



[TRANSLATION]

Citation: *FD v Canada Employment Insurance Commission*, 2022 SST 343

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

Decision

Appellant: F. D.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (457010) dated February 14,
2022 (issued by Service Canada)

Tribunal member: Nathalie Léger
Type of hearing: Teleconference
Hearing date: March 30, 2022
Hearing participant: Appellant
Decision date: April 19, 2022
File number: GE-22-613

Decision

[1] The appeal is allowed.

Overview

[2] On April 26, 2021, the Appellant received her notice of assessment from the Canada Revenue Agency.¹ On reading the document, the Appellant saw that she was being asked to repay \$570.06 for “Employment Insurance premiums payable.”² The Appellant does not understand why she is being asked to repay these premiums, since she is self-employed.

[3] She made various attempts to understand. She was told that, on April 21, 2020, she had entered into an agreement³ to register for the Employment Insurance (EI) special benefits program for self-employed people. But, she says that she has never claimed these benefits before or ever entered into any such agreement. She also says that she never received the agreement confirmation letter, by email or by mail.

[4] On December 22, 2021, she received a letter from the Canada Employment Insurance Commission (Commission)⁴ informing her that her request to terminate the agreement had indeed been received. The letter also informed her that she would have to pay EI premiums because she did not terminate the agreement within 60 days of it coming into effect.

[5] The Appellant disputes having to pay premiums because she says that she never entered into that agreement and never received confirmation of the agreement.

¹ GD2-8

² GD2-9

³ Note that the Canada Employment Insurance Commission uses the term *entente* [“agreement”], whereas the *Employment Insurance Act* (Act) uses the term *accord* [“agreement”]. For the purposes of this decision, I am of the view that there is no distinction between these two terms.

⁴ GD2-14

Issue

[6] Did the Appellant enter into an agreement to register for the EI special benefits program for self-employed people?

Analysis

[7] Part VII.1 of the *Employment Insurance Act* (Act) sets out a special benefits program for self-employed persons.⁵ That part of the Act applies to self-employed people only if they have entered into an agreement with the Commission to participate in the program.⁶ The Act does not set out any procedure or requirement for entering into the agreement. All that it says is that the Commission may determine how to proceed.⁷ The procedure is simply to complete a series of steps using a claimant's account after they register.

Has an agreement been reached?

[8] The Commission is of the view that the Appellant entered into an agreement to participate in the EI special benefits program for self-employed persons.

[9] It explains that it is unable to prove that the agreement was reached.⁸ All it can provide is the confirmation number⁹ and an agreement confirmation letter.¹⁰

Agreements like this are made electronically, using the Claimant's "My Service Canada" account. Only the Claimant has access to that system. She has to use her personal access code. The Commission cannot access it.

[10] In addition, the Commission argues that it is unlikely that the Appellant did not receive the agreement confirmation letter, since that letter was sent to the same

⁵ For this purposes of this decision, the terms "self-employed persons" and "self-employed people" have the same meaning.

⁶ Section 152.02(1) of the Act

⁷ Section 152.02(3) of the Act

⁸ GD10-1 to 3

⁹ GD10-5

¹⁰ GD3-3

address as the letter confirming the agreement's termination; and that letter did indeed arrive.¹¹

[11] As for the Appellant, she argues the following. First, she has said, both before the Tribunal and during discussions with the Commission, that she has never entered into any such agreement and that she has never wanted to participate in the self-employment program.¹² She also says that she never received the agreement confirmation letter. It is only when she had read her notice of assessment that she understood that something was not right. At the hearing, she also indicated that the letter was not in her Service Canada account.

[12] The Appellant explains that she applied for the Canada Emergency Response Benefit (CERB) in March 2020. Her application was approved. She then completed her claims online every two weeks for seven months¹³ and received the benefits she was entitled to.

[13] It is not clear from the Act who has the burden of proof in a case like this. Since the Appellant resides in Quebec, reference must be made to the rules of civil law,¹⁴ to determine the rules around how a contract is formed, and to the rules that state who the burden of proof¹⁵ is on (that is, who has the burden of proving a fact) in a given situation.

[14] I find that the burden of proof is on the Commission. It is up to the Commission to show that an agreement has been entered into since this is something that is essential for applying section 152.02.¹⁶ In other words, only if an agreement has actually been reached can the Appellant be asked to pay back premiums.

¹¹ GD4-4

¹² GD3-5 and GD3-19

¹³ GD3-7

¹⁴ Section 8.1 of the *Interpretation Act*, RSC 1985, c I-21

¹⁵ Section 40 of the *Canada Evidence Act*, RSC 1985, c C-5

¹⁶ See articles 2803, 2828, and 2835 of the *Civil Code of Québec*.

[15] In this case, the Commission was unable to provide the agreement reached, to show how it was reached, and who entered into it, or even to provide any information other than the agreement's supposed confirmation number.

[16] The Appellant's version of events also casts doubt on the validity of the information the Commission provided, as does the timing of the claims. It also seems to me to be highly unlikely that the Appellant wanted to register for the special benefits program for self-employed people when she had applied for, and received, the CERB less than a month earlier. So, I find that the Commission has failed to prove the identity of the person who entered into that agreement or even that an agreement was actually reached.

Conclusion

[17] The appeal is allowed. The Appellant did not enter into an agreement to register for the EI special benefits program for self-employed people. Therefore, the Commission's alleged agreement is deemed never to have existed.

Nathalie Léger
Member, General Division – Employment Insurance Section