



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *J. F. v Canada Employment Insurance Commission*, 2020 SST 144

Tribunal File Numbers: GE-19-4118
GE-19-4120

BETWEEN:

J. F.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Josée Langlois

HEARD ON: January 7, 2020

DATE OF DECISION: January 7, 2020

DECISION

[1] The appeal is dismissed. I find that the Appellant did not have just cause for voluntarily leaving his employment on June 18, 2019. I also find that the Commission was justified in imposing a penalty on the Appellant's file and issuing a notice of violation.

OVERVIEW

[2] The Appellant voluntarily left his employment as a technical advisor at X on June 18, 2019. On November 5, 2019, the Canada Employment Insurance Commission (Commission) denied the Appellant's claim because it found that he had reasonable alternatives to leaving his employment voluntarily.

[3] The Commission also found that the Appellant had made a false statement when he failed to report that he had worked from June 3, 2019, to June 18, 2019. The Commission imposed a penalty on the Appellant for having knowingly made a false statement and issued a notice of violation. The Appellant submits that he was misunderstood and that he was distressed when he left his job.

[4] The Commission's discretionary decisions cannot be changed unless it can be shown that the Commission exercised its discretionary power in a non-judicial manner or acted in a perverse or capricious manner without regard to the material before it.

[5] I must determine whether the Appellant had just cause for voluntarily leaving his employment, whether a penalty should be imposed for having knowingly made a false or misleading statement, and whether issuing a notice of violation was justified.

ISSUES

[6] Did the Appellant have no reasonable alternative to leaving his employment?

[7] Should a penalty be imposed on the Appellant's file? To determine this, I must answer the following questions:

- Did the Appellant make a false or misleading statement?

- If so, did the Appellant know that the statement he made contained false or misleading information?
- Did the Commission exercise its discretion judicially when it imposed the penalty?
- Was the Commission justified in issuing a notice of violation to the Appellant?

PRELIMINARY MATTER

[8] At the hearing, I combined the Appellant's two files, numbered GE-19-4118 and GE-19-4120, because they both raise common questions of fact or law and because combining them was not likely to cause prejudice to the parties.

[9] The Appellant did not attend the hearing. The notice of hearing was sent to him by mail on December 27, 2019, a message was left on his voicemail on December 31, 2019, by the Tribunal Registry informing him of the hearing, and the Appellant sent a document to the Tribunal on January 3, 2019.

[10] At the time of the hearing, the Tribunal Registry left a voicemail message at the telephone number provided by the Appellant and sent him an email informing him of the hearing and asking him to contact the Tribunal immediately. The Appellant did not follow up on these messages.

[11] Since the parties were advised of the hearing, it was held in their absence.

ANALYSIS

Voluntary leaving

[12] The Appellant admitted that he had voluntarily left his employment at X in the middle of his shift because of an issue with the printer he could not resolve.

[13] I find that the Appellant voluntarily left his employment on June 18, 2019.

[14] Since the Commission has shown that the leaving was voluntary, the Appellant must show that he had just cause for voluntarily leaving his employment.¹

Did the Appellant have no reasonable alternative to leaving his employment?

[15] The Appellant admits that he left his employment during his shift because he had an issue with the printer. He was the only person in charge on site and the mechanics and customers were relying on him. The Appellant knew it was not the right thing to do, but he could not help but leave because the pressure he felt was too strong.

[16] The Appellant also stated in his notice of appeal that the distress he felt on his last day of work was misunderstood and that he acted in good faith.

[17] The employer stated to the Commission that the Appellant had left the workplace after becoming upset. The printer was out of ink and the Appellant left the dealership, the customers, and the employees on their own when he left the workplace. The employer never heard from the Appellant again.

[18] The Commission submits that the Appellant had alternatives to voluntarily leaving his employment. It submits that the Appellant could have talked to the employer before leaving his job. The Appellant could also have taken a break and [translation] “cooled down” before leaving the workplace.

[19] I share the Commission’s view. The Appellant had other alternatives on June 18, 2019. Although he tried to reach his supervisor, and they were unable to solve the problem over the phone, the Appellant could have contacted technical services. The Appellant was responsible for the employees and customers, and, even if the printer was not working, he could have stayed at the workplace to ensure the dealership was supervised. Furthermore, after leaving the workplace, the Appellant did not try to contact the employer to provide it with an explanation.

¹ *Green*, 2012 FCA 313; *White*, 2011 FCA 190; *Patel*, 2010 FCA 95.

[20] If the Appellant felt distressed, he could have contacted a doctor or discussed the situation with his employer, even after the fact. But the Appellant did not contact the employer again.

[21] The Appellant argues that another job was waiting for him, and he sent the Tribunal an exchange of text messages dated July 9, 2019, to August 7, 2019, showing that he had had an interview and had been hired by another employer. However, these facts became known after June 18, 2019, and cannot justify the Appellant having voluntarily left his employment at that time.

[22] The facts show that the Appellant did not have assurance of another employment when he left the one he had on June 18, 2019.

[23] The Appellant did not have just cause for voluntarily leaving his employment on June 18, 2019, because he had reasonable alternatives to leaving when he did.²

Should a penalty be imposed on the Appellant's file?

[24] To assess whether a penalty should be imposed, I must establish whether the Appellant knowingly made a false or misleading statement and, where applicable, whether the Commission properly exercised its discretion when calculating the penalty amount.

[25] The Commission must show the existence of knowingly made false statements in a claimant's file. Then, the Appellant must explain why incorrect answers were given.³

Did the Appellant make a false or misleading statement?

