



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SR v Canada Employment Insurance Commission*, 2021 SST 157

Tribunal File Number: AD-20-734

BETWEEN:

S. R.

Appellant / Claimant

and

Canada Employment Insurance Commission

Respondent / Commission

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: April 16, 2021

DECISION AND REASONS

DECISION

[1] I am allowing the appeal. I am rescinding the General Division's decision and substituting my own.

[2] I am annulling the allocation of earnings. The Claimant S. R. does not owe any overpayment. Effectively this means the Claimant is entitled to a reimbursement of any payments she may have made.

OVERVIEW

[3] The Claimant is appealing the General Division's decision.

[4] The General Division decided that the Respondent, the Canada Employment Insurance Commission, had, for the most part, correctly allocated the Claimant's earnings from each of her four places of employment. This left the Claimant with an overpayment of Employment Insurance benefits.

[5] The Claimant argues that the General Division made legal and factual errors regarding her earnings, including failing to consider whether the Commission should have extended Employment Insurance benefits by four weeks. Further, she claims that no one ever provided her with a detailed breakdown of her earnings, which made it difficult for her to argue her case.

[6] Following the hearing of this appeal, and in response to the Claimant's arguments, the Commission revisited its position and offered a concession.¹ The Commission states that it did not comply with procedural requirements. The Commission is asking me to allow the appeal and annul the allocation of earnings.

[7] I find the concession appropriate on the facts of this case. I am therefore allowing the appeal and annulling the allocation of earnings.

¹ Concession of the Commission to the Social Security Tribunal Appeal Division, dated March 26, 2021, at ADN7, and Commission's supplementary representations to the Social Security Tribunal Appeal Division, dated April 12, 2021, at ADN9.

ISSUES

[8] There are several issues, regarding whether the General Division made any jurisdictional, procedural, legal, or factual errors. But, if I accept the Commission's recent concession, it may be unnecessary for me to address them.

[9] So, I will begin my assessment by considering the Commission's concession. This involves looking at whether the facts justify accepting the Commission's concession. In particular, this means examining whether the Commission failed to comply with the procedural requirements.

ANALYSIS

[10] The Claimant argues, among other things, that no one has ever given her a detailed breakdown of her earnings from each of her four workplaces. She claims that the Commission should have given her a breakdown. Without it, she claims that she did not fully know the case against her and could not properly prepare for the hearing at the General Division.

[11] Following the hearing of the appeal in this matter, and in response to the Claimant's arguments, the Commission revisited its position. The Commission conceded that, because it had not followed procedures set out under section 52 of the *Employment Insurance Act*, it could not allocate any earnings that the Claimant might have made.

[12] Under section 52(5), the Commission has 72 months within which it can reconsider a claim. It can do this if, in its opinion, a claimant has made a false or misleading statement or representation.

[13] The section also states that if the Commission decides that a person has received benefits to which they were not entitled, the Commission is required to calculate the amount of the money and to notify the claimant of its decision.

[14] The Commission agrees that it had to be "reasonably satisfied" of its opinion that a claimant has made a false or misleading statement before it can extend the reconsideration period to 72 months. However, the Commission concedes that even if the evidence clearly establishes that a claimant has made a false or misleading statement, it cannot avoid its obligations to give

notice to a claimant, along with a justification. It still has a duty to explain why it considered that claimant's statement false.²

[15] The Commission acknowledges that it failed to issue a decision in the Claimant's case. It acknowledges that it also failed to provide any justification for its reconsideration decision. And, as a result, it did not give the Claimant the opportunity to challenge its authority to extend the time limit to reconsider a claim to 72 months. The Commission says that it is now too late for it to amend its decision to allow it to exercise its authority.³

[16] The evidence shows that the Commission did not comply with the procedural requirements to enable it to extend the time to reconsider the Claimant's claim. For that reason, the Commission could not proceed to allocation.

[17] I am accepting the Commission's concession. It is therefore unnecessary for me to consider the Claimant's arguments regarding any errors that the General Division might have made.

REMEDY

[18] The Commission is asking me to allow the appeal and annul the allocation of earnings. I agree this is the appropriate remedy. The Commission breached its duty to the Claimant under section 52 of the *Employment Insurance Act*. As a result, it did not have the authority to allocate any earnings.

CONCLUSION

[19] The appeal is allowed.

[20] I am annulling the allocation of earnings. The Claimant does not owe any overpayment. She is entitled to a reimbursement of any payments she may have made.

Janet Lew
Member, Appeal Division

² *Canada (Attorney General) v Langelier*, 2002 FCA 157.

³ *Canada (Attorney General) v Wakelin*, 1999 CanLII 8980.

HEARD ON:	March 19, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. R., Appellant Josée Lachance, Representative for the Respondent