



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *TP v Canada Employment Insurance Commission*, 2021 SST 82

Tribunal File Number: GE-21-104

BETWEEN:

T. P.

Appellant (Claimant)

and

Canada Employment Insurance Commission

Respondent (Commission)

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: February 4, 2021

DATE OF DECISION: February 8, 2021

DECISION

[1] I am dismissing the appeal. The Claimant is liable to repay Employment Insurance (EI) benefits she is not entitled to receive. This means I am not reducing or writing off the overpayment of EI benefits. The Claimant is at liberty to contact the Commission if she wishes to pursue her request for write off.

OVERVIEW

[2] When the Claimant applied for regular EI benefits, she was not able to obtain a Record of Employment (ROE) from two of her previous employers. She requested the assistance of the Commission who offered to establish her claim using interim ROEs.

[3] The Claimant agreed to the terms for using an interim ROE. She provided her hours of work and rates of pay. She told the Commission that she only had two periods of work for X. The first period was from February 1, 2019, to February 28, 2019. The second period was for 7 days from August 6, 2019, to August 14, 2019.¹

[4] The Commission created two interim ROEs. They established the Claimant's benefit period effective September 29, 2019, using those two interim ROEs. The Commission initially determined the Claimant's benefit rate is \$562.00 per week and she is entitled to 29 weeks of benefits.

[5] After the Claimant collected all 29 weeks of benefits, the Commission received insurability rulings from Canada Revenue Agency (CRA) for each employer who failed to provide ROEs. CRA determined that the Claimant's work was insurable for each employer. Following the rulings, the Commission received an ROE from X. However, they never received an ROE from the second employer, X.

[6] The Commission recalculated the claim using the ROE from X. They determined that when they created the interim ROE for X., they did not use the actual part-time hours and earnings provided by the Claimant. Rather, they created the interim ROE as if the Claimant had worked full-time hours from February 1, 2019, to August 14, 2019. So, when the recalculation was performed the Claimant's benefit rate reduced from \$562.00 to \$339.00 per week and her

¹ See GD3-25.

entitled dropped to 20 weeks instead of 29. This recalculation results in a \$9,050.00 overpayment of benefits.

[7] The Commission reconsidered their decision. They maintain that the Claimant has a \$9,050.00 overpayment of benefits that she is required to repay. The Claimant appeals to the Social Security Tribunal. She argues that the Commission is “culpable in miscalculating her hours and earnings” because they failed to use the actual hours and earnings she provided. She says the Commission grossly miscalculated her hours and earnings causing her financial hardship.

ISSUE

[8] Is the recalculation of the Claimant’s benefit rate in dispute?

[9] Is the recalculation of the Claimant’s weeks of entitlement in dispute?

[10] Can I hear an appeal relating to insurability rulings?

[11] Do I have the authority to reduce or write-off the overpayment?

ANALYSIS

Is the recalculation of the Claimant’s benefit rate in dispute?

[12] No. The Claimant states that she is not disputing the Commission’s recalculation. This recalculation results in her weekly benefit rate dropping from \$562.00 to \$339.00.

[13] The law says that the rate of weekly benefits payable to a claimant is 55% of their weekly insurable earnings.² The benefit rate is calculated using a variable number of the best (highest) weeks of insurable earnings that fall within the qualifying period.³

[14] The Commission provides detailed submissions outlining their recalculation of the benefit rate.⁴ Upon review of the recalculation, the Claimant says she agrees that her highest weekly earnings were the 22 weeks listed by the Commission in their submissions.⁵ The

² As specified in subsection 14(1.1) of the *Employment Insurance Act (Act)*.

³ See sections 8 and 14 of the *Act*.

⁴ See page GD4-5.

⁵ The Commission lists the Claimant’s best 22 weeks of earnings and their detailed recalculation on page GD4-5.

Claimant states she agrees that upon recalculation, her benefit rate is \$339.00. I see no evidence to dispute this. So, I find as fact that, upon recalculation, the Claimant's weekly benefit rate is \$339.00.

Is the recalculation of the Claimant's weeks of entitlement in dispute?

[15] No. The Claimant states that she is not disputing the Commission's recalculation. This recalculation results in her weeks of entitlement dropping from 29 to 20 weeks.

[16] To determine the number of weeks of benefits the Claimant is entitled to receive, the following is considered:

- The Regional Rate of Unemployment (RRU) in the Claimant's area;
- the dates of the qualifying period, and
- the hours of insurable employment that fall within the qualifying period⁶

[17] The Commission provides detailed submissions outlining their recalculation of the weeks of entitlement to benefits.⁷ I reviewed the Commission's recalculation with the Claimant during the hearing. She says she agrees that her qualifying period is from September 30, 2018, to September 28, 2019. She agrees with the Commission's determination of her numbers of hours in the qualifying period. She states that at the time she established her claim she was residing in the region of Toronto. However, she states she did not look up the chart for the regional rate of unemployment (RRU), but she trusts the Commission's judgment in their calculation.

