



[TRANSLATION]

Citation: *CP v Canada Employment Insurance Commission*, 2023 SST 1322

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

Decision

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

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (549436) dated December 1, 2022 (issued by Service Canada)

Tribunal member: Normand Morin
Type of hearing: Videoconference
Hearing date: June 29, 2023
Hearing participant: Appellant
Decision date: August 30, 2023
File number: GE-23-30

Decision

[1] The appeal is dismissed.

[2] I find that the Canada Employment Insurance Commission (Commission) correctly calculated the Appellant's weekly EI benefit rate.¹

[3] I find that the Commission is justified in asking the Appellant to repay the amount of money she was overpaid in benefits (overpayment).²

Overview

[4] From March 22, 2021, to April 1, 2022, the Appellant worked as an administrative assistant for X (employer) and stopped working for that employer because of an illness or injury.³

[5] On April 9, 2022, she made an initial claim for benefits (sickness or special benefits).⁴ A benefit period was established effective April 3, 2022.⁵

[6] On June 19, 2022, Employment and Social Development Canada sent the Appellant a notice of debt telling her that a change in her insurable employment had resulted in an "overpayment" of benefits.⁶

[7] On August 8, 2022, the Commission verbally informed her that her weekly benefit rate had been set at \$413 instead of \$638.⁷

¹ See section 14 of the *Employment Insurance Act* (Act).

² See sections 43, 44, 47, and 52 of the Act.

³ See GD3-3 to GD3-15.

⁴ See GD3-3 to GD3-13.

⁵ See GD3-1 and GD4-1.

⁶ See the document entitled "Notice of Debt / *Avis de dette*" issued by Employment and Social Development Canada / *Emploi et Développement social Canada*—GD3-25 and GD3-26.

⁷ The Appellant says that she was informed verbally of the Commission's decision on August 8, 2022. In its arguments, the Commission says that it doesn't have any evidence to show that the Appellant was notified on August 8, 2022, either verbally or in writing, of the decision about her weekly benefit rate—GD7-1. The Commission still refers to a decision made on August 8, 2022, in the reconsideration decision dated December 1, 2022—GD2-11, GD2-12, GD3-30, and GD3-31. I find that the Appellant was given verbal notice of the initial August 8, 2022, decision.

[8] On December 1, 2022, following a reconsideration request, the Commission told her that it was upholding the August 8, 2022, decision about calculating her weekly benefit rate (benefit rate – overpayment). The Commission told her that she would receive a notice of debt and that the amount she owed could be deducted from her future benefits.⁸

[9] The Appellant says that, looking at her online EI account (My Service Canada Account), she found that it contained two Records of Employment (ROE) issued in her name by employers she hadn't worked for. She says that in April 2022 she went to a Service Canada Centre more than once to show that the ROEs in question were fraudulent and should not be taken into account when determining her weekly benefit rate. The Appellant says that, despite that report, the Commission told her that the ROEs in question had been taken into account to establish her weekly benefit rate. She says that she asked the Commission not to pay her benefits until the problem with fraudulent ROEs was resolved, but was unsuccessful. She says that she received benefits at a weekly rate that took into account all the ROEs issued in her name, including those that were fraudulent, when that should not have been the case.

[10] The Appellant says that she doesn't object to the weekly benefit rate the Commission established after corrections were made to her file. She says that she objects to the fact that the Commission ignored her specific request that it not consider the fraudulent ROEs issued to her to determine her weekly benefit rate and pay her benefits. The Appellant argues that the Commission made an error in her EI file. She points out that the Commission took a long time to fix it.

[11] The Appellant is asking to write off the overpayment amount the Commission says she has to pay back. She says that it is difficult for her to repay the amount it says she owes.

⁸ See GD2-11, GD2-12, GD3-30, and GD3-31.

[12] On December 31, 2022, the Appellant challenged the Commission's reconsideration decision. This decision is being appealed to the Social Security Tribunal of Canada (Tribunal).

Issues

[13] I have to decide whether the Commission correctly calculated the Appellant's weekly EI benefit rate.⁹

[14] I also have to decide whether the Commission is justified in asking the Appellant to repay the benefits she was overpaid.¹⁰

Analysis

Appellant's weekly benefit rate

[15] The weekly benefit rate paid to a claimant is the maximum amount they can receive for each week in their benefit period. The general rule is that the weekly benefit rate is 55% of a claimant's average weekly insurable earnings.¹¹

[16] This rate is calculated using the number of weeks when a claimant's (excluding fishers and self-employed workers) insurable earnings were the highest (best weeks) in their qualifying period.¹² Generally, the qualifying period is the 52-week period before the start of a person's benefit period.¹³

[17] The number of weeks taken into account for the calculation can vary from 14 to 22 weeks.¹⁴ This number is based on the regional rate of unemployment in the area where the claimant ordinarily resides, as of the start date of their benefit period.¹⁵

⁹ See section 14 of the Act.

