



[TRANSLATION]

Citation: *SP v Canada Employment Insurance Commission*, 2023 SST 344

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

**Decision**

**Appellant:** S. P.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (428040) dated July 22, 2021  
(issued by Service Canada)

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**Tribunal member:** Manon Sauvé  
**Type of hearing:** In person  
**Hearing date:** November 16, 2022  
**Hearing participant:** The Appellant  
**Decision date:** January 18, 2023  
**File number:** GE-21-1416

## Decision

[1] The appeal is allowed. The Commission hasn't shown that it could take advantage of a period to reconsider that was longer than 36 months and shorter than 72 months.

## Overview

[2] The Claimant works as a salesperson for a window manufacturer.

[3] On December 9, 2016, he stopped working because of a shortage of work. He applied for Employment Insurance (EI) benefits with the Commission.

[4] A benefit period was established effective December 11, 2016. He received benefits during his eligibility period.

[5] In September 2019, the Commission investigated whether the Claimant had correctly reported his earnings during his benefit period.

[6] On June 8, 2021, the Commission sent the Claimant a decision about his December 11, 2016, claim. It found that there was no interruption of earnings because the Claimant had an employment contract that was valid until 2019 and he was a commissioned salesperson.

[7] In addition, it told the Claimant that it could reconsider his claim, since it had received new information.

[8] The Claimant disagrees with the Commission. It could not review his file the way it did. Also, the employment relationship had been effectively severed.

## Issues

1. Could the Commission take advantage of the 72-month period to reconsider set out in the Act?
2. Was there an interruption of earnings for seven consecutive days for the period starting December 11, 2016?

## Analysis

1. Could the Commission take advantage of the 72-month period to reconsider set out in the Act?

[9] The Act allows the Commission to reconsider decisions<sup>1</sup> within 36 months. That is a discretionary power available to the Commission.

[10] The Act also allows the Commission to reconsider decisions within 36 to 72 months. When exercising its power, it has to do so judicially.<sup>2</sup> In other words, it must not act in a perverse or capricious manner, and it has to consider the evidence on file.

[11] The Commission has to show that it exercised its discretion judicially.

[12] When the Commission exercises a separate power conferred on it by section 52(5) of the Act, it has a duty to tell the claimant precisely why, for the particular purposes of the exercise it is undertaking under that subsection, the statement seems false.<sup>3</sup>

[13] I note that the Claimant applied for EI benefits for a period starting December 11, 2016. The Claimant received benefits from December 11, 2016, to April 8, 2017.

[14] The Commission collected information from the employer and reports from the Claimant for almost two years. It wanted to verify the Claimant's commission income.

[15] It wasn't until June 8, 2021, that the Commission made a decision. The Commission didn't make a decision about the commission the Claimant received. It found that the Claimant isn't entitled to EI benefits for the entire period because there was no interruption of earnings.

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<sup>1</sup> Section 52(1) of the Act says that the Commission may reconsider any claim that has been paid or that has become payable within 36 months.

<sup>2</sup> *Uppal*, 2008 FCA 388 (CanLII).

<sup>3</sup> *Canada (Attorney General) v Langelier*, 2002 FCA 157; *Canada (Attorney General) v Dussault*, 2003 FCA 372.

[16] When the June 8, 2021, decision was made, the Claimant didn't have an interruption of earnings because he was a commissioned salesperson.

[17] Also, the Commission determined that while the Claimant didn't make false statements knowingly or in a misleading manner, the statements were false. That means it could extend the reconsideration period to more than 36 months.

[18] I am of the view that the Commission didn't exercise its discretion judicially. In fact, the Commission had to notify the Claimant before it concluded that he wasn't entitled to benefits since there was no interruption of earnings.

[19] On June 8, 2021, the Commission revisited a review that began in 2019. In 2019, the Commission investigated the amounts in commission the Claimant received that weren't properly reported. It found that the Claimant didn't properly report his income.

[20] In fact, the Claimant's last communication with the Commission is about his availability and his earnings. At that time, the Commission told the Claimant that it would readjust the benefits based on the commissions he earned. This means that some weeks will be to the Claimant's benefit, while others will require him to pay back an overpayment. This isn't an interruption of earnings. It didn't send him a notice about it.

[21] On June 8, 2021, the Commission told the Claimant that he wasn't entitled to benefits because there had been no interruption of earnings. That issue wasn't discussed until the Commission decided that the Claimant had made false statements about his status. It didn't notify him about it. It made a decision and found that the Claimant isn't entitled to benefits for the period from December 11, 2016, to April 8, 2017.

[22] With this in mind, I find that the Commission didn't follow the rules from section 52(5) of the Act for the benefit period starting December 11, 2016, and ending April 8, 2017. I note that the Commission hasn't provided evidence showing that it felt the Claimant had made a false statement.

[23] Also, the Commission didn't tell the Claimant that it felt he had made a false statement. It made its decision at the end of the process, when the Claimant wasn't told that the Commission considered that it could reasonably believe that he had made a false statement.

[24] As a result, I don't have to decide whether there was an interruption of earnings to determine that the Claimant is entitled to benefits for the period from December 11, 2016, to April 8, 2017. The Commission didn't act properly when it reconsidered the claim.

## **Conclusion**

[25] I find that the Commission hasn't shown that it could reconsider the benefit period from December 11, 2016, to April 8, 2017, under section 52(5) of the Act.

[26] The appeal is allowed.

Manon Sauvé

Member, General Division – Employment Insurance Section