[18] The Commission submits a copy of the table of Unemployment Rates for the EI Economic Regions.⁸ Upon review of this table, I find that the applicable RRU is 5.9%, as determined by the Commission.

[19] I see no evidence to dispute the recalculation of the weeks of benefit entitlement. So, I find as fact that the Claimant is entitled to 20 weeks of benefits.

⁶ See section 12 of the *Act*.

⁷ See page GD4-6.

⁸ See pages GD3-33 to GD3-37.

[20] The recalculation results in a \$9,050.00 overpayment of benefits. This is because the Commission completed the recalculation after the Claimant had already received payment for the full 29 weeks at \$562.00 per week. As stated above, the Claimant's weekly benefit rate drops from \$562.00 to \$339.00 and her weeks of entitlement drop from 29 to 20 weeks due to the recalculation.

Repayment of an overpayment of benefits?

[21] The law states that a claimant is liable to repay EI benefits they are not entitled to receive.⁹

[22] The Federal Court of Appeal has held that in cases where the Commission's errors result in an overpayment of benefits their decision is to remain if there is no prejudice to the claimant.¹⁰ I find that in this case, the Commission's error does not cause the Claimant any prejudice because their error did not prevent her from appealing the reconsideration decision.

[23] I am sympathetic to the Claimant's situation. However, I am bound by the clear legislative provisions concerning her liability to repay the overpayment amount. The facts support that the Claimant received \$9,050.00 of EI benefits in excess of the amount she is entitled to receive. This means she is liable to repay the \$9,050.00 overpayment.

Can I hear an appeal relating to insurability rulings?

[24] No. The Federal Court of Appeal (FCA) has reaffirmed that Canada Revenue Agency (CRA) has exclusive jurisdiction to determine appeals relating to insurability rulings. This means I cannot determine matters relating to CRA rulings of the Claimant's hours, earnings, or severance pay. If the Claimant wishes to pursue such an appeal, she ought to contact CRA to determine their process of appeal.¹¹

⁹ As per section 43 of the *Act*.

¹⁰ In *Desrosiers v Canada (AG)*, A-128-89, the judicial review relating to CUB 16233 was dismissed. In that case, the Federal Court of Appeal upheld the Umpire's determination that an error, which does not cause prejudice, is not fatal to the decision under appeal, so the decision is to be maintained.

¹¹ *Canada (Attorney General) v Romano* 2008 FCA 117; *Canada (Attorney General) v Didiolato* 2002 FCA 345

Do I have the authority to reduce or write-off the overpayment resulting from the recalculation?

[25] No. As explained during the hearing, I do not have the jurisdiction to decide on matters relating to a debt write off or reduction. That authority belongs to the Commission.¹²

[26] The Claimant requests the overpayment be erased because it results entirely from the Commission's "gross error" when creating her interim ROE. She states that she provided the Commission with accurate details of her part-time employment, namely her rate of pay and the days she worked, but they created an interim ROE as if she was working full-time. She says that the Commission is "culpable in miscalculating her hours and earnings" so she should not have to repay the \$9,050.00 overpayment.

[27] The Commission says they informed the Claimant verbally and in writing that once they receive the ROEs, they will recalculate her claim. They explained further that if the recalculation results in an overpayment she is required to repay the overpayment amount.¹³

[28] The Claimant agrees that the Commission's agent told her about the requirement for recalculation. However, she says she based her agreement on her expectation that the Commission would create the interim ROE correctly, based on the actual information she provided. She argues that the Commission's agent made a "gross" error resulting in a huge financial burden placed upon her. She reiterated that she agreed to the terms based on the expectation that the Commission did their job correctly when creating the interim ROE.

[29] I agree that it is reasonable for claimants to expect that the Commission will perform their duties correctly. However, as explained during the hearing, I do not have the jurisdiction to decide on matters relating to a debt write off or reduction. That authority belongs to the Commission.¹⁴ That said it is my opinion that this is a case where the Commission should consider writing off the overpayment because it arises entirely from their error.

¹² Section 56 of the *Regulations*.

¹³ See GD3-26 and GD3-38.

¹⁴ Section 56 of the *Regulations*.

CONCLUSION

[30] The Commission paid the Claimant \$9,050.00 in benefits she is not entitled to receive, which she is liable to repay. This means I am dismissing the appeal.

Linda Bell

Member, General Division - Employment Insurance Section

HEARD ON:	February 4, 2021
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	T. P., Appellant (Claimant)