



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. J. v Canada Employment Insurance Commission*, 2019 SST 1308

Tribunal File Number: GE-19-3189

BETWEEN:

R. J.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Solange Losier

HEARD ON: September 30, 2019

DATE OF DECISION: October 2, 2019

DECISION

[1] The appeal is dismissed. The Claimant was working full working weeks for self-employment during disentanglement period from September 8, 2014 to October 31, 2014. This means that benefits cannot be paid for that period.

OVERVIEW

[2] The Appellant applied for employment insurance benefits (EI benefits) and a benefit period was established effective on March 2, 2014. The Claimant received EI benefits from March 2, 2014 to week ending on November 1, 2014 (GD3-96 to GD3-97). The Canada Employment Insurance Commission (Commission) became aware that the Claimant had applied for a business number. They determined that he was not entitled to received EI benefits from March 2, 2014 because he was self-employed and not unemployed from March 2, 2014. An overpayment was issued for \$10,794.00.

[3] The Claimant advised the Commission that he was seeking employment and that he only started dedicating 100% of his time to his business and self-employment from September 8, 2014 and onwards. On reconsideration, the Commission changed their initial decision and removed the disentanglement to EI benefits. They accepted that he was unemployed from March 2, 2014 until September 7, 2014. This reduced the initial overpayment that was originally issued.

[4] However, the Commission also decided that he was not entitled to EI benefits from September 8, 2014 to October 31, 2014 because he was not unemployed and was focused on self-employment. The Commission maintained that an overpayment of \$4,012.00 was still applicable for the period he received benefits from September 8, 2014 to October 31, 2014.

[5] The Claimant disagreed and filed an appeal to the Social Security Tribunal (Tribunal) arguing that he had a verbal contract with a Commission agent to pay the overpayment amount of \$2,056.00 and not \$4,012.00.

PRELIMINARY MATTERS

[6] The Claimant raised concerns at the hearing related to other issues such as, the calculation of his benefit rate, the duration of his benefit period and the allocation of his severance to his claim.

[7] The Claimant did not ask the Commission for an explanation, or make a request for reconsideration decision for any of the above issues. Therefore, I have no jurisdiction to consider these issues because there is no reconsideration decision made by the Commission.¹

[8] The Claimant confirmed that the only issue under appeal to the Tribunal is the reconsideration decision dated April 10, 2019 on the issue of “week of unemployment”. The Claimant noted that he had arguments to present about the overpayment.

ISSUES

[9] I must determine whether the Claimant is disentitled from receiving employment insurance benefits has proven that he was unemployed from September 8, 2014 to October 31, 2014.

[10] I must also decide whether I have the authority to address the overpayment issue.

ANALYSIS

[11] The law says that a person can be paid EI benefits for each week of unemployment.² A week of unemployment means any week in which a person does not work a full working week.³ If a person is self-employed/engaged in the operation of a business, the person is assumed to be working full working weeks.⁴ So, the person cannot be paid EI benefits.⁵

¹ Section 112 of the *Employment Insurance Act*.

² Section 9 of the *Employment Insurance Act*.

³ Section 11 of the *Employment Insurance Act*.

⁴ Subsection 30(1) of the *Employment Insurance Regulations*.

⁵ *Marlowe v. Canada*, 2009 FCA 102.

[12] There is an exception if the Claimant has a low level of engagement in the business.⁶ The Claimant has to prove⁷ that his level of engagement in the business was low enough that the exception applies.⁸ I am looking at whether the Claimant would not normally rely on the self-employment as a principal means of livelihood.⁹

[13] I have to consider six factors to decide whether the Claimant's self-employment is low enough to be covered by the exception:

- The time spent
- The nature and amount of the money, property, goods¹⁰ and/or resources invested
- The financial success or failure of the business
- The ongoing, continuing and/or enduring nature¹¹ of the business
- The nature of the business
- The Claimant's intention and willingness to look for and immediately accept alternate employment¹²

Unemployment

[14] The Claimant testified that he was not unemployed from September 8, 2014 and onwards because he was working full work weeks on his business and self-employment. This was consistent with his previous statement to the Commission (GD3-92).

[15] The Claimant testified that his dispute is not about whether he was unemployed from September 8, 2014 to October 31, 2014 because he agreed with this fact, but it was the manner he was treated by the Commission. The Claimant explained that he filed a formal complaint to

⁶ Subsection 30(2) of the *Employment Insurance Regulations*, which refers to the level of engagement as being minor in extent; *Martens v. Canada (Attorney General)*, 2008 FCA 240.

⁷ *Canada (Attorney General) v. Falardeau*, A-396-85; the Claimant has to prove this on a balance of probabilities which means it is more likely than not.

⁸ *Lemay v. Canada Employment Insurance Commission*, A-662-97.

⁹ Subsection 30(2) of the *Employment Insurance Regulations* and *Martens v. Canada (Attorney General)*, 2008 FCA 240.

