Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *SV v Canada Employment Insurance Commission*, 2020 SST 1210

Tribunal File Numbers: GE-20-2244
GE-20-2248
GE-20-2249
GE-20-2250

BETWEEN:

S. V.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Charline Bourque

HEARD ON: December 8, 2020

DATE OF DECISION: December 12, 2020

Canada

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant applied for Employment Insurance benefits starting November 22, 2015; November 20, 2016; December 10, 2017; and December 9, 2018.

[3] The Commission found that it had 72 months to reconsider the claims for Employment Insurance benefits due to false or misleading statements. Therefore, the Commission reconsidered the Appellant's claims for benefits and determined that the Appellant had not had an interruption of earnings for the claims made on December 20, 2016; December 10, 2017; and December 9, 2018.

[4] The Commission also found that the Appellant had not correctly reported the earnings he received from his employer for the weeks of January 3, 2016; March 19 and 26, 2016; and May 6, 2018.

[5] The Appellant disagrees with the decisions. He says that they are unreasonable and arbitrary.[1]

PRELIMINARY MATTERS

[6] The Tribunal joined the files to make the hearing easier and because of common evidence in the files after the Commission's investigation. Furthermore, the Tribunal is of the view that joining the files made it easier for the Appellant to understand because of common issues in certain files.

[7] Section 12(1) of the *Social Security Tribunal Regulations* says that, if a party fails to appear at a hearing, the Tribunal can proceed in the party's absence if the Tribunal is satisfied that the party received notice of the hearing. In addition, a document sent electronically is

[1] See the notice of appeal (GD2).

deemed to have been communicated to a party the next business day after the day on which it is transmitted.[2]

[8] I consider the fact that an email was sent to the Appellant and his representative on November 27, 2020. This email contained the notice of hearing. Then, the Tribunal contacted the representative on December 3, 2020, and the Appellant on December 4, 2020, to remind them of the hearing scheduled for December 8, 2020. No party attended the hearing or has since contacted the Tribunal. Therefore, I am of the view that I can proceed in the absence of the Appellant and his representative because I am satisfied that they received notice of that hearing.

ISSUES

[9] Did the Appellant make a false or misleading statement that would enable the Commission to reconsider its decision within 72 months after the benefits were paid or became payable?

[10] Did the Commission correctly allocate the earnings the Appellant received from his employer?

[11] Should the Employment Insurance benefit periods starting December 20, 2016; December 10, 2017; and December 9, 2018, be cancelled?

ANALYSIS

Issue 1: Did the Appellant make a false or misleading statement that would enable the Commission to reconsider its decision within 72 months after the benefits were paid or became payable?

[12] The Commission says that it told the Appellant on February 12, 2020, that it was going to reconsider the claims for benefits for the following periods: December 12, 2013; December 3, 2014; December 15, 2015; December 3, 2016; December 22, 2017; and December 19, 2018.[3]

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[2] See section 19(1)(c) of the *Social Security Tribunal Regulations*.
[3] See the letter from the Commission (GE-20-2244/GD3-26).

[13] The Commission says that the benefits reconsidered after that decision were for the period from December 12, 2017, to May 19, 2018; and from December 9, 2018, to March 23, 2019, which is within the 36-month period. The Commission says that, under section 52(1) of the *Employment Insurance Act*, it had the authority to reconsider the claim retroactively for that period because the Claimant had failed to report his benefits from the company "X" while he was claiming Employment Insurance benefits.

[14] Furthermore, the Commission is of the view that it has demonstrated, under section 52(5) of the Act, that it exercised its discretion judicially when it [translation] "found that a false or misleading statement or representation had been made in connection with the claim." The Claimant made a false statement when he reported his earnings for the week starting January 3, 2016. The Claimant was notified on 2020-02-12—that is, within the 72-month timeframe. Finally, the Commission is of the view that the benefits reconsidered for the period from November 20, 2016, to April 1, 2017, were within the 72 months and that, under the Act, it had the authority to reconsider the claim retroactively for that period because the Claimant had failed to report his earnings and benefits from the company "X" while he was claiming Employment Insurance benefits.