[26] The Commission may impose a penalty on a claimant when they make a statement that they knew was false or misleading at the time of their claim for benefits, or even simply when a claimant makes a statement or provides information that they know was false or misleading.⁴

² *Astronomo*, A-141-97; *Tanguay*, A-1458-84; *Peace*, 2004 FCA 56 (CanLII); *Landry*, A-1210-92.

³ *Canada (Attorney General) v Bellil*, 2017 FCA 104.

⁴ Act, s 38.

[27] On June 21, 2019, the Appellant filled out a claimant's statement. To the question: [Translation] "Did you work or receive any earnings during the period from June 2, 2019, to June 22, 2019," the Appellant answered "no." The next question on the form indicated, [translation] "You have answered 'no.' Is this correct?" and the Appellant answered "yes."

[28] The Appellant made a false statement to the Commission when he said that he had not worked during the period from June 2, 2019, to June 22, 2019, when in fact he had worked from June 3, 2019, to June 18, 2019, at X.

[29] With this false statement established, the Appellant must show that his statement was not made knowingly, by providing a reasonable explanation.⁵

Did the Appellant know that the statement he made to the Commission was false or misleading?

[30] Just because a false statement was made does not necessarily mean that the author knew it was false. There has to be subjective knowledge that the statement was false.⁶

[31] A false or misleading statement has been made when the claimant subjectively knows that that the information they have given, or the statements they have made, are false. The term "knowingly" refers to the idea that the Appellant wilfully made these statements with full knowledge of the facts.⁷

[32] To determine whether the Appellant knowingly made a false or misleading statement, there is no requirement to show that there was a mental element, such as the intention to deceive, when concluding that a false statement was knowingly made.⁸

[33] As the Commission's file shows, the Appellant worked at X from June 3, 2019, to June 18, 2019.

⁵ *Miazga*, A-698-95.

⁶ *Moretto*, A-667-96.

⁷ *Mootoo*, 2003 FCA 206 (CanLII).

⁸ *Antonia*, A-743-97.

[34] The Commission submits that the Appellant knew that he was providing false or misleading information even though he claims to have made an error. It argues that the Appellant's explanation is not sufficient to show that he was unaware that he had worked from June 3, 2019, to June 18, 2019.

[35] Although the Appellant argues that he was unsure about some of the points on the statement, that he made an error, and that he sent all the information requested by the Commission officer in September 2019, the fact remains that on June 21, 2019, the Appellant indicated that he had not worked when in fact he had. That question was simple, and the Appellant even confirmed his answer.

[36] I am satisfied that, when he reported that he had not worked during the period from June 2, 2019, to June 22, 2019, the Appellant knew that he had worked from June 3, 2019, to June 18, 2019 at X.

[37] The question put to him in the claimant's statement on June 21, 2019, was clear and simple.

[38] The Appellant has not provided a reasonable explanation, and I find that he had subjective knowledge that he worked at X from June 3, 2019, to June 18, 2019. Therefore, he knew that the information he was providing to the Commission was false.

Did the Commission exercise its discretion judicially when it imposed the penalty?

[39] I am of the view that the Commission used its discretionary power judicially when it imposed a penalty on the Appellant because it considered all the factors relevant to the Appellant's situation and ignored any irrelevant factors.⁹

⁹ *Canada (Attorney General) v Uppal*, 2008 FCA 388; *Canada (Attorney General) v Tong*, 2003 FCA 281.

[40] I can change a discretionary decision by the Commission only if it is shown that the Commission “exercised its discretionary power in a non-judicial manner or acted in a perverse or capricious manner without regard to the material before it.”¹⁰

[41] The onus is on the Commission to show that it exercised its discretion judiciously in imposing a penalty.¹¹ Acting in a non-judicial manner may mean acting in bad faith with an improper purpose or motive, having regard to irrelevant factors, not having regard to a relevant factor, or acting in a discriminating manner.¹²

[42] The Commission argues that the penalty amount was imposed judicially because all the relevant circumstances were considered when it determined the penalty amount.

[43] Because the Appellant had not reported having worked at X during the period from June 2, 2019, to June 22, 2019, and because he made this false statement knowingly, the Commission imposed a \$571 penalty on the Appellant. It calculated as follows: \$1,141 (overpayment due to the false statement) x 50% = \$571.

[44] The Commission used its discretion judiciously when it imposed a penalty on the Appellant because it considered the factors relevant to the Appellant’s situation and ignored any irrelevant factors.¹³

Was issuing the Appellant a notice of violation justified?

[45] In situations that require imposing a penalty, a notice of violation is not required or automatic, and the Commission must exercise its discretion while considering the circumstances.¹⁴

¹⁰ *Uppal*, 2008 FCA 388 (CanLII).

¹¹ *Cou Lai*, A-525-97.

¹² *Dunham*, A-708-95; *Purcell*, A-694-94.

¹³ *Uppal* 2008 FCA 388 (CanLII), *Attorney General of Canada, supra*.

¹⁴ *Gill*, A-483-09.

[46] Mitigating circumstances must be considered in deciding whether to issue a notice of violation. Another factor to consider is the overall impact of issuing a notice of violation to the Appellant, including his ability to establish a future claim for benefits.

[47] The Commission argues that discovering false statements resulted in an overpayment amounting to \$1,141 and that a notice of violation was issued. The Commission issued a minor notice of violation because it was the first time the Appellant had made a false statement.

[48] The Commission argues that it exercised its discretion judicially in deciding to issue a notice of violation because it considered the overall impact of this notice on the Claimant's situation, including his ability to establish a future claim for benefits.

[49] I find that the Commission considered all of the relevant circumstances and that it was justified in issuing a notice of violation to the Appellant. The Commission properly exercised the discretion to issue a notice of violation.

CONCLUSION

[50] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section

HEARD ON:	January 7, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	J. F., Appellant