



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *AS v Canada Employment Insurance Commission*, 2019 SST 1725

Tribunal File Number: GE-19-3082

BETWEEN:

A. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

DATE OF DECISION: September 18, 2019

REASONS AND DECISION

[1] On February 28, 2019, the Appellant filed an appeal of the Respondent's reconsideration decision that she had received earnings while on a claim for benefits and that those earnings should be allocated to her claim. The Respondent's decision was upheld at the General Division of the Tribunal. The Appellant appealed this decision to the Appeal Division, who concluded that the case should be returned to the General Division because the Tribunal had failed to consider whether the Respondent had the authority to reconsider the Appellant's claim.

[2] The issue before me is whether the Respondent had the authority to reconsider the Appellant's decision and, if so, I will also decide whether the Appellant received earnings and if those earnings should be allocated to her claim for benefits.

[3] The Respondent only has the ability to reconsider a decision after more than 36 months have passed if it believes a false or misleading statement or representation was made in connection with the claim.¹ The Respondent has the burden of proving that the Appellant knowingly made a false or misleading statement.

[4] On June 25, 2019, the Respondent filed submissions to the Appeal Division in which they conceded the appeal. It maintained this concession in a submission to the General Division filed on August 28, 2019. The Respondent concedes that it did not have the authority to reconsider the Appellant's claim on the basis of false or misleading statements. It acknowledged that the Appellant had not completed bi-weekly reports during the period in question, as she had agreed to be exempt from the reporting requirement while receiving maternity and parental benefits.

[5] I have reviewed the evidence and submissions in the file and agree with the Respondent that the appeal should be allowed. The Respondent has failed to meet its burden of proving that it had the authority to reconsider the Appellant's claim after 36 months had passed under subsection 52(5) of the *Employment Insurance Act*. As the Respondent did not have the authority to reconsider the Appellant's claim, it did not have the authority to make the decision regarding

¹ This authority is provided for in subsection 52(5) of the *Employment Insurance Act*

whether the Appellant received earnings while on her claim for benefits. Therefore, this decision does not need to be considered as it has no effect.

[6] Finally, the Tribunal relies on paragraph 3(1)(b) of the *Social Security Tribunal Regulations* (Regulations) to render this decision on the record. The Tribunal finds that the Respondent's failure to use section 18 of the Regulations to enter an agreement with the Appellant is a special circumstance which justifies varying the requirement to hold a hearing and ensures the appeal is dealt with as informally and quickly as the circumstances, fairness and natural justice permit.

[7] The appeal is allowed.

Catherine Shaw
Member, General Division – Employment Insurance