



[TRANSLATION]

Citation: *YP v Canada Employment Insurance Commission*, 2024 SST 204

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

Decision

Appellant:	Y. P.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (604447) dated September 20, 2023 (issued by Service Canada)
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Tribunal member:	Manon Sauvé
Type of hearing:	Teleconference
Hearing date:	January 4, 2024
Hearing participants:	Appellant Appellant's partner
Decision date:	January 10, 2024
File number:	GE-23-2863

Decision

[1] The appeal is allowed. The Appellant didn't make false statements within the meaning of the Act.¹ This means that a penalty should not be imposed.

Overview

[2] For several years, the Appellant owned a denture clinic. The staff consisted of four denturists and an administrative assistant.

[3] On September 18, 2021, the clinic's administrative assistant went on maternity leave. She was scheduled to go back to work around October 2022.

[4] Meanwhile, the Appellant's partner and a friend split the hours. In the fall of 2022, the administrative assistant told the Appellant that she would not be going back to work.

[5] The Appellant posted the job as a full-time job. In November 2022, he hired a new administrative assistant. He terminated the employment of his partner and of her friend.

[6] They went to a Service Canada Centre to find out about whether they could apply for Employment Insurance (EI) benefits. They understood that they aren't entitled to benefits because they no longer want to work full-time. One is 77 years old and the other is 67 years old. They are both retired. They helped the Appellant while the administrative assistant was on maternity leave.

[7] The Commission started an investigation. It seemed to suspect that the jobs didn't exist.

[8] After the Commission gathered information from the Appellant, the two employees, and the Appellant's accounting department, it concluded that the Appellant had made false statements. It imposed a penalty of \$8,000.

¹ Section 39 of the *Employment Insurance Act* (Act).

[9] The Appellant asked for a reconsideration. He says that he didn't make false statements. There was an end to the contract for the two employees who didn't want to work full-time. This was temporary work until the administrative assistant would come back from maternity leave.

[10] On reconsideration, the Commission upheld its decision about the false statements but reduced the penalty to \$3,200.

Issues

1. Did the Appellant make two false statements?
2. If so, did the Commission use its discretion by imposing a penalty of \$3,200 on the Appellant?

Issue 1: Did the Appellant make two false statements?

[11] When the Commission says that a person made a false representation they knew was misleading, it has to prove that.² It has to prove this on a balance of probabilities. This means it has to be more likely that the person made a false statement.

[12] The Commission has to show that the person wrongly answered a very simple question.³ If it shows this, the burden of proof is reversed. It is now up to the individual to provide a reasonable explanation for why the false statement wasn't made wilfully.

[13] To interpret the word "knew," a subjective test should be used to determine whether the required knowledge exists. "It is not sufficient to proclaim one's ignorance to avoid sanctions; it is permissible to consider common sense and objective factors to decide whether a claimant had subjective knowledge of the falsity of his or her representations."⁴

² See *Canada v Bellil*, 2017 FCA 104.

³ See *Bellil*, 2017 FCA 104 at para 15; *Purcell* A-694-94; and *Gates* A-600-94.

⁴ *Canada v Bellil*, 2017 FCA 104.

[14] In this case, I note that the Appellant owned a denture clinic for several years. An administrative assistant managed the clinic to assist four denturists.

[15] In 2021, the administrative assistant stopped working because of maternity leave. Faced with the difficulties of recruiting a replacement during the pandemic, the Appellant's partner and a friend split the work during the assistant's maternity leave. They were to stop working when she went back.

[16] The assistant told the Appellant that she was leaving her job. This means she would not be going back to work after her maternity leave. So, the Appellant had to hire a new assistant. He agreed with his partner and a friend that the contract would end when the assistant would go back, but because of her resignation, it would be when the new assistant was hired.

[17] The new assistant was finally hired in November 2022. The Appellant's partner stopped working. The friend finished a few weeks later, to train the new assistant. They have always been clear about not wanting to work full-time. They are 77 and 67 years old, respectively.

