



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MH v Canada Employment Insurance Commission*, 2019 SST 1708

Tribunal File Number: GE-19-3417

BETWEEN:

M. H.

Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Gary Conrad

HEARD ON: November 15, 2019

DATE OF DECISION: November 19, 2019

DECISION

[1] The appeal is dismissed. The Claimant received earnings and the Commission allocated these earnings to the correct weeks.

[2] The Commission has proven¹ that the Claimant knowingly provided false or misleading information, and acted judicially when they levied the penalty, so the penalty remains.

OVERVIEW

[3] The Claimant applied for Employment Insurance (EI) benefits. While getting EI benefits the Claimant needed to tell the Commission if he was working and tell them about any money he was making.

[4] The Claimant told the Commission he was working for some of the time he was getting benefits and told them the money he made while he was working.

[5] The Commission received information from the Claimant's employer saying he made much more money than he had told the Commission. The Commission recalculated the amount of benefits the Claimant should get after receiving the information from the Claimant's employer about how much money he was making. The recalculation resulted in the Claimant owing the Commission money.

[6] The Commission also decided the Claimant had knowingly told them the wrong amount of money he was making while getting benefits. The Commission issued a penalty which means the Claimant has to pay the Commission money.

[7] The Claimant asked the Commission to reconsider their decision. After a review, the Commission upheld their decision regarding the money paid to the Claimant by his employer counting as earnings and their allocation of it resulting in the Claimant owing them money.

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

[8] The Commission also upheld their decision the Claimant knowingly told them wrong information and the issuance of a penalty, but reduced the amount of money they asked the Claimant to them in regard to the penalty.

[9] The Claimant appealed the decision of the Commission to the General Division of the Social Security Tribunal (Tribunal), where he was not successful.

[10] The Claimant appealed the decision of the General Division to the Appeal Division of the Tribunal who allowed his appeal and returned the issue back to the General Division to have it looked at again.

[11] In considering the issue under appeal I must first decide if the money the Claimant received from his employer is considered 'earnings' under the law. If I determine it is, I must then decide if the Commission correctly decided to what weeks these earnings should be allocated i.e. distributed.

[12] Finally, I must decide if the Claimant knowingly provided false information to the Commission and, if so, whether the Commission acted properly when they decided to issue a penalty to the Claimant.

ISSUE

1. Is the money that the Claimant received earnings?
2. If it is earnings, did the Commission allocate it correctly?
3. Did the Commission prove the Claimant knowingly provided false or misleading information on his claim report?
4. If so, then did the Commission properly decided the penalty amount?

ANALYSIS

Did the Claimant receive earnings?

[13] Yes, the monies the Claimant received from his employer are earnings. My reasons for deciding this are explained below.

[14] The law says that earnings are the entire income of a claimant arising out of any employment.² The law defines both “income” and “employment.” “Income” includes any income that a claimant did or will get from an employer or any other person, whether it is in the form of money or something else.³ “Employment” includes any employment under any kind of contract of service or employment.⁴

[15] The Commission decided the monies paid by the Claimant’s employer to him over the period of August 6, 2017, to September 23, 2017, were earnings as the money was paid to him as wages by his employer for the work the Claimant did during that time period.

[16] The Claimant told the Commission he agreed with the earnings reported by his employer as he had nothing to demonstrate the information was wrong⁵.

[17] The Claimant testified that he did work for his employer starting in August 2017 and ending in September 2017. The Claimant agreed he was paid for the work, but was not sure of the exact amounts he was paid.

[18] The Claimant is the party who has to prove that it is more likely than not that the money is not earnings.

[19] I find the money paid to the Claimant by his employer is earnings as he agrees he worked for the employer starting at the beginning of August 2017 and ending in September 2017 and that he was paid by his employer during that time. This means the money he got is income from his employment and as the law states, that makes such money earnings.

Did the Commission allocate the earnings correctly?

² Subsection 35(2) of the *Employment Insurance Regulations*.

³ Subsection 35(1) of the *Employment Insurance Regulations*.

⁴ Subsection 35(1) of the *Employment Insurance Regulations*.

⁵ GD3-63

[20] The law says that earnings have to be allocated.⁶ Earnings are allocated depending on the nature of the earnings: why were the earnings paid?

[21] The Claimant's earnings were wages paid by his employer as compensation for the services he provided to his employer. There is a section in the law on allocation that applies to earnings that are paid or payable for this reason.⁷

[22] The law says that earnings payable to the Claimant under a contract of employment for the performance of services should be allocated to the period when the services were performed.⁸

[23] The Commission allocated the Claimant's earnings as follows:

WEEK BEGINNING	COMMISSION'S ALLOCATION	CLAIMANT'S REPORTED EARNINGS
August 6, 2017	\$2,144.00	\$0.00
August 13, 2017	\$780.00	\$0.00
August 20, 2017	\$2,063.00	\$160.00
August 27, 2017	\$2,358.00	\$633.00
September 3, 2017	\$2,090.00	\$736.00
September 10, 2017	\$2,157.00	\$600.00
September 17, 2017	\$2,291.00	\$400.00

[24] I find the Commission correctly allocated the Claimant's earnings. I rely on the fact the Claimant has not provided any information to demonstrate the amounts reported by his employer were incorrect and that he told the Commission he did not have any information to demonstrate his employer's information was incorrect⁹.