[15] The Act says that the Commission can reconsider a claim for benefits within 36 months after the benefits have been paid or would have been payable if a claimant did not receive benefits to which they were entitled or received benefits to which they were not entitled.[4]

[16] If the Commission finds that a false or misleading statement or representation has been made in connection with a claim, the Commission has 72 months within which to reconsider the claim.[5]

[17] To reconsider a claim for benefits within 72 months, the Commission does not have the burden of proving "that the claimant knowingly made false statements." The legislation requires only that, "in the opinion of the Commission, a false or misleading statement … has been made." To reach this conclusion, the Commission must be satisfied that an appellant has made a false or

[4] See section 52 of the *Employment Insurance Act* (Act).
[5] See section 52(5) of the Act.

misleading statement or representation in connection with a claim. Therefore, the mere existence of a false or misleading statement is enough, if the Commission is reasonably satisfied of this fact, for this section to apply, without the need to find intention in the person making the statement.[6]

[18] I am satisfied that the Appellant failed to report a portion of his earnings and benefits from his employer.

[19] As a result, I am of the view that the Commission could find that there was a false or misleading statement because, despite everything, the Claimant did not report a portion of his earnings and benefits from his employer.

[20] Therefore, I find that the Commission was reasonably satisfied as to the existence of this false or misleading statement, regardless of whether it was made knowingly, to be able to apply sections 52(1) and (5) of the Act.

[21] As a result, I am of the view that the Commission could reconsider the Claimant's claim for benefits within the 72 months set out in the Act. Because the Appellant was notified, on January 4, 2019, of the reconsideration of the decisions, I find that the Commission could reconsider each of the periods at issue because they were within the 72-month timeframe set out in the Act.

Issue 2: Did the Commission correctly allocate the earnings the Appellant received from his employer?

[22] Earnings for benefit purposes are "the entire income […] arising out of any employment, including […] wages, benefits or other remuneration," and must be taken into account unless they fall within an exception.[7]

[23] More specifically, income is defined as "any pecuniary or non-pecuniary income that is or will be received by a claimant from an employer or any other person, including a trustee in

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[6] See *Canada (Attorney General) v Dussault*, 2003 FCA 372.
[7] See sections 35(2) and 35(7) of the *Employment Insurance Regulations* (Regulations).

bankruptcy."[8] Therefore, the entire income of a claimant arising out of any employment is to be taken into account in calculating the amount to be deducted from benefits.[9]

[24] The Commission says that the Appellant received the following earnings as wages from his employer:

- $903.48 for the week of January 3, 2016[10]
- $1,033.76 for the week of May 6, 2018[11]
- $1,164.80 for the week of March 19, 2019[12]
- $0.00 for the week of March 26, 2019,[13] even though he reported earnings of $1,100

[25] The Appellant told the Commission that he agreed with the earnings received. He said he made a mistake when submitting his reports.[14]

[26] Therefore, I am of the view that the earnings received from the employer as wages constitute earnings within the meaning of section 35(2) of the Regulations.

[27] As a result, the Regulations state that amounts that constitute earnings under section 35 of the Regulations must be allocated under section 36 of the Regulations.[15]

[28] More specifically, earnings that are payable to a claimant under a contract of employment for the performance of services are allocated to the period in which the services were performed.[16]

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[8] See section 35(1) of the Regulations.
[9] *McLaughlin v Canada (Attorney General)*, 2009 FCA 365.
[10] See the Appellant's file GE-20-2250.
[11] See the Appellant's file GE-20-2249.
[12] See the Appellant's file GE-20-2248.
[13] See the Appellant's file GE-20-2248.
[14] Report of the Commission's interview (GE-20-2248/GD3-25).
[15] *Boone et al v Canada (AG)*, 2002 FCA 257.
[16] See section 36(4) of the Regulations.

[29] As a result, earnings received as wages in exchange for hours worked must be allocated to each of the weeks for which they were received. Therefore, I am of the view that the Commission correctly allocated the Appellant's earnings.