[18] A request was sent to the clinic's accountant asking him to issue two separations. On the Record of Employment (ROE), it says **shortage of work/end of contract**. The Appellant's partner and her friend asked the Commission whether they could receive EI benefits.

[19] The accountant who was running the business of the clinic left his job. He was replaced by a new accountant. She completed the ROEs indicating **shortage of work/end of contract**.

[20] On January 9, 2023, the Commission contacted the accountant who completed the ROEs. She told it that she started working on November 8, 2022. She doesn't know all the details. She confirmed that the Appellant's partner and a friend worked in 2022. Also, there was an error on one employee's ROE. She had to correct it.

[21] On January 9, 2023, the Commission contacted the Appellant's partner for information about her job—how many hours, what her tasks were, etc.

[22] Also on January 9, 2023, the Commission tried to reach the Appellant but was unsuccessful.

[23] On January 10, 2023, the Commission contacted the partner's friend. It asked about the relationship between the friend, the Appellant, and his partner. It asked her about her work duties, whether she pays them when she stays with them.

[24] I note that the Commission's questions are to determine whether the friend is a related person. And whether the positions actually existed.

[25] On January 10, 2023, it contacted the Appellant's partner again. The questions were mainly about how the clinic operates and the Appellant's tasks.

[26] On January 10, 2023, the Commission contacted the new accountant again. It asked her whether the Appellant's partner had worked in 2021. It wanted information about the business.

[27] On January 10, 2023, the Commission contacted the Appellant's partner once again. This time, it decided to send the Canada Revenue Agency the file of the business to determine whether the hours worked by the Appellant's partner and her friend were insurable hours.

[28] On January 11, 2023, the Commission contacted the partner's friend. It told her that her hours of work were certainly insurable, but she wasn't entitled because she wasn't available for full-time work.

[29] On January 12, 2023, the Commission asked the new accountant for the paycheques. It asked her to send at least one cheque she had issued for a supplier.

[30] From the Commission's many requests, I understand that it wanted to determine whether the business existed and whether the people actually worked there. It wasn't

looking at the reason for the termination of employment of the Appellant's partner and her friend yet.

[31] I understand that the Commission will continue its communications with the Appellant, the Appellant's partner, and the friend.

[32] On January 23, 2023, the Commission contacted the new accountant. It insisted on obtaining documents. The new accountant said that she wasn't authorized to forward the documents.

[33] On January 25, 2023, the Commission reached the Appellant. The questions were to determine the role of each individual in the business. It also wanted company documents.

[34] This led to discussions between the Commission and the new accountant, the Appellant's partner, the Appellant, and the partner's friend.

[35] After reading the information gathered by the Commission, I still don't know what the objectives were. Was it to show that this is a fictitious business, that they are fictitious workers, or the involvement of the four individuals in the business? The process could be called a fishing expedition. This is because the notes say that the individuals don't really know why all these questions were asked.

[36] The Commission says that the Appellant knew that these were false statements, since he asked it to reconsider the penalty for making false statements.

[37] I understand the Commission's position. But I don't fully agree with its interpretation. After several conversations over the phone between January and February, where there was no mention of false statements on the ROE, the Commission issued a decision on June 12, 2023, about false statements. I will come back to that.

[38] On February 13, 2023, as part of its investigation, the Commission asked the accountant whether she had been asked to indicate a shortage of work. The Commission's notes say that she replied, [translation] "She had a note on her desk

saying that the employer had called and that she had to complete the ROEs **for an end of contract.**"⁵

[39] The notes also say that the new accountant repeatedly said that she didn't know because she was new. She thought some things but wasn't sure.

[40] And this is where the Commission's investigation takes a turn. It argues that the Appellant made false statements, because he indicated "shortage of work/end of contract," when there was still work, since he hired a new person full-time.

[41] On April 3, 2023, the Commission spoke with the new accountant, and she reiterated that, from memory, it was **an end of contract.**⁶ Again, the new accountant doesn't really know what happened.

