



Citation: *SH v Canada Employment Insurance Commission*, 2021 SST 637

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

# **Decision**

**Appellant:** S. H.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (426088) dated July 6, 2021  
(issued by Service Canada)

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**Tribunal member:** Solange Losier

**Type of hearing:** Teleconference

**Hearing date:** September 23, 2021

**Hearing participants:** Appellant  
Appellant's Witness

**Decision date:** October 5, 2021

**File number:** GE-21-1365

## Decision

[1] The Commission has proven<sup>1</sup> that the Claimant knowingly provided false or misleading information, so the monetary penalty and the violation remains.

## Overview

[2] The Commission says that the Claimant fraudulently collected EI benefits on five occasions, totalling \$4,190.00.<sup>2</sup> The Claimant provided her bank account information to her ex-boyfriend so that someone else's EI benefits could be deposited to her bank account while that person was in jail.

[3] The Commission says that she knowingly provided false or misleading information when used her bank account information so that EI payments belonging to someone else could be deposited to her bank account (GD3-55 to GD3-56). Because of this, the Commission imposed a penalty of \$1,257.00 (GD3-44). She also has to pay back the EI payments that she was not entitled to receive (GD3-43). The Commission also issued a notice of violation, which means that she has to work more hours of insurable employment in order to qualify for EI benefits.

[4] The Claimant says that the Commission was wrong to impose both the penalty and the notice of violation because it was her ex-boyfriend who facilitated the scheme. She agrees that she gave her ex-boyfriend the bank account information, but he was the one who made the reports to the Commission and benefited from the EI payments.

## Issues

[5] I must decide two issues:

- Did the Commission prove the Claimant knowingly provided false or misleading information? If she did, then I must also decide whether the Commission properly decided the penalty amount of \$1,257.00.

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<sup>1</sup> The Commission has to prove this on a balance of probabilities, which means it is more likely than not.

<sup>2</sup> The Commission says there were five payments of \$838.00 deposited to the Claimant's bank account.

- Did the Commission properly decide to impose a violation?

## **Analysis**

### ***Did the Claimant knowingly provide false or misleading information?***

[6] To impose a penalty, the Commission has to prove that the Claimant knowingly provided false or misleading information.<sup>3</sup>

[7] It is not enough that the information is false or misleading. To be subject to a penalty, the Commission has to show that it is more likely than not that the Claimant knowingly provided it, knowing that it was false or misleading.<sup>4</sup> The Commission may impose a penalty for each false or misleading statement knowingly made by the Claimant.

[8] I do not need to consider whether the Claimant intended to defraud or deceive the Commission when deciding whether she is subject to a penalty.<sup>5</sup>

[9] I find that the Commission has proven that it is more likely than not that the Claimant knowingly provided false or misleading information because she gave her bank account information for the purpose of receiving another person's EI payments in her bank account while that person was in jail. The file contains documents from the bank and Commission that prove the bank account belonged to the Claimant and that the EI payments were deposited to her bank account (GD3-15; GD3-18 to GD3-33)..

[10] I was not persuaded by the Claimant's argument that she did not really know what was happening because it was simply not credible for the following reasons.

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<sup>3</sup> Section 38 of the *Employment Insurance Act*.

<sup>4</sup> *Bajwa v Canada*, 2003 FCA 341; the Commission has to prove this on a balance of probabilities, which means it is more likely than not.

<sup>5</sup> *Canada (Attorney General) v Miller*, 2002 FCA 24.

[11] First, the Claimant admitted to giving her bank information to her ex-boyfriend in order to receive EI payments belonging to his friend who was in jail. This is consistent with her verbal and written statement to the Commission (GD3-47 to GD3-49).

[12] I acknowledge the Claimant's argument that she felt intimidated and pressured to make a statement to the Commission. I note that her written statement is consistent with her testimony, namely that her ex-boyfriend facilitated the scheme and she provided her bank account information so that someone else's EI payments would get deposited to her bank account (GD3-39 to GD3-40).

[13] Second, the Claimant was aware that she had received five EI payments of \$838.00 in her bank account. She knew that the EI payments did not belong to her, but she did not report it to the Commission, the police, or any other third party and made no efforts to stop the deposits.

