



Citation: *JP v Canada Employment Insurance Commission*, 2023 SST 994

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

# Decision

**Appellant (Claimant):** J. P.  
**Representative:** Rabbi Sidney Speakman

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (539987) dated October 3, 2022  
(issued by Service Canada)

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**Tribunal member:** Linda Bell

**Type of hearing:** In person

**Hearing date:** January 24, 2023

**Hearing participants:** Appellant (Claimant)  
Appellant's representative  
Two observers, Appellant's family members

**Decision date:** January 30, 2023

**File number:** GE-22-3654

## Decision

[1] I am dismissing the appeal. I disagree with J. P., the Appellant (Claimant).

[2] The Claimant didn't suffer an interruption of earnings within the qualifying period.<sup>1</sup> This means he doesn't qualify for Employment Insurance (EI) benefits starting on February 14, 2021.

[3] The Commission acted judicially (properly) when it cancelled the February 14, 2021, benefit period. The benefit period cancellation results in the Claimant having an overpayment of EI benefits. I can't write off or reduce the overpayment.

## Overview

[4] The Claimant applied for regular EI benefits. The Commission started his benefit period on February 14, 2021. The Claimant submitted reports and was paid EI benefits.

[5] Several months later, the Claimant's employer GDI, submitted an amended Record of Employment (ROE). The Commission conducted a review. It contacted the employer to clarify whether the Claimant had a seven-day period with no work and the reason why he stopped working.

[6] The Commission determined the Claimant didn't suffer an interruption of earnings during the qualifying period between February 16, 2020, and February 14, 2021. This means the Claimant doesn't qualify for the EI benefits he was paid.

[7] The Commission cancelled the February 14, 2021, benefit period. This resulted in a \$11,736.00 overpayment of EI benefits. The Commission maintained this decision upon reconsideration.

[8] The Claimant disagrees with the Commission's decision and the resulting overpayment. He submitted an appeal to the Social Security Tribunal.

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<sup>1</sup> Section 8 of the *Employment Insurance Act* (EI Act) states the qualifying period is normally the 52-week period immediately before the start of the benefit period.

## Issues

[9] Did the Claimant suffer an interruption of earnings during the qualifying period?

[10] Did the Commission act properly (judicially) when cancelling the benefit period?

[11] If so, can I write off or reduce the overpayment of EI benefits?

## Matters I must consider first

### Case Conference

[12] On December 22, 2022, I invited the parties to attend a case conference. The Claimant's representative appeared. We discussed the hearing process, the issues under appeal, the legal test, and the Tribunal's jurisdiction. A summary of what was discussed at that conference was sent to both parties.<sup>2</sup>

### Analysis

[13] To qualify for EI benefits and establish a benefit period, a claimant must have suffered an interruption of earnings and have enough hours of insured employment.<sup>3</sup> A benefit period is the period during which benefits may be paid.

### Interruption of earnings

[14] I find the Claimant didn't suffer an interruption of earnings prior to the start of the February 14, 2021, benefit period. The following is what I considered.

[15] An interruption of earnings occurs when the following criteria are met:

- the claimant is laid off or terminated from their employment,
- the claimant doesn't work for seven consecutive days for that employer, **and**
- the claimant doesn't receive any earnings arising from that employment.<sup>4</sup>

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<sup>2</sup> See the GD10 document.

<sup>3</sup> See section 7 of the EI Act.

<sup>4</sup> See section 14(1) of the *Employment Insurance Regulations* (Regulations).

[16] There are different criteria when determining an interruption of earnings for a claimant who is requesting special benefits.<sup>5</sup> Special benefits include sickness, maternity, parental, and family caregiver benefits. Usually, claimants who ask for special benefits stop working because of an illness, injury, quarantine, pregnancy, or to care for a child. In those cases, the week of the interruption of earnings occurs at the beginning of the week in which the claimant's earnings reduce more than 40% of their normal weekly earnings.<sup>6</sup>

[17] In this case I find the Claimant must meet the three criteria set out above, [in paragraph 13], to establish an interruption of earnings. I recognize the Claimant says his weekly earnings were reduced by 40%. But he didn't apply for special benefits or stop working because of an illness, injury, quarantine, pregnancy, or to care for a child. He applied for regular EI benefits.

[18] The Claimant agrees that prior to February 14, 2021, he wasn't laid off. Instead, he remained employed, but his employer reduced his shifts from 5 days to 3 days per week. He testified that he used to work Monday through Friday. Then his employer reduced his hours and he worked on Monday, Wednesday, and Friday. He confirmed he didn't have a period of 7 consecutive days with no work and no earnings, in the 52 weeks prior to February 14, 2021.

[19] I find the Claimant doesn't meet all three criteria to establish an interruption of earnings. He wasn't laid off and he didn't have a seven-day period with no work or earnings. This means he doesn't meet the criteria to establish a benefit period as of February 14, 2021.

### **Did the Commission act properly?**

[20] Yes, I find the Commission acted properly when reviewing the claim and canceling the benefit period.

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<sup>5</sup> Section 2 of the EI Act defines special benefits as those benefits paid for any reason mentioned in section 12(3) of the EI Act.