¹⁰ See sections 43, 44, 47, and 52 of the Act.

¹¹ See sections 14(1) and 17 of the Act.

¹² See the table in section 14(2) of the Act, and sections 14(3) and 14(4) of the Act.

¹³ See section 8 of the Act.

¹⁴ See sections 14(2) and (4) of the Act.

¹⁵ See sections 14(2) and (4) of the Act.

[18] The average weekly insurable earnings amount is determined by dividing the total insurable earnings of the weeks used to make the calculation by that number of weeks.¹⁶

[19] The Commission argues the following:

- a) The Appellant's qualifying period was established from April 4, 2021, to April 2, 2022. Her benefit period was established effective April 3, 2022.¹⁷
- b) The required number of "best weeks" for calculating the weekly benefit rate when the unemployment rate is 4.8% (rate of unemployment established at 4.8% for the period from March 13, 2022, to April 9, 2022, in the EI economic region of Central Quebec where the Appellant resides) is 22 weeks.¹⁸
- c) The Appellant's weekly benefit rate was initially calculated based on earnings that she hadn't earned, since these earnings came from, among other sources, two fraudulent ROEs out of three that appeared in her file. The Commission had to fix the Appellant's file so that her benefit rate would be in compliance with the Act. Even though the fraudulent activities in the Appellant's file constitute a special situation, the benefit rate has to be calculated the same way it would be for any other claimant.¹⁹
- d) In establishing the Appellant's benefit period, taking into account the three ROEs issued in her qualifying period, the Commission determined that the total insurable earnings in the calculation period were \$25,512.²⁰
- e) The weekly benefit rate was calculated as follows: Average weekly insurable earnings: $\$25,512 / 22 = \$1,159.64$. Weekly benefit rate: $\$1,159.64 \times 55\% = \638 (rounded to the nearest dollar).²¹

¹⁶ See sections 14(2) and (4) of the Act.

¹⁷ See section 8(1)(a) of the Act. See also GD4-3.

¹⁸ See the table in section 14(2) of the Act. See also GD3-20 to GD3-23, GD4-1, and GD4-3.

¹⁹ See GD4-1 and GD4-5.

²⁰ See GD3-14 to GD3-19, GD4-1, and GD4-3.

²¹ See GD4-1 and GD4-3

- f) After the Commission's investigation was finalized on June 4, 2022, it determined that only one of the three records in the Appellant's file was legitimate and should have been considered in calculating her weekly benefit rate. The Commission decided that the Appellant's total insurable earnings had to be established at \$16,539.²²
- g) The weekly benefit rate was calculated as follows: Average weekly insurable earnings: $\$16,539 / 22 = \751.70 . Weekly benefit rate: $\$751.70 \times 55\% = \413 (rounded to the nearest dollar).²³
- h) The rate was recalculated to determine the amount that was actually payable to the Appellant. This recalculation showed that the Appellant was overpaid \$1,350 in benefits. This amount is the Appellant's overpayment for the period from April 10, 2022, to May 21, 2022 (six weeks).²⁴

[20] The Appellant says that she doesn't object to the Commission's calculations to establish her new weekly benefit rate at \$413.

[21] She says that she primarily objects to the Commission ignoring her request not to pay her benefits until corrections were made to her EI file to avoid taking into account the fraudulent ROEs.²⁵

[22] In this case, I find that the Commission correctly calculated the Appellant's weekly benefit rate after making corrections by excluding the two fraudulent ROEs in her file from its calculation.

[23] In doing so, the Commission considered only the Appellant's period of employment during her qualifying period established from April 4, 2021, to April 2, 2022, which is part of her period of employment from March 22, 2021, to March 31, 2022.

²² See GD3-18, GD3-19, and GD4-1 to GD4-3.

²³ See GD4-1 to GD4-3.

²⁴ See GD3-24, GD4-2, and GD4-3.

²⁵ See GD9-1.