Issue 3: Should the Employment Insurance benefit periods starting December 20, 2016; December 10, 2017; and December 9, 2018, be cancelled?

[30] To establish a claim for Employment Insurance benefits, a claimant has to meet the conditions set out in the *Employment Insurance Act* (Act).[17] A claimant has to have an interruption of earnings from employment and enough hours of insurable employment based on the regional rate of unemployment that applies to them.[18]

[31] In this case, only the issue of the interruption of earnings is in dispute.

[32] An interruption of earnings occurs where [a person has] a period of seven or more consecutive days in respect of which no earnings that arise from employment are payable or allocated.[19]

[33] More specifically, an interruption of earnings has three components:

- a lay-off or separation from an employer or a significant reduction in hours worked resulting in a significant decrease in earnings;
- a period of seven or more consecutive days during which no work is performed for that employer; and
- seven or more consecutive days during which no earnings arise from that employment.[20]

[34] Section 35(2) says that the earnings to be taken into account for the purpose of determining whether an interruption of earnings under section 14 has occurred are the entire income arising out of any employment. Section 35(10)(d) specifies that these earnings include

[17] See section 7(1) of the Act.
[18] See section 7(2) of the Act.
[19] See section 14(1) of the Regulations.
[20] *Swallowell v Canada (UIC)*, FCA A-1195-84.

the value of board, living quarters, and other benefits received by the claimant from or on behalf of the claimant's employer in respect of the claimant's employment.

[35] Case law has established that earnings do not have to be in the form of cash and that certain benefits granted and related to the performance of work are of an income nature and constitute earnings within the meaning of the Act.[21]

[36] The Commission is of the view that, despite a shortage of work, the Appellant continued to receive the employer's benefits year-round, including the use of the truck and the use of the company cell phone. The Commission says that the Claimant demonstrated that the truck was paid in part by the [*sic*] and confirmed that it paid for all gas, maintenance, and repair costs. In addition, the employer confirmed that the company was paying for gas for the truck and that the cell phone was paid year-round by the company. Finally, the address on the credit card that pays for the cell phone is that of the company "X."

[37] The Appellant says that he disagrees with the decisions and adds that they are unreasonable and arbitrary.[22]

[38] I consider the fact that the Appellant confirms that he pays for his cell phone. Nevertheless, I note that the credit card used is in the Appellant's name but has the company's address, even though the Appellant's address is different from the company's address. Furthermore, the employer confirmed that the cell phone belongs to it.[23]

[39] I also note that the vehicle's lease and insurance policy are in the company's name.[24] I consider the fact that the Appellant pays part of the cost of the vehicle, but I am of the view that this does not allow me to find that the company does not pay the monthly costs of the vehicle that the Appellant uses every month, even when he is off work. The Appellant also confirmed that the maintenance and repair costs of the truck were paid entirely by the company. I note that the vehicle's lease was signed in November 2016.

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[21] *Masse v Canada (Attorney General)*, FCA A-307-06.
[22] See the notice of appeal (GD2).
[23] See the interview report (GE-20-2248/GD3-32).
[24] See the vehicle lease (GE-20-2248/GD3-80 to GE3-84).

[40] I am of the view that the Appellant's use of a truck and/or cell phone provided by his employer constitutes a benefit that he receives from that employer and, therefore, constitutes income and insurable earnings under the Act and Regulations. Because the Appellant uses the cell phone and vehicle year-round, even when he is off work, these earnings therefore prevent an interruption of earnings, as described in the Regulations.[25]

[41] Therefore, based on the evidence and the parties' submissions, I am of the view that there was no interruption of earnings for at least seven consecutive days because the Appellant had access to the company's vehicle and a cell phone. As a result, on a balance of probabilities, the Appellant does not meet the conditions to establish an Employment Insurance benefit period for each of the periods at issue.

CONCLUSION

[42] The appeal is dismissed.

Charline Bourque
Member, General Division – Employment Insurance Section

HEARD ON:	December 8, 2020
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	No party attended the hearing.

[25] See section 14(1) of the Regulations.