a penalty of \$5,000.00 because that was the maximum penalty amount for a first level misrepresentation, and because it is the lesser of the three proposed amounts. A copy of the decision rationale was submitted (GD3-82 to GD3-83; GD3-285-289).

[63] I am satisfied that the Commission exercised its discretion in a judicial manner when issuing the notice of violation classified as “very serious”.

[64] The Commission considered the overall impact to the Claimant including that he is a self-employed, his mitigating circumstances, prior offences and the impact on the ability of the Claimant to qualify for future claims. They determined that a violation was applicable (GD3-289). A copy of their decision rationale was submitted (GD3-83).

[65] The Claimant presented no additional information or exceptional circumstances at the hearing, except that he retired, self-employed and was a victim. I have not found any errors, omissions and the Commission considered all of this information and other relevant information

¹³ Section 41.1 of the Act

when they made their decisions. Therefore, the warning letter, the monetary penalty of \$5,000.00 and the notice of violation remains.

CONCLUSION

[66] The appeal is dismissed.

Solange Losier
Member, General Division - Employment Insurance Section

HEARD ON:	July 29, 2019; August 19, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	Z. T., Appellant (Claimant) David Ciobataru, Legal Representative for the Appellant