<sup>6</sup> See section 14(2) of the Regulations. Section 2 of the EI Act states that a week is seven consecutive days and starts on a Sunday.

[21] The law states that once a benefit period has been established, it is up to the Commission to decide whether it will cancel that benefit period.<sup>7</sup> When deciding whether to cancel a benefit period, the Commission considers whether the claimant qualified to receive benefits.

[22] The Commission makes its own decisions about whether to cancel a benefit period. This is called a discretionary power.

[23] Even though the Commission has discretionary power to cancel a benefit period, the Commission must make its decision fairly. The Commission must look at all the information when it makes its decision. The Commission should pay attention to important information about whether you qualify for benefits and ignore things that are not important.<sup>8</sup>

[24] I must respect the Commission's discretionary power. Usually, this means that I can't change the Commission's decision. But, if the Commission didn't make its decision fairly, then I can step into the Commission's role. Then, I may make the decision whether the Claimant qualifies for benefits.

[25] The documents on file show me the Commission completed its review of the benefit period on July 28, 2022. This is 17 months after the weeks for which benefits were paid or payable.

[26] The Commission has the authority to review previous claims.<sup>9</sup> Specifically, the EI Act states the Commission has 36 months after paying EI benefits, to reconsider a claim for benefits.

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<sup>7</sup> This is set out in sections 10, 48, and 49 of the EI Act.

<sup>8</sup> In *Canada (Attorney General) v. Purcell*, A-694-94, the Federal Court of Appeal states that the Commission must consider all relevant factors, ignore irrelevant factors, act in good faith, and act in a manner that is not discriminatory.

<sup>9</sup> See section 52 of the EI Act, which provides the Commission with the authority to review previous claims. Specifically, it states the Commission has 36 months after paying EI benefits, to reconsider a claim for benefits. This period is extended to 72 months in cases if, in the opinion of the Commission, a false or misleading statement or representation has been made in connection to a claim.

[27] As stated by the Commission, the Federal Court of Appeal recognizes the Commission can't review changes to claims at the exact time they happen. It is precisely for that reason the EI Act allows the Commission time to rescind or amend any decision given in a claim for EI benefits.<sup>10</sup>

[28] There is nothing in the appeal documents that could lead me to believe the Commission was of the opinion the Claimant provided false or misleading statements. Instead, the Commission says it received an amended ROE and then proceeded to conduct a review of the claims. It was during that review the Commission determined the Claimant hadn't suffered an interruption of earnings.

[29] I find the Commission considered all relevant factors during its review. There is no evidence before me that would support a finding that the Commission ignored relevant factors, considered irrelevant factors, failed to act in good faith, or acted in a manner that was discriminatory.

[30] I acknowledge the Claimant's representative argued that the government waived the requirement to serve a waiting period. But this isn't relevant to whether the Claimant has suffered an interruption of earnings. This is because a waiting period occurs **after** the beginning of the benefit period, as stated in section 13 of the EI Act. Whereas an interruption of earnings occurs **before** a benefit period starts and falls under section 7 of the EI Act.

[31] This is truly an unfortunate situation where the Commission failed to enquire whether the Claimant had suffered an interruption of earnings before establishing the February 14, 2021, benefit period and paying him benefits. But the Federal Court of Appeal has held that even in cases where the Commission's errors result in an overpayment of benefits, its decision is to remain if there is no prejudice to the claimant.<sup>11</sup> In this case, I find the Commission's error doesn't cause the Claimant

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<sup>10</sup> *Canada (Attorney General) v Landry*, A-532-98.

<sup>11</sup> In *Desrosiers v Canada (AG)*, A-128-89, the judicial review relating to CUB 16233 was dismissed. In that case, the Federal Court of Appeal upheld the Umpire's determination that an error, which does not cause prejudice, is not fatal to the decision under appeal, so the decision is to be maintained.

prejudice because the error didn't prevent him from appealing the reconsideration decision.

[32] I recognize that had the Commission conducted its review sooner, the overpayment of benefits may be lower. But the Commission conducted its assessment within the time limit set out in the EI Act, so the overpayment is valid.

### **Will I write off or reduce the overpayment EI benefits?**

[33] No. I don't have the jurisdiction to decide on requests to write off or reduce an overpayment. This authority belongs to the Commission.<sup>12</sup> It is the Federal Court of Canada who has jurisdiction to hear an appeal relating to a write-off issue.<sup>13</sup>

[34] So, if the Commission refused such a request and the Claimant wishes to pursue an appeal about a write-off issue, he may do so at the Federal Court of Canada.

[35] If the Claimant is wishing to negotiate repayment arrangements for the overpayment, he may wish to contact the Canada Revenue Agency (CRA) to discuss repayment options.

### **Conclusion**

[36] The appeal is dismissed.

Linda Bell

Member, General Division – Employment Insurance Section

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<sup>12</sup> See section 56 of the Regulations.

<sup>13</sup> See *Steel v Canada (Attorney General)*, 2011 FCA 153; *Bernatchez v Canada (Attorney General)*, 2013 FC 111.