[24] The Federal Court of Appeal (Court) tells us that a claimant's weekly benefit rate is based on their weekly insurable earnings.²⁶ The Court says that the rate for these benefits—55% of weekly insurable earnings—and the method for calculating it are the same for all claimants.²⁷

[25] I find that the Commission also correctly determined the overpayment amount that resulted from the Commission's recalculation.²⁸ The Appellant's weekly benefit rate changed from \$638 to \$413—a difference of \$225.

[26] For each of the six weeks the Appellant received \$638 in benefits for the period from April 10, 2022, to May 21, 2022, the total overpayment is \$1,350. This amount is the same as the one on the notice of debt sent to the Appellant on June 19, 2022.²⁹

[27] I find that the Commission has shown that it correctly calculated the Appellant's weekly benefit rate after the corrections it made. It considered the Appellant's total earnings from the employer she worked for during her qualifying period.

[28] The Commission also correctly determined the overpayment amount that resulted from the corrections made to the Appellant's weekly benefit rate.

Liability to repay overpaid benefits

[29] The Commission is justified in asking the Appellant to repay the amount she was overpaid in benefits.

[30] If a person received EI benefits they weren't entitled to or were disqualified from, they are required to pay back those benefits or the resulting overpayment.³⁰

[31] The Commission has 36 months to reconsider any claim for benefits paid or payable to a claimant.³¹ That period is 72 months if the Commission is of the opinion

²⁶ The Court reiterated this principle in *Manoli*, 2005 FCA 178.

²⁷ The Court reiterated this principle in *Manoli*, 2005 FCA 178.

²⁸ See GD3-24.

²⁹ See the document entitled "Notice of Debt / *Avis de dette*" issued by Employment and Social Development Canada / *Emploi et Développement social Canada*—GD3-25 and GD3-26.

³⁰ See sections 43 and 44 of the Act.

³¹ See section 52 of the Act.

that a false or misleading statement or representation has been made in connection to a claim.³²

[32] The Commission may write off an amount owing under specific conditions.³³ Write-off means cancelling or waiving a debt or an amount owing (for example, an overpayment).

[33] The Commission argues the following:

- a) The Commission didn't make an error when it initially calculated the Appellant's weekly benefit rate. Calculations to determine this rate were made on April 11, 2022. The Appellant's file was already under investigation, but no decision had been made on the authenticity of the ROEs in that file. This means the three records were taken into account in the Commission's calculations.³⁴
- b) The Commission imposes a stop payment when a file is under investigation to avoid an overpayment. In the Appellant's case, the stop payment was removed before the investigation's findings were fully applied. In other words, before her benefit rate was recalculated. This explains why the Appellant was overpaid.³⁵
- c) The initial calculation of the benefit rate included insurable earnings that the Appellant didn't actually have.³⁶
- d) Only the insurable earnings that the Appellant actually earned can be used to determine her rate of weekly benefits.³⁷

³² See section 52 of the Act.

³³ See section 56 of the *Employment Insurance Regulations* (Regulations).

³⁴ See GD4-4.

³⁵ See GD4-4.

³⁶ See GD4-4.

³⁷ See GD4-5.

- e) The Commission reconsidered and corrected the Appellant's file retroactively because benefits had been paid to her contrary to the structure of the Act.³⁸
- f) The Commission always reconsiders when benefits have been paid contrary to the structure of the Act and when an overpayment is created. That is the case whether or not it made the payment by mistake.³⁹
- g) The fraudulent activities in the Appellant's file were properly taken into account in the handling of her file. The timing of the transactions after the Commission's investigation led to the overpayment of benefits.⁴⁰
- h) The Commission had no choice but to correct the Appellant's file so that her benefit rate would be in compliance with the Act.⁴¹
- i) The Appellant received more benefits than she was entitled to because of fraudulent activities in her file and because the stop payment was removed before her benefit rate was recalculated.⁴²
- j) The Appellant has to pay back the amount she was overpaid in benefits because she isn't entitled to them.⁴³
- k) The Appellant has nothing more to pay back than what she was overpaid.⁴⁴

[34] The Appellant's testimony and statements indicate the following:

- a) In April 2022, she repeatedly asked the Commission not to take into account ROEs issued in her name by employers she hadn't worked for to determine her weekly benefit rate. Those records were fraudulent.⁴⁵

³⁸ See GD4-4.

³⁹ See GD4-4.

⁴⁰ See GD4-4.

⁴¹ See GD4-4 and GD4-5.

⁴² See GD4-5.

⁴³ See sections 43 and 44 of the Act. See also GD4-4 and GD4-5.

⁴⁴ See GD4-4.

