



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. I. v Canada Employment Insurance Commission*, 2019 SST 1559

Tribunal File Number: GE-19-3418

BETWEEN:

A. I.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Amanda Pezzutto

HEARD ON: November 6, 2019

DATE OF DECISION: November 18, 2019

DECISION

[1] I am dismissing the Claimant's appeal.

OVERVIEW

[2] The Claimant collected employment insurance sickness benefits in 2016. She declared earnings in some weeks. In other weeks, she did not declare any earnings. About three years later, the Canada Employment Insurance Commission (Commission) investigated the Claimant's entitlement. The Claimant's employer gave the Commission information about her work and earnings that was different from the Claimant's reports. The Commission decided that the employer's information was accurate. The Commission decided that the Claimant did not declare all of her earnings and asked her to repay benefits. The Claimant asked the Commission to review its decision. The Commission did not change its decision. The Claimant appealed to the Tribunal.

[3] I am dismissing the Claimant's appeal. The Claimant's information about her earnings was different from the employer's information. It was reasonable for the Commission to believe that the Claimant had made a false statement. The Commission had a reasonable basis to extend the reconsideration period to 72 months.

[4] The employer's information about the Claimant's work and earnings is more likely to be reliable than the Claimant's information. The Claimant's wages are earnings and the Commission should allocate her wages to the weeks she worked.

PRELIMINARY MATTERS

[5] The Claimant asked for an adjournment. I granted her request for an adjournment. Tribunal staff spoke to the Claimant about setting a new date for a hearing. The Claimant agreed to a new hearing date two weeks in the future. Tribunal staff emailed a notice of hearing with the new hearing date to the Claimant on October 24, 2019.

[6] The Claimant did not connect to the teleconference hearing. When Tribunal staff called her, she said that she did not know that she had a hearing. She said that she was not ready to participate in a hearing.

[7] I think that the Claimant received notice of the second hearing. Tribunal staff spoke to the Claimant about a new hearing date. Tribunal staff also emailed a notice of hearing to the Claimant.

[8] The law says that I have to proceed with the hearing even though the Claimant did not appear at the hearing.¹ This is because the Claimant already had one adjournment request and received notice of the new hearing date.

[9] However, I understood that the Claimant might ask for another adjournment. Tribunal staff told the Claimant that she could ask for another adjournment in writing. I waited more than a week for the Claimant to make an adjournment request. The Claimant has not yet asked for an adjournment. I have decided to proceed with making a decision.

ISSUES

[10] Issue 1 – Can the Commission extend the reconsideration period to 72 months?

[11] Issue 2 – Did the Claimant receive earnings? If so, how should the Commission allocate the earnings?

ANALYSIS

Issue 1: Can the Commission extend the reconsideration period to 72 months?

[12] The Commission can extend the reconsideration period to 72 months. The Commission believed that the Claimant made false statements about her earnings. It was reasonable for the Commission to have this opinion.

[13] The Commission can reconsider any claim for employment insurance benefits. However, the Commission must obey time limits. Usually, the Commission has 36 months to reconsider a claim for benefits.² If the Commission decides that a claimant has received benefits they were not entitled to receive, the claimant has to repay those benefits.³

¹ Section 12(2) of the *Social Security Tribunal Regulations*.

² Section 52(1) of the *Employment Insurance Act*.

³ Section 52(3) of the *Employment Insurance Act*.

[14] If the Commission has the opinion that someone has made false or misleading statements about a claim for benefits, then the Commission can extend the reconsideration period. The Commission can take up to 72 months to reconsider a claim if the Commission has the opinion that someone made a false or misleading statement about a claim.⁴

[15] The Commission's power to extend the reconsideration period to 72 months is an exceptional power. The Commission must exercise this power carefully. The Commission has to prove that it has a reasonable basis for its opinion that someone made a false or misleading statement. The Commission should tell a claimant why it thinks there is a false statement.⁵

[16] The Claimant collected employment insurance benefits in 2019. She declared earnings in some weeks and did not declare any earnings in other weeks.

[17] The employer gave the Commission a detailed, week-by-week breakdown of the Claimant's earnings in March, April, and May 2016. The employer's information did not match the information the Claimant reported to the Commission.

[18] The Claimant has given different explanations for the difference. She told the Commission she did not receive any employment insurance benefits. She told the Commission that she did not receive all of the money her employer reported. On her notice of appeal, she said that she did not work during that period.

