



[TRANSLATION]

Citation: *AN v Canada Employment Insurance Commission*, 2021 SST 525

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

Decision

Appellant: A. N.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (416546) dated February 22, 2021 (issued by Service Canada)

Tribunal member: Charline Bourque

Type of hearing: Teleconference
Hearing date: April 16, 2021
Hearing participant: Appellant
Decision date: April 13, 2021
File number: GE-21-428

Decision

[1] The appeal is dismissed on the issue of allocation of earnings. The appeal is allowed on the issue of false statements. The Appellant did not knowingly make false or misleading statements.

Overview

[2] The Commission decided that the Appellant had received earnings from her employer while claiming Employment Insurance (EI) benefits. So, it allocated these amounts. It also imposed a non-monetary penalty, finding that the Appellant had made false or misleading statements by failing to declare the earnings.

[3] The Appellant agrees with the earnings received from the employer and with the Commission's allocation. So, she does not dispute the issue of allocation of earnings. However, she disagrees that she made false statements. She says that she has been the victim of fraud by her ex-partner and that she did not know he had claimed EI benefits in her name.

Matter I have to consider first

[4] At the start of the hearing, the Appellant confirmed that she was not appealing the issue of earnings. The Appellant confirmed that she agreed with that decision and said that she wanted to appeal only the issue of false statements. So, my analysis will focus only on the issue of false statements, the only issue the Appellant is appealing in this case.

Issue

[5] Could the Commission impose a penalty on the Appellant?

Analysis

Issue: Could the Commission impose a penalty on the Appellant?

[6] The Commission may impose on a claimant, or any other person acting for a claimant, a penalty for each act or omission if the Commission becomes aware of facts

that, in its opinion, establish that the claimant or other person has, in relation to a claim for benefits, made a representation that the claimant or other person knew was false or misleading.¹

[7] However, the Commission cannot impose penalties if more than 36 months have passed since the day the act or omission occurred.²

[8] The Commission may issue a warning (also known as a non-monetary penalty) instead of setting the amount of a penalty for an act or omission.³

[9] In all cases, the Commission has the burden of proving that the claimant knowingly made false or misleading statements. The claimant must then explain why those statements were made.⁴

[10] In this case, the Commission imposed a non-monetary penalty by way of a warning letter, since the acts or omissions occurred outside the 36-month time frame.⁵ So, to decide whether the Commission could impose a penalty on the Appellant, I have to answer the following questions:

- a) Has the Commission proven that the Appellant made false or misleading statements?
- b) If so, were those statements made knowingly?
- c) If so, did the Commission exercise its discretion judicially in determining the amount of the penalty to be imposed?
- d) If not, what penalty should be imposed?

¹ See section 38 of the *Employment Insurance Act* (Act).

² See section 40 of the Act.

³ See section 41 of the Act.

⁴ See *Canada (Attorney General) v Purcell*, FCA, A-694-94.

⁵ See the Commission's reconsideration decision (GD3-88).

Has the Commission proven that the Appellant made false or misleading statements?

[11] In my view, the Commission has proven that the Appellant made false or misleading statements.

[12] The Commission has the burden of proving, on a balance of probabilities (meaning it is more likely than not), which is not beyond all reasonable doubt, that the claimant made a statement or representation that they knew to be false or misleading.⁶

[13] The Commission submits that it has proven that the Appellant made false statements when she failed to declare her earnings as wages from the employer Agence du revenu du Québec for the period from August 21, 2016, to October 22, 2016.

[14] I note that the employer confirmed the earnings paid to the Appellant for the period from August 21, 2016, to October 22, 2016.

[15] The Appellant also confirmed that she agreed with the amounts received from her employer and with the Commission's allocation of the earnings. The Appellant does not dispute this allocation.

[16] So, in my view, the Commission has proven that the Appellant failed to declare the earnings she received from her employer during the periods in question and that false or misleading statements were made.

[17] As a result, I have to consider whether those false or misleading statements were made knowingly.

Did the Appellant make those false or misleading statements knowingly?