⁴⁵ See GD2-6, GD3-14 to 17, GD3-29, and GD9-1.

- b) The Commission didn't consider this request or the fact that she had been a victim of fraud in her EI file. The Commission didn't establish her weekly benefit rate using only the actual ROE in her file.⁴⁶
- c) The Commission made an error in her file by paying her benefits without excluding the fraudulent ROEs from its calculations.⁴⁷
- d) She doesn't have to pay for the Commission's mistake or bear the consequences.⁴⁸
- e) It isn't her fault that the Commission took a long time to sort out her case.⁴⁹
- f) She disagrees with having to pay back the amount the Commission says she owes in overpaid benefits.⁵⁰
- g) She asks that the Commission's demand for repayment be written off.⁵¹
- h) She says that she finds it difficult to repay the amount it says she owes.

[35] I find that the Commission exercised its right to reconsider the Appellant's claim within the time limit.⁵²

[36] The Commission also exercised its right to ask the Appellant to repay the amount she was overpaid in benefits.⁵³

[37] Even though the Appellant argues that she asked the Commission not to take into account the fraudulent ROEs in her file before establishing her weekly benefit rate and paying her benefits, the fact is that she received benefits she wasn't entitled to.

⁴⁶ See GD3-18, GD3-19, GD3-27, and GD9-1.

⁴⁷ See GD2-6, GD3-29, and GD9-1.

⁴⁸ See GD3-29 and GD9-1.

⁴⁹ See GD3-29.

⁵⁰ See GD2-6, GD3-29, and GD9-1.

⁵¹ See GD9-1.

⁵² See section 52 of the Act.

⁵³ See section 52 of the Act.

[38] Although the Appellant disagrees that she has to pay back the amount it says she owes in overpaid benefits, she still has to repay that amount. This is an overpayment that has to be paid back.

[39] The Court tells us that the amount of an overpayment specified in a notice of debt becomes repayable on the date of notification of the overpayment and that a person who receives an overpayment of benefits is to return the amount of overpayment without delay.⁵⁴

[40] I don't accept the Appellant's argument that the Commission made an error in her file and that, for that reason, she isn't required to pay back the amount it says she owes in overpaid benefits. The Appellant's statements on this point can't exempt her from her obligation to repay the amount of money in question.

[41] The Court tells us that an amount a claimant received without being entitled to it—even if the Commission made a mistake—doesn't make them entitled to receive the amount in question or excuse them from paying it back.⁵⁵

[42] Even though several months passed before the Commission told the Appellant that her weekly benefit rate had been reduced, this situation doesn't change the fact that she was overpaid benefits because of the calculations to establish that rate.

[43] But, I am of the view that the Commission should have acted quickly to consider the Appellant's efforts to tell it that fraudulent ROEs were in her EI file and to make the necessary corrections to establish her new benefit rate before paying her benefits.

[44] Although the Appellant is asking that the amount she was overpaid in benefits be written off, I note that the Tribunal doesn't have jurisdiction to decide on writing off an overpayment.⁵⁶ That authority rests with the Commission.

⁵⁴ The Court established or reiterated this principle in *Faullem*, 2022 FCA 29; and *Braga*, 2009 FCA 167. See also sections 43, 44, 47, and 52 of the Act.

⁵⁵ The Court established or reiterated this principle in *Buors*, 2022 FCA 372; *Lanuzo*, 2005 FCA 324; and *Shaw*, 2002 FCA 325.

⁵⁶ The Court established or reiterated this principle in *Villeneuve*, 2005 FCA 440; *Filiatrault A-874-97*; *Romero A-815-96*; and *Gagnon A-676-96*.

[45] In summary, the Appellant's situation can't exempt her from her obligation to pay back the amount she was overpaid in benefits and that she isn't entitled to.

[46] Although sympathetic to the Appellant's situation, the Court tells us that adjudicators, including the Tribunal, can't rewrite the law or interpret it in a way that is contrary to its plain meaning.⁵⁷

[47] I find that the Commission is justified in asking the Appellant to pay back the overpayment. It is up to the Commission to determine how that amount is to be repaid.

Conclusion

[48] I find that the Commission correctly calculated the Appellant's weekly benefit rate.

[49] I find that the Commission is justified in asking the Appellant to pay back the amount it overpaid her in benefits for the weeks in question.

[50] This means that the appeal is dismissed.

Normand Morin

Member, General Division – Employment Insurance Section

⁵⁷ The Court established this principle in *Knee*, 2011 FCA 301.