[19] The Claimant's statements are unreliable. She did receive employment insurance benefits. She reported work to the Commission, and so she did work during that period. The employer's information about the Claimant's income is more likely to be reliable.

[20] The employer's records say that the Claimant earned more money than the Claimant reported to the Commission. The Claimant's memory of the events is unreliable. It was reasonable for the Commission to believe that the Claimant made a false statement. The Commission may extend the reconsideration period to 72 months.

⁴ Section 53(5) of the *Employment Insurance Act*.

⁵ The Federal Court of Appeal says this in *Canada (Attorney General) v. Langelier*, 2002 FCA 157.

Issue 2: Did the Claimant receive earnings? If so, how should the Commission allocate the earnings?

[21] It is likely that the employer's information about the Claimant's wages is accurate. The Claimant's wages are earnings. The Commission should allocate the wages to the weeks she worked.

[22] When a claimant receives money while also receiving employment insurance benefits, the Commission must decide whether the sum of money is earnings. Any income arising from employment is earnings.⁶ If the Commission decides that the money is earnings, then the Commission must allocate, or apply, the money to the proper weeks. The reason for the payment determines the weeks of allocation.⁷

[23] The Commission allocates earnings paid as wages to the weeks that the claimant worked and earned those wages.⁸

[24] The Claimant reported her work and earnings over the phone with a Commission agent. The Claimant reported the following information:

Week beginning	Claimant reported
March 13, 2016	\$99
March 20, 2016	0
March 27, 2016	0
April 3, 2016	0
April 10, 2016	0
April 17, 2016	\$240
April 24, 2016	\$240
May 1, 2016	\$240
May 8, 2016	\$240
May 15, 2016	\$240

⁶ Section 35 of the *Employment Insurance Regulations* describes this principle.

⁷ Section 36 of the *Employment Insurance Regulations* describes this principle.

⁸ Section 36(4) of the *Employment Insurance Regulations* describes this principle.

[25] The Commission asked the Claimant's employer for a week-by-week breakdown of the Claimant's wages for the same period. The employer reported this information:

Week beginning	Employer reported
March 13, 2016	\$470
March 20, 2016	\$470
March 27, 2016	\$470
April 3, 2016	\$470
April 10, 2016	\$470
April 17, 2016	\$520
April 24, 2016	\$520
May 1, 2016	\$708
May 8, 2016	\$708
May 15, 2016	\$708

[26] The Claimant has given different explanations of why her employer's information is different from her reports. She told the Commission that she could not do her job and so she had to pay someone to do her work. She also told the Commission that she did not receive any benefits. When the Commission noted that she had received sickness benefits, the Claimant argued that she did not receive all of the money that the employer reported. On her notice of appeal, she said that she did not work during the time period.

[27] The Claimant did not give the Commission any more information about why she did not receive all of the wages the employer reported. She did not give the Commission details about how she hired someone else to do her work, whether her employer knew about the arrangement, or whether the person was a subcontractor or another employee.

[28] She did receive employment insurance sickness benefits, and so her statement that she did not receive benefits is wrong. She reported work and earnings to the Commission, and so her statement that she did not work is also wrong.

[29] When there are different explanations of what happened, I have to decide which version is most likely. I have to consider all of the evidence and make a decision on the balance of

probabilities.⁹ I have to ask myself this question: whose information about earnings is more likely to be true?

[30] The Claimant is not reliable. She has given several different explanations of why her reports are different from the employer's information about her work and earnings. The employer's information is more likely to be reliable. I accept the employer's information about the Claimant's wages and the weeks she worked.

[31] I accept the employer's information about when the Claimant worked and how much she earned each week. Wages are earnings because they are income arising from employment. The Commission must allocate the Claimant's wages to the weeks she worked.

CONCLUSION

[32] I am dismissing the Claimant's appeal. The Commission had a reasonable basis to extend the reconsideration period to 72 months. The Claimant received earnings from her employer. The Commission should allocate wages to the weeks she worked.

Amanda Pezzutto

Member, General Division - Employment Insurance Section

HEARD ON:	November 6, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	No party appeared at the hearing.

⁹ The Federal Court of Appeal says that the standard of proof is the balance of probabilities for employment insurance matters in its decision *Canada (Attorney General) v. Corner*, A-18-93.