Citation: *PB v Canada Employment Insurance Commission*, 2022 SST 1121

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (496059) dated July 20, 2022 (issued by Service Canada)

Tribunal member:	Lilian Klein
Type of hearing:	Teleconference
Hearing date:	October 19, 2022
Hearing participants:	Appellant
Decision date:	October 28, 2022
File number:	GE-22-2828

Decision

[1] I am dismissing the Claimant's appeal. This decision explains why.

[2] After recalculation of the Claimant's insurable hours by the Canada Revenue Agency (CRA), the Canada Employment Insurance Commission (Commission) correctly reduced both her weekly benefit rate and the number of weeks of benefits she could get in her benefit period. I cannot change the CRA's ruling.

[3] The Commission used it powers properly when it issued a warning since it showed that it considered all relevant information and acted in good faith. So, the warning stands.

Overview

[4] The Claimant said she worked for three employers in her qualifying period, from February 28, 3016, to February 25, 2017. Based on her three Records of Employment (ROEs), the Claimant was paid 36 weeks of regular benefits at a weekly rate of $316.

[5] A fraud investigation by the Commission showed that there were discrepancies on the Claimant's ROE from one of her employers (B Enterprises). It decided that this employer credited her for full days of work at times when she was not working.

[6] The CRA then ruled that the Claimant did not have insurable employment with B Enterprises from January 5, 2016, to August 12, 2016. So, her total insurable hours in her qualifying period dropped from 1,820 to 924, and her insurable earnings in the 22 weeks of her best earnings dropped to $8,259.

[7] These figures mean that the Claimant was only eligible for 17 weeks at a weekly benefit rate of $206 in her benefit period, from February 26, 2017, to February 25, 2018.

[8] The Commission says it issued a warning because the Claimant knowingly provided false or misleading information for her ROE from B Enterprises. She denies this.

[9] To decide this appeal, I must first remove the insurable earnings and hours from the ROE issued by B Enterprises, as determined by the CRA.[1]

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[1] See GD3-99 to GD3-100. I cannot change the CRA's ruling since it has sole authority on these matters.

The issues I must decide

[10] Did the Commission correctly recalculate the Claimant's benefit rate for her 2017/2018 claim?

[11] Did the Commission correctly recalculate the number of weeks of benefits she was eligible to receive?

[12] Was the Commission's warning justified?

Analysis

Calculating the weekly benefit rate

[13] Your weekly benefit rate is what you receive for each week in your benefit period. Weekly insurable earnings are calculated using your total insurable earnings in the best earning weeks of your qualifying period. This is the calculation period. Those earnings are divided by the number of best weeks. The weekly benefit rate is 55% of that figure.[2]

[14] The number of best weeks, consecutive or not, ranges from 14 to 22 depending on your total insurable hours and the regional rate of unemployment where you live at the start of your benefit period.[3]

[15] The parties agree that the Claimant's 52-week qualifying period was from February 28, 2016, to February 25, 2017. She lived in the Vancouver Lower Mainland Region when her benefit period began. Based on the 5% unemployment rate at the time, the number of her best weeks for the calculation was 22.[4] Those facts are not in dispute.

[16] The CRA says the earnings on the B Enterprises ROE was not from insurable employment. So, the Commission recalculated the weekly benefit rate as follows:

> $8,259 (insurable earnings in the Claimant's calculation period) ÷ 22 (the number of her best working weeks) = $375 (weekly insurable earnings) x 55% = $206 (her amended weekly benefit rate).

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[2] S 14(1) of the *Employment Insurance Act* (EI Act).
[3] S 14(4) of the EI Act.
[4] See the Table in section 14(2) of the EI Act.

[17] I find that the Commission's recalculation is correct. It is based on a fixed formula that is set out in the law and used for every claimant.[5] So, the Commission has shown that the Claimant's weekly benefit rate was $206, not the $316 rate it previously applied to her claim. This explains the first part of her overpayment.

Calculating how many benefit weeks you can get

[18] The number of weeks of benefits is not the same for everyone. It depends on:

1) the total number of insurable hours you worked in your qualifying period; *and*
2) the unemployment rate in your region when your benefit period began.[6]

[19] The CRA says the Claimant only had 924 hours of insurable employment in her qualifying period, instead of 1,820. The evidence shows a 5% regional unemployment rate in the area where she lived when her benefit period began. She does not dispute this rate.

[20] Based on the CRA ruling, the Commission recalculated the number of weeks of benefits that the Claimant could get as 17 weeks, instead of the 36 weeks she was paid.

[21] I find that the Commission's recalculation is correct. It is based on a mathematical formula set out in the law that uses a claimant's total insurable hours and regional rate of unemployment.[7] The same formula is used for every claimant. The drop in the number of weeks of benefits that the Claimant could get explains the second part of her overpayment.

