



Citation: *DH v Canada Employment Insurance Commission*, 2021 SST 338

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

Decision

Appellant: D. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (418861) dated March 22, 2021 (issued by Service Canada)

Tribunal member: Catherine Shaw

Type of hearing: Teleconference
Hearing date: May 12, 2021
Hearing participant: Appellant
Decision date: May 12, 2021
File number: GE-21-628

Decision

[1] D. H. is the Claimant. I am dismissing his appeal.

[2] The Claimant has an overpayment arising from a penalty and the allocation of earnings to his EI claim. The Canada Employment Insurance Commission (Commission) does not have the jurisdiction to reconsider its decision on whether to write-off any amount of the overpayment. I also do not have the jurisdiction to write-off or reduce the overpayment on his claim.

Overview

[3] The Claimant was working while on a claim for EI benefits. He only reported some of his wages. The Commission decided that the unreported wages he received were earnings and applied them to the Claimant's benefits. This created an overpayment (meaning the Claimant had to repay some of the benefits he had received).

[4] The Commission also imposed a monetary penalty and a notice of violation because it said the Claimant had knowingly made false or misleading statements when he reported his earnings.

[5] The Claimant says that he reported the way he did because he was addicted to drugs and gambling. He is unable to repay the overpayment that resulted from the allocation of earnings and the penalty. He's asking to have the overpayment reduced or written off.

Matters I have to consider first

The hearing was adjourned

[6] The hearing was originally scheduled to take place on May 11, 2021. On the day of the hearing, there were technical issues and the Claimant was not able to connect to the hearing. I re-scheduled the hearing for May 12, 2021, and the hearing proceeded on that day with the Claimant in attendance.

The Claimant isn't disputing the penalty and notice of violation

[7] The Commission made several decisions about the Claimant's EI benefits. It allocated earnings to the Claimant's EI claims for November 1, 2015 to February 28, 2016 and March 25 to May 27, 2018. It also imposed a penalty and violation on the Claimant because it decided the Claimant had knowingly made false or misleading representations about his earnings.

[8] The Claimant asked the Commission to reconsider some of its decisions. He said that he had been experiencing addiction issues at the time he made the claims and expressed remorse for his actions. In a conversation with the Commission, the Claimant stated that he was asking for the overpayment to be reduced.

[9] The Commission decided that it could not reconsider the Claimant's liability for the overpayment. It did reconsider the decision to impose the penalty and notice of violation on the Claimant, but ultimately maintained its decisions on both.

[10] The Claimant appealed the Commission's refusal to reconsider the overpayment to the Tribunal. At the hearing, he stated that he is not disputing the Commission's decision to impose a penalty or violation. He is only asking for the overpayment to be reduced.

[11] As the Claimant is not disputing the penalty and notice of violation, I will not consider these as part of this decision. I will only look at the issues around the Claimant's overpayment.

Issues

[12] Should the Commission have reconsidered its decision about the amount of the Claimant's overpayment?

[13] Can I write off or reduce an overpayment of EI benefits?

Analysis

Should the Commission have reconsidered the overpayment?

[14] The Claimant asked the Commission to reduce the amount of his overpayment.¹ The Commission said that it couldn't change the overpayment amount and couldn't reconsider this decision. It said the Claimant's responsibility to repay the overpayment and the interest charged on the overpayment were not within its authority to reconsider.²

[15] The Commission has the authority to reduce or write-off an overpayment if a claimant meets certain criteria.³ In the Claimant's case, the Commission decided that it could not write-off the Claimant's overpayment.

[16] The law says that a decision to write-off any amount owing to the Commission is excluded from the reconsideration process.⁴ So, I find the Commission has correctly determined that the issue of the overpayment is not within its jurisdiction to reconsider.

Can I write off or reduce the overpayment?

[17] My jurisdiction is limited to decisions that have been reconsidered by the Commission.⁵ As stated above, the Commission didn't reconsider the issue of debt reduction or write-off. This means I can't determine matters related to a request for a write-off or reduction of an overpayment.

[18] I understand the Claimant has been going through a lengthy and stressful process to put his past behaviour behind him. I truly sympathize with the difficult financial circumstances he is experiencing. However, I do not have any discretion to waive the overpayment, no matter how compelling the Claimant's circumstances may

¹ See GD3-71

² See GD3-76

³ The criteria for write-off of amounts wrongly paid, penalties and interest is set out at section 56 of the *Employment Insurance Regulations*.

⁴ See section 112.1 of the *Employment Insurance Act*.

⁵ See section 112.1 of the *Employment Insurance Act*.

be. The law simply does not allow me to relieve the Claimant from responsibility for the overpayment.⁶ I cannot ignore the law, even if the outcome may seem unfair.

[19] I have no ability to grant the Claimant what he's requested. But, nothing in my decision would prevent the Claimant from seeking assistance in the other ways, such as:

- If the Claimant wants to formally appeal the Commission's refusal to write-off the overpayment, he can do so with the Federal Court of Canada. The Federal Court has exclusive jurisdiction over this issue.
- If repayment will cause the Claimant financial hardship, he can contact the Debt Management Call centre of the Canada Revenue Agency and ask about applying for debt relief.⁷

Conclusion

[20] The appeal is dismissed.

Catherine Shaw
Member, General Division – Employment Insurance Section

⁶ See sections 43 and 44 of the *Employment Insurance Act*.

⁷ This information was provided by the Commission in its decision letter dated December 10, 2020, and can be found on GD3-54 of the appeal file.