[42] On June 12, 2023, the Commission imposed a penalty of \$8,000 on the Appellant for making false statements.

[43] The Commission says that the Appellant gave false information on the ROE. He knew that the employees would be replaced by a full-time employee. He wanted to allow both employees to receive EI benefits.

[44] The Commission upheld its decision on the Appellant's request about false statements. But it reduced the penalty to \$3,200.

[45] In this appeal, the Commission argues that it is the presence of conflicting versions of the facts that must be decided by accepting the evidence that is reasonable, reliable, and credible in the circumstances. The Commission considered the parties' versions not credible and contradictory.

[46] It referred to its request to get the statement from a personal or business bank account. The Appellant refused to send the cheques to the Commission. His partner said that she didn't know anything about paperwork.

⁵ GD3-28.

⁶ GD3-29.

[47] In its submissions, the Commission also argues that the Appellant made false statements because he indicated a shortage of work on the ROEs.⁷

[48] Yet, the Commission says that the accountant clarified that this was an end of contract.⁸

[49] The Appellant reiterates that he had an agreement with his 77-year-old partner and her 67-year-old friend to replace the administrative assistant on maternity leave. Their contract would end when she would go back.

[50] The evidence shows that she quit her job. The partner stopped working in November 2022, when the new assistant was hired. Her friend stayed until January 2023 to help the new assistant. In the meantime, the clinic was sold to the Appellant's daughter.

[51] After considering the evidence on file, and the parties' testimony and submissions, I am of the view that the Commission hasn't shown that the Appellant made false statements.

[52] The Appellant has always said that he had an agreement with his partner and a friend to work at the clinic. They split the work during the administrative assistant's maternity leave. They were to stop working when she went back. They never intended to work full-time. They are 77 and 67 years old.

[53] Their work ended when the new assistant was hired. This is the agreement that the parties had from the beginning. The Appellant asked that the ROE show an end of contract. For him, this was an end of contract, since they had been hired part-time during the replacement.

[54] In fact, the new accountant told the Commission from the beginning that the Appellant had asked to indicate end of contract. She entered shortage of work/end of contract. In my view, I cannot find that false statements were made because the new

⁷ GD4-4 para 6.

⁸ GD4-4 para 5.

accountant gave two reasons. In fact, she followed the Commission's rules for end of contracts where A has to be entered in Block 16.

[55] So, that isn't enough to find that the Appellant made false statements, because the new accountant indicated both reasons in Block A [*sic*]. The reason for the termination is simple, but the answer isn't wrong like the Commission says it is. There was an end to the contract between the parties.

[56] It was entirely reasonable for the partner and the friend to apply for EI benefits. The Commission decides whether they meet the criteria. Clearly, it decided that they didn't meet the requirements of the Act because they weren't available for full-time work.⁹

[57] I am not persuaded about the contradictions that the Commission raised to show that the individuals involved aren't credible. They received several calls from the Commission in a short period of time. Those who provided the information are retired seniors and a new accountant, and did so to the best of their knowledge. Each person was consistent with their version of the facts. And just because the Appellant told the Commission that he refused to forward the documents and because his partner claims that she doesn't know anything about documents doesn't mean that they aren't credible and that the statements are false. Even though they gave different information, this isn't enough to show that false statements were made.

[58] The Appellant, his partner, her friend, and the new accountant are credible when they say that this was an end of contract. They aren't false statements.

[59] As a result, I disagree with the Commission that the Appellant made false statements.

⁹ I won't comment on the Commission's statement about the definition of availability under the Act.

Issue 2: If so, did the Commission use its discretion properly by imposing a penalty of \$3,200 on the Appellant?

[60] Since I have found that the Appellant didn't make false statements, there is no need to impose a penalty on him. So, I don't have to consider whether the Commission used its discretion properly.

Conclusion

[61] The Commission hasn't shown that the Appellant made false statements. This means that a penalty should not be imposed.

[62] The appeal is allowed.

Manon Sauvé

Member, General Division – Employment Insurance Section