[14] Third, the Claimant said that her ex-boyfriend had ongoing legal issues and that he was dealing drugs, yet she still knowingly gave her bank account information so that he could facilitate this scheme with his friend. I note that she was not forced or obligated to provide her bank account information, but instead agreed to do so.

[15] Fourth, the person who was in jail told the Commission that he shared his access code with the Claimant's ex-boyfriend to file his reports. However, he did not provide his consent to change his banking information and did not receive any of these EI payments from the end of January 2019. (GD3-16 to GD3-17).

[16] The Claimant argues that she did not benefit from the EI payments because they were withdrawn from her bank account and given to her ex-boyfriend. However, the evidence shows that the majority of the EI payments remained in her bank account and was not withdrawn as she claimed. We reviewed the bank statements at the hearing and she identified several withdrawals. However, the evidence shows that she received \$4,190.00 of EI payments deposited into her bank account, but the amount withdrawn on her bank statements was significantly less. She offered no explanation for keeping

the extra EI funds. I note that the Claimant was also receiving EI parental benefits for her child during the same time which are also reflected on the bank statements.

[17] The Witness testified that he is the ex-boyfriend and father to her child. He said that only part of the \$4,190.00 was withdrawn from her account, but the remainder was used to support his child with the Claimant.

[18] Accordingly, I find that the Claimant knowingly provided false or misleading information when she provided her bank account information in order to facilitate someone else's EI payments into her bank account. She also benefited from these funds because they were used to support her child.

***Did the Commission properly decide the penalty amount?***

[19] The Commission's decision on the penalty amount is discretionary.<sup>6</sup> This means that it is open to the Commission to set it at the amount it thinks is correct. I have to look at how the Commission exercised its discretion. I can only change the penalty amount if I first decide that the Commission did not exercise its discretion properly when it set the amount.<sup>7</sup>

[20] I find that the Commission exercised its discretion properly because they considered the Claimant's circumstances and all relevant factors. Specifically, they considered that she was a single mother with two young children and that her source of income was parental benefits at the time. They provided a detailed rationale for making that decision and for deciding to impose the lowest monetary penalty available at \$1,257.00 (versus \$7,542.00, which is the maximum amount) (GD3-51 to GD3-52). The Claimant presented no new circumstances at the hearing when asked.

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<sup>6</sup> *Canada (Attorney General) v Kaur*, 2007 FCA 287.

<sup>7</sup> *Canada (Attorney General) v Kaur*, 2007 FCA 287. The Commission's decision can only be interfered with if it exercised its discretionary power in a non-judicial manner or acted in a perverse or capricious manner without regard to the material before it: *Canada (Attorney General) v Tong*, 2003 FCA 281. Discretion is exercised in a non-judicial manner if the decision-maker acted in bad faith, or for an improper purpose or motive, took into account an irrelevant factor or ignored a relevant factor or acted in a discriminatory manner: *Attorney General of Canada v Purcell*, A-694-94.

[21] This means that the Commission exercised its discretion properly so I cannot change the penalty amount.

***Did the Commission properly decide to impose a violation?***

[22] In addition to the penalty, the Commission also has the discretion to impose a violation.<sup>8</sup> The violation increases the number of hours of insurable employment that the Claimant requires to qualify for benefits.

[23] As with deciding the penalty amount, the decision to impose a violation is also discretionary. So, I must review how the Commission exercised its discretion when it decided to impose a violation.

[24] I find that the Commission exercised its discretion properly in deciding to impose a violation, because they considered the Claimant's circumstances and all relevant factors. Specifically, they considered that she was a single mother with two young children and that her source of income was parental benefits at the time. They provided a detailed rationale for making that decision and for deciding to impose a violation classified as serious (GD3-53 to GD3-54). The Claimant presented no new circumstances at the hearing to consider.

[25] This means that the Commission exercised its discretion properly so I cannot change the violation.

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<sup>8</sup> Subsection 7.1(4) of the *Employment Insurance Act*, *Gill v Canada (Attorney General)*, 2010 FCA 182.

## **Conclusion**

[26] I find that the Claimant is subject to a penalty, and the penalty amount remains the same. This means that the appeal on the issue of the penalty is dismissed.

[27] I find that the Commission properly made the decision to impose a violation. This means that the appeal on the issue of the violation is dismissed, and the violation remains.

Solange Losier

Member, General Division – Employment Insurance Section