



[TRANSLATION]

Citation: *SV v Canada Employment Insurance Commission*, 2021 SST 273

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant:	S. V.
Representative:	Stéphane Harvey
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (0) dated March 25, 2021 (issued by Service Canada)
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Tribunal member:	Josée Langlois
Type of hearing:	Videoconference
Hearing date:	May 28, 2021
Hearing participants:	S. V., Appellant Stéphane Harvey (counsel), Appellant's representative
Decision date:	June 2, 2021
File numbers:	GE-21-520, GE-21-522, GE-21-523, GE-21-524

Decision

[1] The appeal is dismissed.

[2] I find that there was no interruption of earnings for seven consecutive days and that a benefit period cannot be established in the files GE-21-520, GE-21-521, and GE-21-522. As a result, the benefit periods starting November 20, 2016, December 10, 2017, and December 9, 2018, must be cancelled.

Overview

[3] The Claimant is a carpenter-joiner with X. According to the Canada Revenue Agency (CRA), the Appellant has employee status and was employed in insurable employment for each of the benefit periods in question.

[4] After receiving information from the CRA, the Canada Employment Insurance Commission (Commission) reconsidered the Appellant's claims starting December 22, 2015, November 20, 2016, December 10, 2017, and December 9, 2018. It readjusted the earnings the Appellant received for the benefit periods starting December 22, 2015, November 20, 2016, and December 10, 2017. And it found that there was no interruption of earnings for the three benefit periods starting November 20, 2016, December 10, 2017, and December 9, 2018.

[5] The Appellant disputed these decisions before the Tribunal and, on December 12, 2020, the Tribunal's General Division found that the Commission could reconsider the Appellant's claims for benefits, that the earnings the Appellant received had been correctly allocated to his benefit periods, and that there was no interruption of earnings for seven consecutive days for three benefit periods because the Appellant was using a company vehicle and cell phone.

[6] The Appellant disputed that decision before the Tribunal's Appeal Division. On March 25, 2021, the Appeal Division allowed the Appellant's appeal and returned the file to the General Division for reconsideration.

[7] The Claimant agrees with the allocation of his earnings to his benefit periods. He also does not dispute the Commission's reconsideration period to make its decisions. However, he disagrees with the Commission's finding that there was no interruption of earnings for seven consecutive days for three benefit periods. The Appellant submits that he did not receive company benefits while he was temporarily off work due to a shortage of work.

[8] I have to determine whether the Appellant is entitled to receive benefits and whether the benefit periods starting November 20, 2016, December 10, 2017, and December 9, 2018, must be cancelled.

Matter I have to consider first

The Appellant's files are joined

[9] At the hearing, I joined the Appellant's four files (GE-21-520, GE-21-521, GE-21-522, and GE-21-523) because the appeals raise common questions of law or fact and because no injustice is likely to be caused to any party. One decision for all four of the Appellant's files is made.

Issue

[10] Was there an interruption of the Appellant's earnings from his employer for seven consecutive days for the benefit periods starting November 20, 2016, December 10, 2017, and December 9, 2018?

Analysis

[11] To be entitled to receive benefits and to establish a benefit period, the Appellant has to qualify, and one of the qualification requirements is an interruption of earnings for seven consecutive days.¹

¹ Section 7 of the *Employment Insurance Act* (Act).

[12] An interruption of earnings occurs where, following a period of employment with an employer, an insured person is laid off or separated from that employment and has a period of seven or more consecutive days during which no work is performed for that employer and in respect of which no earnings that arise from that employment, other than a holiday, are payable or allocated.²

[13] The entire income of a claimant arising out of any employment must be taken into account to establish the interruption of earnings.³ Earnings can include benefits given to the Appellant by his employer.⁴

[14] I have to make this decision on a balance of probabilities. This means that, if it is more likely than not that the Appellant received benefits, such as the use of a cell phone (mobile service) and/or a vehicle provided by the company during his benefit periods, I cannot find that there was an interruption of earnings for a period of seven consecutive days.

