



[TRANSLATION]

Citation: *AC v Canada Employment Insurance Commission*, 2022 SST 1021

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

Decision

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

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (465806) dated March 31, 2022 (issued by Service Canada)

Tribunal member: Charline Bourque
Type of hearing: Teleconference
Hearing date: August 17, 2022
Hearing participant: Appellant
Decision date: August 30, 2022
File number: GE-22-1471

Decision

[1] The appeal is dismissed.

[2] The Claimant got the maximum number of weeks of sickness benefits he is entitled to.

[3] Also, despite the Commission's long delay in making the changes that were needed, I don't have jurisdiction to decide on writing off the overpayment. But, I am of the view that it is an error for the Commission to say it doesn't have jurisdiction.

Overview

[4] The Claimant has been off work indefinitely due to illness since September 25, 2020.

[5] He mistakenly said he was available for work from October 4 to October 17, 2020, and got Employment Insurance (EI) regular benefits for 2 weeks. But, he contacted the Commission starting on October 21, 2020, to tell it about the error and to convert his regular benefits to sickness ones. So, the Claimant got sickness benefits for 15 weeks on top of two weeks of regular benefits he had already gotten.

[6] But, the Commission took over a year to make the change to the Claimant's file. It was only in February 2022 that it made the correction and found that the Claimant was overpaid 2 weeks of regular benefits and that he got the maximum number of weeks of sickness benefits (15 weeks). This led to a debt of \$1,146 that the Claimant says he can't repay.

Issues

[7] Did the Claimant get the maximum number of weeks of sickness benefits?

[8] Could the Commission ask the Claimant to repay the amount, given its delay in making the change to his file?

[9] Can the overpayment be cancelled?

Analysis

Issue no 1: Did the Claimant get the maximum number of weeks of sickness benefits?

[10] The Claimant confirmed that he was off work due to illness as of September 25, 2020. A medical certificate confirms he is off work indefinitely.¹

[11] The Claimant should have gotten EI sickness benefits as of September 25, 2020, for 15 weeks. This means that the Claimant could be paid sickness benefits until January 16, 2021.

[12] The *Employment Insurance Act* sets the maximum number of weeks of EI sickness benefits that can be paid at 15 weeks.²

[13] So, the Claimant got the maximum number of weeks of EI benefits.

[14] But, since there was a mistake in his file for the weeks from October 4 to October 17, 2020, and the Claimant had then declared himself available for work, he was overpaid two weeks of regular benefits. Those two weeks led to a debt of \$1,146 that the Claimant has to repay.

Issue no 2: Could the Commission ask the Claimant to repay the amount, given its delay in making the change to his file?

[15] The Claimant takes issue with the Commission's delay in asking him to repay the two weeks of benefits he was overpaid.

[16] He says that he quickly told the Commission on October 21, 2020, and asked for it to be corrected. But, it wasn't until February 2022 that the Commission made the corrections to the Claimant's file. This created a debt for the Claimant.

¹ See medical certificate (GD3-24).

² See section 12(3)(c) of the *Employment Insurance Act* (Act).

[17] The Claimant says that he would not have this debt had the Commission made its decision earlier, since he would not have gotten an overpayment. He finds himself in a very difficult situation where it is impossible for him to repay this debt.

[18] The Claimant says that he can't go back to work for health reasons. He says he is in a very difficult financial position and that this debt is making it worse.

[19] I note that the Commission can reconsider a decision within 36 months.³ So, the Commission can make corrections to the Claimant's file and ask him to repay an overpayment.

[20] Also, the Act says that the Commission can cancel or change any decision made about a particular claim for benefits if new facts are presented or if it is satisfied that the decision was given without knowledge of, or was based on a mistake as to, some material fact.⁴

[21] I agree with the Claimant that he has been penalized because of the Commission's delay in making a change to his file. It is difficult to understand the Commission's delay of over a year even with the reasons it has given.

Issue no 3: Can the overpayment be cancelled?

[22] The Claimant is in a difficult financial situation after being off work due to illness. He says he can't repay this debt.

[23] But, despite my understanding the difficulties the Claimant is experiencing and my own difficulty in understanding the delays the Commission needed to make changes to his file, I am of the view that this Tribunal doesn't have jurisdiction to decide the issue of write-off.

³ See section 52 of the Act.

⁴ See section 111 of the Act.

[24] But, contrary to the Commission's position in its arguments to the Tribunal, I believe that it has the authority to cancel the Claimant's overpayment due to his situation's special circumstances.

– **This Tribunal's authority**

[25] When someone is dissatisfied with a reconsideration decision of the Commission, they can appeal the decision to the Social Security Tribunal.⁵

[26] But, decisions made by the Commission under the *Employment Insurance Regulations* respecting the writing off of any penalty owing, amount payable, or interest accrued on any penalty owing or amount payable isn't subject to review.⁶

[27] This means that this Tribunal doesn't have jurisdiction to make a decision on the issue of write-off. The Act says that the issues of write-off aren't subject to review and that this Tribunal's jurisdiction is limited to appeals filed in connection with a reconsideration decision.

[28] But, if the Claimant wants, he can appeal to the Federal Court if he gets an unfavourable decision on the write-off, since it has the jurisdiction to hear this issue.

[29] Despite the sympathy I feel for the Claimant's situation, I can't change the Act. The Act sets out specific criteria and I can't ignore them.⁷

– **The Commission's power**

[30] The Commission says that it sympathizes [translation] "with the difficult situation the Claimant is going through. Still, the Commission wants to point out that neither the Commission nor the Social Security Tribunal has the jurisdiction to decide on the obligation to repay benefits. A client's responsibility to repay an overpayment doesn't stem from a Commission decision. The claimant takes on this liability as a 'debtor' and

⁵ See section 113 of the Act.

⁶ See section 112.1 of the Act.

⁷ *Granger v Commission (CEIC)*, FCA A-684-85.

not a 'claimant.' The Claimant's recourse for this issue is to seek judicial review with the Federal Court of Canada (see sections 43, 44, and 47 of the Act attached)."⁸

[31] But, I disagree with the Commission's position. The Act says there are exceptional situations where the Commission can write off amounts. I remind the Commission that it can write off an amount owing when more than 12 months have passed and when the overpayment is because of a delay in processing a claim for benefits.⁹ Also, the Commission has to consider whether the repayment of the debt would cause undue hardship to the Claimant.¹⁰

[32] So, I am of the view that it is an error for the Commission to say it doesn't have jurisdiction to decide on the obligation to repay benefits. Section 56 of the Act says the exact opposite.

[33] Also, I am of the view that the Commission has to decide on writing off the overpayment to allow the Claimant to appeal to the Federal Court if he wants to.

[34] To make this decision, the Commission would have to review all the factors set out in section 56 of the Act.

[35] So, even if the Tribunal doesn't have jurisdiction to decide on writing off an overpayment, the Commission has the power to do so. I invite the Commission to decide on the write-off to allow the Claimant to pursue the matter if he wants.

Conclusion

[36] The appeal is dismissed.

[37] The Claimant got the maximum number of weeks of sickness benefits he is entitled to.

⁸ See the Commission's arguments to the Tribunal (GD4-5).

⁹ See section 56(2)(b)(i) of the *Employment Insurance Regulations* (Regulations).

¹⁰ See section 56(1)(f)(ii) of the Regulations.

[38] Also, despite the Commission's long delay in making the necessary changes, I don't have jurisdiction to decide on writing off the overpayment.

[39] But, I am of the view that it is an error for the Commission to say it doesn't have jurisdiction.

Charline Bourque
Member, General Division – Employment Insurance Section