[25] I further find that as the Claimant agreed he worked for his employer from the start of August 2017 to September 2017, and as the law says the Claimant's earnings should be allocated to the period when the work was performed, the Commission correctly allocated his earnings to the weeks when the work was performed by the Claimant.

⁶ Section 36 of the *Employment Insurance Regulations*.

⁷ Subsection 36(4) of the *Employment Insurance Regulations*.

⁸ Subsection 36(4) of the *Employment Insurance Regulations*.

⁹ GD3-63

Did the Claimant knowingly provide false or misleading information?

[26] To impose a penalty, the Commission has to prove that the Claimant knowingly provided false or misleading information.¹⁰

[27] 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.¹¹

[28] If it is clear from the evidence the questions were simple and the Claimant answered incorrectly, then I can infer that the Claimant knew the information was false or misleading. Then, the Claimant must explain why he gave wrong answers and show that he did not do it knowingly.¹² The Commission may impose a penalty for each false or misleading statement knowingly made by the Claimant.

[29] I do not need to consider whether the Claimant intended to defraud or deceive the Commission when deciding whether he is subject to a penalty.¹³

[30] The claim report completed by the Claimant asked him whether he was working over the period of the report and if he was, what his earnings were. The Claimant reported his earnings as shown in the table above.

[31] The Commission says that the Claimant knowingly made false or misleading statements when he completed his reports as knew he was working from August 8, 2017 to September 22,

¹⁰ Section 38 of the *Employment Insurance Act*.

¹¹ *Bajwa v Canada*, 2003 FCA 341; the Commission has to prove this on a balance of probabilities, which means it is more likely than not.

¹² *Nangle v Canada (Attorney General)*, 2003 FCA 210.

¹³ *Canada (Attorney General) v Miller*, 2002 FCA 24.

2017, but he declared he did not have any work and earnings in the week of August 6, 2017 and in the week of August 13, 2017.

[32] The Commission also says, that while the Claimant was aware he was working he under declared his earnings by a large margin for the weeks of August 20, 2017, August 27, 2017, September 3, 2017, September 10, 2017 and September 17, 2017.

[33] The Claimant testified he did not knowingly provide false information to the Commission when completing his reports. The Claimant testified he did not have internet access or get any mail when he was living in X so he did not have exact numbers for how much he was getting paid.

[34] The Claimant testified he just estimated how much he was making by doing simple math, taking what he was paid per hour and multiplying that by the amount of hours he worked in a week.

[35] I find that the Commission has proven that it is more likely than not that the Claimant knowingly provided false or misleading information. I find, that for the weeks beginning August 6 and August 12, 2017, the Claimant was aware he was working and being paid, agreed he was working and being paid, yet reported no earnings. I find this represents a case of knowingly providing false information.

[36] I find that for the weeks beginning August 20, August 27, September 3, September 10, and September 17, 2017, while the Claimant did report some earnings, and I accept he did not have internet access or regular access to his mail, he still knowingly provided false information when completing his reports.

[37] I find that while he did provide an amount for earnings, even if he was estimating using simple math of hours worked per week multiplied by his pay per hour, the earnings he reported to the Commission were far off from what his employer reported he earned. I find this difference is not explained away by mathematical errors. I further rely on the fact the Claimant has not provided any information to show his employer's information was incorrect regarding his earnings.

[38] I find the Claimant did provide false information and did so knowingly.

Did the Commission properly decide the penalty amount?

[39] The Commission's decision on the penalty amount is discretionary.¹⁴ 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.¹⁵

[40] The Commission says they rendered their decision to levy a penalty in a proper manner as they considered all the relevant circumstances and reduced the original amount of the penalty by 50% due to mitigating circumstances provided by the Claimant.

[41] The Claimant testified he could not say if the Commission acted in bad faith when they made their decision as he was not sure of their intention.

[42] The Claimant testified the Commission did not consider his circumstances when they made their decision. The Claimant testified the Commission imagined he was living a normal life when in fact he was living in a shelter, and had serious mental and physical health issues. The Claimant testified the Commission did not listen to him when he tried to speak to them about the struggles he was going through at the time he made his reports.

[43] I find there is insufficient evidence to support that the Commission 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, when they made their decision to levy a penalty

[44] I find the Commission took into account the circumstances raised by the Claimant regarding his financial issues, physical and mental health struggles and his problems finding a place to live and having to live in a shelter as they stated as such in their Record of Decision

¹⁴ *Canada (Attorney General) v Kaur*, 2007 FCA 287.

¹⁵ *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.

dated March 7, 2019¹⁶ and reduced the original penalty in light of those mitigating circumstances.

[45] I further find the Claimant has not raised any other relevant issues the Commission ignored when they made their decision.

[46] I find the Commission exercised its discretion properly so I cannot change the penalty amount.

CONCLUSION

[47] The appeal is dismissed. The Claimant received earnings and these earnings were allocated correctly by the Commission. Further, the Claimant knowingly provided false information to the Commission and the Commission exercised its discretion properly when issuing the penalty so I cannot change the penalty amount.

Gary Conrad

Member, General Division - Employment Insurance Section

HEARD ON:	November 15, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. H., Claimant

¹⁶ GD3-65