[15] When he applied for benefits, the Appellant indicated that he was not a co-owner of a company and that he did not own more than 40% of a company's shares. However, he indicated that he was working for a company that belonged to an immediately family member, his father and/or his mother, and that his address was different than the company's address.

[16] On January 4, 2019, the Commission sent a letter to the Appellant indicating that it had received information showing that he is a co-owner of the company X. After a telephone interview with the Commission's agent, the Appellant said he agreed with the earnings declared by his mother, who handles the company's administration.

[17] On January 14, 2020, a Commission investigator met with G. D., co-owner of the company X. G. D. explained that her spouse, M. R., handles the contracts and bids and that he was slowly transferring his knowledge to his son, the Appellant. In response to a

² Section 14 of the *Employment Insurance Regulations* (Regulations).

³ Section 35(2) of the Regulations.

⁴ Section 35(10)(d) of the Regulations.

question from the investigator, she explained that she did not have copies of the cell phone bills because the former accountant had these documents, and he did not give them to her. However, she said that the cell phones belong to each of the shareholders but that the company reimburses the bills for the mobile service year-round.

[18] G. D. also explained that her spouse and her son use a vehicle with the company name on it. The company pays the cost of the vehicle as well as the insurance year-round. They are also reimbursed for gas year-round.

[19] Finally, she explained that there is only one credit card for the company and that she is usually the one who uses it.

[20] The company's lawyer also provided details to the Commission, indicating that only G. D. handles the company's administration and that the Appellant holds non-voting, but participatory, shares.⁵

[21] The Commission's file contains a copy of a vehicle lease, with the name of the company as lessee and the name of the Appellant as co-lessee. The cost of this GMC Sierra is \$68,740, and the monthly payment is \$1,018.42 for three years as of November 2016.⁶

[22] The Commission's file contains a copy of the insurance policy designating the company as named insured and the Appellant as primary driver of this vehicle.⁷

[23] In addition, various copies of statements from a MasterCard account, in the Appellant's name but addressed to the company, show billing for a mobile service with Telus. This billing runs from December 14, 2015, to December 7, 2019. Scotia Bank statements, in the Appellant's name, show several monthly transfers of \$575 from this account to the company X.⁸

⁵ Descriptive document GD3-154 to GD3-165.

⁶ Vehicle lease: GD3-80 and GD3-81.

⁷ GD3-83.

⁸ GD3-85 to GD3-135.

[24] The Appellant told the Commission that he paid for his cell phone himself and that he reimbursed the company for about half of the monthly amount of the vehicle for his personal use.

[25] At the hearing, the Appellant explained that he works for the company as a carpenter-joiner. He said that he receives only his salary and, when he is off work due to a shortage of work, he receives no other benefits. No money and no benefits. So, he testified that he did not know where the statement that his cell phone bills were reimbursed by the company came from because this is not the case. He explained that his cell phone belongs to him and that he does not have to use it when he is working because of the duties he performs, unless it is to check what time he starts work. His work consists of going to the work site and carrying out the contract as a carpenter-joiner. He also said that he does not carry out any services for the company without being paid for them.

[26] About the company vehicle, the Appellant admitted that he uses it when he works, but he submitted that he does not use it for personal use when he is off work. He said that it is a pickup for moving trailers. He specified that, while he is unemployed, he does not use the vehicle except once a month to make sure everything is working. He testified that he uses his spouse's vehicle during his benefit periods and that the company vehicle stays parked.

[27] As for the Commission, which relies on information sent by the CRA and by the company administrator, it argues that the Appellant provides several unpaid services to the company and that he receives several financial benefits.

[28] The Commission submits that the benefits periods were cancelled because the Appellant continued to receive company benefits while he was off work.

[29] I am of the same view. While I understand that the overpayment amount can have a significant impact, since it concerns three benefit periods, the Appellant is responsible for being transparent by declaring the earnings he receives from his job, even in the form of benefits.

[30] So, I am faced with some contradictory statements. First between the versions of the company administrator (who is also the Appellant's mother) and the Appellant himself, but also between the different versions the Appellant gave the Commission and at the hearing.