[18] A claimant must not only make a false or misleading statement. They must also have done so knowingly. So, a claimant must, on a balance of probabilities (meaning it

⁶ See *Canada (Attorney General) v Gates*, FCA, A-600-94.

is more likely than not), have knowledge of the fact that they were making a false or misleading statement.⁷

[19] In deciding whether a claimant subjectively knew they were making a false or misleading statement, however, I may take into account common sense and objective factors.

[20] So, when “a claimant claims to be ignorant of something that the whole world knows, the fact finder could rightly disbelieve that claimant and find that there was, in fact, subjective knowledge, despite the denial. Not to know the obvious, therefore, might properly lead to an inference that the claimant is lying. This does not make the test objective; it does, however, take into account objective matters in coming to a decision on subjective knowledge. If, in the end, the trier of fact is of the view that the claimant really did not know that the representation was false, there is no violation of subsection [38(1)].”⁸

[21] The Commission finds that the Appellant knowingly made false or misleading statements because she is responsible for her unique access code for filing claimant reports. By sharing access to her computer—where her passwords were stored—with her ex-partner, she gave him the opportunity to use the access code and get the EI benefits. Even though she was unaware of her ex-partner’s actions, she is still the owner of the bank account the payments went to, so she must have reasonably known that EI benefits were being deposited into it and that her ex-partner was withdrawing them.

[22] Additionally, the Commission is of the view that the Appellant did not contact it to inform it of the identity theft the moment she became aware of the situation. She mentioned not having filed a police complaint because of death threats against her by her ex-partner. The Commission also finds that the March 4, 2021, accident report by the Service de police de la Ville de Québec [Québec city police department] is not proof

⁷ See *Mootoo v Canada (Minister of Human Resources Development)*, 2003 FCA 206.

⁸ See *Canada (Attorney General) v Gates*, FCA, A-600-94.

of her efforts with the police department about the identity theft, since the document refers to an accident report, not an incident report.

[23] The Appellant disagrees with the Commission's position. She says she has been the victim of fraud by her ex-partner, who also threatened her. She says she filed a police complaint after she learned about the Commission's decision in February 2021. Lastly, she adds that the back of the police department's document refers to an incident and not just an accident as the Commission submits.

[24] In the Appellant's view, she did not knowingly make false statements. She did not voluntarily give her access code, but she lent her computer, where some passwords were stored. She says that she moved several times out of fear of her ex-partner and that, even though her bank account stayed open, she did not use it, since she opened another one in the city she moved to. So, she did not know that EI deposits had been made. She did not claim other benefits after that.

[25] I note that the Commission finds the Appellant's explanations credible.⁹ However, I find it contradictory that, while accepting her testimony, the Commission questions the fact that the Appellant filed a complaint in that regard with the police department when the Appellant says otherwise.

[26] So, I am of the view that, by accepting the Appellant's testimony, even if the Appellant did not file a police complaint about identity theft, I cannot find that the Appellant knowingly made a false or misleading statement.

[27] The Appellant voluntarily lent her computer to her ex-partner. However, I am of the view that, when she did this, she could not necessarily have anticipated that he would make false or misleading statements in her name. I cannot find that she had knowledge of the fact that her ex-partner had made a false or misleading statement in her name or that she herself was making or was aware of making a false or misleading statement.¹⁰

⁹ See the Commission's representations (GD4-7) and the Commission's Record of Decision (GD3-87).

¹⁰ See *Mootoo v Canada (Minister of Human Resources Development)*, 2003 FCA 206.

[28] As a result, I am of the view that, on a balance of probabilities, the Appellant did not knowingly make false or misleading statements.¹¹

[29] So, in my view, no penalty or monetary penalty should be imposed on the Appellant. Lastly, since the Appellant did not knowingly make false or misleading statements, I do not have to continue my analysis on the remaining issues.

[30] The appeal is allowed on this issue. The Commission cannot impose a penalty, since the Appellant did not knowingly make false or misleading statements.

Conclusion

[31] The appeal is allowed in part. The appeal is dismissed on the issue of allocation of earnings. The appeal is allowed on the issue of false statements (penalty).

Charline Bourque
Member, General Division – Employment Insurance Section

¹¹ See *Canada (Attorney General) v Purcell*, FCA, A-694-94.