¹⁰ Subsection 30(3) of the *Employment Insurance Regulations* refers to the amount of "capital and resources" invested.

¹¹ Subsection 30(3) of the *Employment Insurance Regulations* refers to the "continuity" of the business.

¹² Subsection 30(3) of the *Employment Insurance Regulations*.

the Commission about the overpayment and wrote a letter to the Minister providing the details and outlining his other concerns.

[16] I accept that the Claimant is frustrated with the Commission and feels that he was not served appropriately by them. However, I do not have the authority under the law to govern their conduct, or to render a favourable decision to the Claimant based on their alleged conduct.

[17] The Commission made submissions about whether the Claimant was unemployed from September 8, 2014 to October 31, 2014 (GD4-1 to GD4-12). I reviewed them at the hearing with the Claimant, including the criteria for determining whether his self-employment was minor. However, the Claimant reiterated that this issue was not in dispute because he was focused on his self-employment and business from September 8, 2014 and onwards.

[18] Accordingly, I accept that the Claimant was not unemployed from September 8, 2014 to October 31, 2014 and his self employment was not minor because he was working full work weeks.

Overpayment

[19] The Commission imposed a disentitlement to EI benefits from September 8, 2014 to October 31, 2014.

[20] There were two separate overpayments of \$2,056.00 for two different time periods.

[21] The first overpayment of \$2,056.00 was imposed for the week starting on September 7, 2014 and ending October 4, 2014. This represented 4 weeks of EI benefits he received (GD3-96 to GD3-97).

[22] The second overpayment of \$2,056.00 was imposed for the week starting on October 5, 2014 and ending on November 1, 2014. This represented 4 weeks of EI benefits he received (GD3-96 to GD3-97).

[23] The total overpayment for the period is \$4,012.00. This amount represents a total of 8 weeks of benefits paid to the Claimant.

[24] The Claimant has already paid one overpayment of \$2,056.00 on April 25, 2019 and his dispute is about the second overpayment of \$2,056.00 (GD2-17).

[25] The Claimant argues that he should not have to pay the second overpayment of \$2,056.00 because he had a verbal contract with the Commission. He says there was an agreement to pay only \$2,056.00 as a full and final agreement.

[26] The Commission identified in their submissions that once the request for reconsideration was complete, the inputs for the disentitlement from October 6, 2014 to October 31, 2014 could be processed and resulted in another overpayment of \$2,056.00 (GD4-5; GD3-95 to GD3-98).

[27] I was not persuaded by the Claimant's argument that his verbal contract to pay \$2,056.00 was a full and final agreement which released him from paying any subsequent overpayments for the following reasons.

[28] The Claimant agreed that he was not entitled to receive benefits from September 8, 2014 to the week ending October 31, 2014 because he was not unemployed and completely focused on his self-employment.

[29] A Claimant is liable to repay an amount that he received as benefits for any period where the claim was disqualified or the claimant is not entitled.¹³ Adjudicators are not permitted to re-write legislation or interpret it in a manner that is contrary to its plain meaning.¹⁴

[30] The Commission had the authority to retroactively impose the disentitlement and resulting overpayment within 72 months because the Claimant had not initially disclosed his self-employment.¹⁵

[31] The telephone note in the file clearly shows that the Commission agent told him that he only owed an overpayment of 4 weeks of benefits (\$2,056.00) (GD3-92). However, this was

¹³ Section 43 of the *Employment Insurance Act*.

¹⁴ *Canada (Attorney General) v. Kneé*, 2011 FCA 301.

¹⁵ Subsection 52(5) of the *Employment Insurance Act*.

clearly an error made by the Commission agent, which they acknowledged in their submissions noting that a second overpayment was generated for the remaining four weeks owing.

[32] The Claimant provided no legal references or case law to show that a verbal contract supersedes or substitutes the *Employment Insurance Act* or the *Employment Insurance Regulations*, or that a Commission agent has the authority to enter into a verbal contract with a Claimant.

[33] For these reasons, I find that the Claimant is liable to repay the outstanding overpayment to the Commission because he received EI benefits for which he was not entitled to receive.

Overpayment write-off

[34] The Commission submits that the Claimant might viewed as a request for a write-off of the overpayment and that the Tribunal has no legal authority to consider his request (GD4-8).

[35] The Claimant agreed that he has not made a request to the Commission to write-off the overpayment of \$2,056.00. He explained that he was not aware or told that he could make a write-off request and request a decision from the Commission on this issue.

[36] I agree with the Commission because the legislation and case law state that I have no authority to write off an overpayment. The authority to write-off an overpayment rests solely with the Commission.¹⁶

CONCLUSION

[37] The appeal is dismissed.

Solange Losier

Member, General Division - Employment Insurance Section

HEARD ON:	September 30, 2019
METHOD OF PROCEEDING:	In person

¹⁶ Section 56 of the *Employment Insurance Regulations*; *Canada (Attorney General) v. Villeneuve*, 2005 FCA 440.

APPEARANCES:	R. J., Appellant
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