[31] The company administrator indicated that the mobile service allowing the Appellant to use his personal cell phone was paid by the company year-round. The company also provides a vehicle and pays the cost of the lease, registration, insurance, and gas year-round.

[32] On October 15, 2020, the Appellant himself told the Commission that the company fully covered maintenance and repair costs for the vehicle.⁹

[33] The Appellant also explained that he reimbursed the company for part of the cost of the vehicle lease so he could use it for personal use. At the hearing, he said that he did not use this vehicle year-round, but only when he was working. Otherwise, during his benefit periods, he would use his spouse's vehicle.

[34] However, on January 20, 2020, the Appellant told the Commission that the company-provided GMC Sierra was the only vehicle that he used and that he used it year-round for work and personal use.¹⁰ In this regard, the vehicle's lease as well as its insurance show that the Appellant is the primary driver.

[35] Contrary to what he said at the hearing, the Scotia Bank statements show the transfer of \$575 also during certain months of his benefits periods. The Appellant testified that he paid a monthly amount to the company only during the months he was working and that he did not use the vehicle for personal use during the periods he was off work. However, as an example, a statement for the month of December 2016, the month of March 2017, and the month of February 2018, shows a transfer of \$575 to X.

⁹ GD3-56.

¹⁰ GD3-172.

As another example, the Appellant transferred \$575 to the company's bank account on December 18, 2017, even though his benefit period had started on December 10, 2017.

[36] Also, even though the cell phone belongs to him and he pays the bills for the mobile service himself, the administrator indicated that the company reimbursed him for the mobile service. Furthermore, the address indicated on the credit card statements is the company's.

[37] Although the administrator mentioned that the cell phone service was provided by Bell, when the Appellant showed that his mobile service comes from Telus, it is likely that the Bell service was provided for the administrator and her spouse and that the Appellant continued using the network he was already using.

[38] Although he indicated at the hearing that his cell phone belonged to him and that he did not use it for work, on January 20, 2020, the Appellant told the Commission that he was using his cell phone for work and for personal use. Similarly, I repeat that the company administrator (and Appellant's mother) said that the company reimbursed the Appellant for the cell phone bills.

[39] Benefits received from a job in this way are considered earnings.¹¹ The evidence shows a clear link between the Appellant's job and the benefits received while he was temporarily off work. The Appellant continued to receive earnings during each of the periods he was off work as of November 20, 2016.

[40] Even though the amount related to the cost of the cell phone service is not high, it is still a cost paid by the company. Despite the administrator's statement that a vehicle with the company's name on it was provided to the Appellant year-round, and while I accept the Appellant's statement that the company does not pay the entire monthly cost of the vehicle because he reimburses it for part of it, he was still given a benefit. For an interruption of earnings to occur, the employee must not receive benefits of daily value to that employee.

¹¹ Section 35(10)(d) of the Regulations.

[41] The Appellant has not persuaded me that he did not enjoy those two benefits during each of his benefit periods. On the contrary, his statements to the Commission, weighed with those provided at the hearing, are inconsistent.

[42] In this regard, the Appellant is responsible for providing all the relevant information about his situation to be able to receive benefits. A penalty can be imposed when false or misleading statements are made. While I understand that the overpayment of benefits is significant, since it concerns three benefit periods, no penalty is imposed on the Appellant.

[43] Given the contradictory statements, I prefer the Commission's version, which is based on the statements made spontaneously by the company administrator as well as on information brought to its attention by the CRA.

[44] The statements by the company administrator show that the Appellant uses a cell phone as well as a vehicle whose bills are paid in whole or in part or reimbursed by the company year-round, even when he is unemployed. The Appellant received benefits during his benefit periods.

[45] I find that there was no interruption of earnings for seven consecutive days for each of the Appellant's three files. While I understand the Appellant's disappointment about not being able to receive benefits, I do not have the authority to exempt an applicant from the provisions of the Act on qualifying for benefits even when the circumstances are unusual.

Conclusion

[46] I find that a benefit period cannot be established because there was no interruption of earnings for seven consecutive days.

[47] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section