Was the Commission's warning justified?

The Claimant submitted false or misleading information

[22] The Commission may impose a penalty if it finds out that a claimant submitted false or misleading information.[8] The claimant must submit this information "knowingly", that is, with the subjective knowledge that the information is false.[9] This finding is made on a balance of probabilities, based on the circumstances and evidence of each case.

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[5] *Manoli v Canada (Attorney General)*, 2005 FCA 178.
[6] Section 12(2) of the EI Act and Schedule.
[7] The formula used to determine the number of weeks of benefits cannot be changed. See CUB 63948. I do not have to follow CUBs but I can use their reasoning if I find it persuasive, as I do in this case.
[8] Section 38(1) of the EI Act.
[9] *Mootoo v Canada (Minister of Human Resources Development*,) 2003 FCA 206.

[23] The Commission has the burden of proof to show that the Claimant *knew* her ROE was false or misleading.[10] It must provide evidence of the questions it asked and her answers.[11] If the Commission shows that the Claimant answered very simple questions incorrectly, the burden then shifts to her to explain why her responses were not correct.[12]

[24] I find that the Commission met its burden to prove that the Claimant gave false or misleading information. The CRA ruling confirms this since it did not accept the ROE from B Enterprises as proof of insurable employment.

[25] I also find that the Commission has proved, on a balance of probabilities, that the Claimant *knew* her ROE was false.

[26] I make these findings since the Commission provided its questions and they were simple. But the Claimant's answers do not match the evidence.[13] She admitted that B-Enterprises used "flexible adjusting time" and may have added hours "to balance things out." This put hours on her ROE that she had not worked. She said this was "helpful." [14]

[27] The Claimant's statements show that she *knew* her employer was manipulating her hours and earnings on her ROE in a false and misleading way.

The Commission acted properly when it issued a warning

[28] If the Commission discovers the false and misleading information more than 36 months after the offence, it can only issue the non-monetary sanction of a warning letter.[15] This means the Claimant does not have to pay a penalty on top of her debt.

[29] Issuing a warning letter is a discretionary decision.[16] I can only interfere with the Commission's decision if I find that it did not exercise its discretion judicially (act properly) when it issued the warning.[17] To prove it acted properly, it must show that it acted in good faith, considered all relevant factors and ignored irrelevant ones.

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[10] *Attorney General of Canada v Gates*, A-600-94.
[11] *Caverly v Canada (Minister of Human Resources Development*, 2002 FCA 92.
[12] *Attorney General of Canada v Purcell*, A-694-94.
[13] The evidence includes berry picking cards, time sheets, dates of medical appointments and courses.
[14] See GD3-94 to GD-97 for the segments of the investigation where these quotes appear.
[15] Sections 40(b) and 41(1) of the EI Act.
[16] *Canada (Attorney General) v Gauley*, 2002 FCA 219.
[17] *Gill v Canada (Attorney General)*, 2010 FCA 182).

[30] I find that the Commission considered all relevant factors when making its decision to impose a warning. It ignored irrelevant factors. It acted in good faith.

[31] So, based on the evidence and circumstances of this case, I find that the Commission used its powers properly when it issued a warning letter. This means that I cannot intervene to remove the warning from the Claimant's' records.

[32] The Claimant says she is suffering from personal and financial hardship and cannot repay the overpayment. I sympathize with her circumstances but I do not have the power to change the law.[18] You have to repay benefits that you were overpaid.[19]

[33] I do not have the authority to forgive or reduce the Claimant's overpayment either. Only the Commission can do that. She might want to ask the Commission for debt reduction under the regulations that deal with financial hardship.[20] If the Commission does not agree, she can take the matter to the Federal Court.

[34] The Claimant can also contact the CRA's Debt Management Centre at 1-866-864-5823 to ask for a write-off of her overpayment because of financial hardship.

Conclusion

[35] Based on the CRA's ruling, the Commission correctly recalculated the Claimant's rate of weekly benefits and the number of weeks of benefits she could get from February 26, 2017, to February 25, 2018. This resulted in an overpayment of benefits.

[36] The Commission showed that the warning was justified. It showed that it acted properly when issuing this form of sanction. So, I cannot intervene to remove it from the Claimant's record.

[37] This means that I am dismissing the Claimant's appeal.

Lilian Klein

Member, General Division – Employment Insurance Section

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[18] *Canada (Attorney General) v Knee*, 2011 FCA 301.
[19] Sections 43 and 44 of the EI Act.
[20] Section 56(1)(f)(ii) of the *Employment Insurance Regulations*.