



Citation: *EN v Canada Employment Insurance Commission*, 2023 SST 1968

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: E. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (619895) dated October 16, 2023
(issued by Service Canada)

Tribunal member: Bret Edwards

Type of hearing: Videoconference

Hearing date: December 8, 2023

Hearing participant: Appellant

Decision date: December 22, 2023

File number: GE-23-3049

Decision

[1] The appeal is dismissed.

[2] The Canada Employment Insurance Commission (Commission) acted judicially when it decided to reconsider the Appellant's claim for benefits.

[3] The Commission also acted judicially when it decided to impose a penalty on the Appellant in relation to his claim.

[4] The Appellant hasn't shown just cause (in other words, a reason the law accepts) for leaving his job when he did. The Appellant didn't have just cause because he had reasonable alternatives to leaving. This means he is disqualified from receiving Employment Insurance (EI) benefits as of October 1, 2017.

[5] The Appellant also received earnings. And the Commission allocated those earnings correctly.

[6] This means the Appellant received benefits he wasn't entitled to. There is now an overpayment, and the Appellant must pay back the money he owes. I can't write off the overpayment, but the Appellant may have other options.

Overview

[7] The Appellant established a claim for EI benefits as of February 12, 2017.¹

[8] The Commission says a post-audit investigation revealed that during that benefit period, the Appellant was working from September 11, 2017 to October 5, 2017, at which time he voluntarily left this job.²

[9] On July 7, 2022, the Commission sent the Appellant two letters. One asked him to provide more information or clarify why he left his job.³ The other asked him to

¹ GD4A-1, GD4B-1.

² GD7-1.

³ GD3A-13.

provide more information or clarify why he didn't declare earnings from that employment.⁴ The Appellant didn't respond to the letters.

[10] On August 1, 2023, the Commission notified the Appellant that it had made two decisions about his February 12, 2017 claim for benefits. First, he hadn't shown just cause for quitting his job on October 5, 2017.⁵ And second, the money he received from that employment was earnings and needed to be allocated as such.⁶

[11] At the same time, the Commission also told the Appellant that it believes he made a false or misleading statement or misrepresentation in relation to his February 12, 2017 claim for benefits.⁷ It says this means it has the authority to review his claim within 72 months instead of 36 months.⁸

[12] The Appellant says he didn't mean to do anything wrong. He says he was addicted to methamphetamine around the time he was working in 2017 and doesn't remember anything about what happened then. He also says he didn't get the Commission's July 7, 2022 letter because he was homeless at the time, so he didn't find out anything about this until he got the Commission's August 1, 2023 decision letters.

Matter I have to consider first

My jurisdiction

[13] My jurisdiction flows from the Commission's reconsideration decision. If the Commission hasn't reconsidered an issue, then I can't review it.⁹

⁴ GD3B-16 to GD3B-17.

⁵ GD3A-20.

⁶ GD3B-20 to GD3B-21.

⁷ GD3B-20 to GD3B-21.

⁸ See section 52(5) of the *Employment Insurance Act* (EI Act), which gives the Commission an extended period of time (72 months) to reconsider a claim if there has been, in its opinion, a false or misleading statement or misrepresentation made by the appellant.

⁹ Sections 112 and 113 of the EI Act say that only decisions that have been reconsidered by the Commission can be appealed to the Tribunal.

[14] The Federal Court of Appeal (Court of Appeal) has suggested the Tribunal should take a broad approach to its jurisdiction, within the limits of the law, to manage appeals fairly and efficiently and determine the scope of the reconsideration.¹⁰

[15] And in a recent decision, the Tribunal's Appeal Division also says the same thing and cites the same case law that I've just mentioned.¹¹

[16] If I am to follow this reasoning and take a broad approach here, I find that means I need to look at what issues the Appellant appears to have raised during the reconsideration phase.

[17] The Commission says its decision to go back and review the Appellant's claim for benefits and its decision to impose a penalty on him for a false or misleading statement or misrepresentation aren't issues before me as it didn't do a reconsideration decision on them.¹²

[18] I disagree with the Commission.

[19] I find the Appellant appears to have raised the issue of the false and misleading statement or misrepresentation during the reconsideration phase. In his reconsideration request, he wrote that "it was an "unintentional mistake".¹³ In my view, this statement likely refers to the false or misleading statement or misrepresentation the Commission says the Appellant made because his reconsideration request followed the Commission's August 1, 2023 letter, which specifically mentioned the false and misleading statement or misrepresentation and which the Appellant says he received.¹⁴

[20] And since I find the Appellant appears to have raised the issue of the false and misleading statement or misrepresentation during the reconsideration phase, I find this also relates to the Commission's decision to go back and review his claim and its decision to impose a penalty on him since the false and misleading statement or

¹⁰ See *Fu v Canada (Attorney General)*, 2019 FC 527.

¹¹ See *FM v Canada Employment Insurance Commission*, 2023 SST 966, paragraphs 9 to 11.

¹² GD7-2.

¹³ GD3A-21, GD3B-27.

¹⁴ GD3A-32, GD3B-38.

misrepresentation the Commission says the Appellant flow from and are tied to these decisions.

[21] As a result, and taking into account the Court of Appeal's instruction on taking a broad approach to jurisdiction, I find I have jurisdiction to look at these issues since it appears to me that the Appellant raised them during the reconsideration phase.

Issues

[22] Can the Commission go back and review the Appellant's claim for benefits?

[23] Did the Commission act judicially when it made its decision to go back and review the Appellant's claim?

[24] Did the Commission act judicially when it decided to impose a penalty on the Appellant in relation to his claim?

[25] Did the Appellant voluntarily leave his job without just cause?

[26] Is the money that the Appellant received earnings?

[27] Did the Commission allocate the earnings correctly?

[28] Does the Appellant have to repay the money he now owes?

Analysis

Can the Commission go back and reconsider the Appellant's claim for benefits?

[29] Yes, it can. The law allows the Commission to do this.

[30] The *Employment Insurance Act* (EI Act) says that the Commission may reconsider a claim for benefits within 36 months after the benefits have been paid.¹⁵

¹⁵ See section 52(1) of the EI Act.

[31] The EI Act also says the Commission may reconsider a claim within 72 months if it feels a false or misleading statement or misrepresentation has been made in connection with a claim.¹⁶

[32] It's not disputed here that the Commission is outside of the 36 months that would allow it to simply reconsider a claim for benefits.

[33] So, at issue in this appeal is whether the Commission has the extended timeframe from 36 months to 72 months to reconsider the Appellant's benefits claim.

[34] When I look at the evidence, I find the Commission can extend the time for reconsidering the Appellant's claim from 36 months to 72 months. This is because the Commission has proven, on a balance of probabilities, that it was reasonable for it to conclude that the Appellant made a false or misleading statement.

[35] The Commission says a post-audit investigation revealed that the Appellant's Record of Employment (ROE) shows that he worked from September 11, 2017 to October 5, 2017, at which time he voluntarily left. It says the Appellant didn't declare this situation and he was paid employment insurance benefits for the same period he was working for his employer.¹⁷

[36] The Commission also says the Appellant reported earnings of \$0 for the weeks beginning September 10, 2017, September 17, 2017, September 24, 2017, and October 1, 2017.¹⁸

[37] The Commission also submits a Full Text Screens Payment page, which shows the Appellant didn't report any earnings for the weeks mentioned above. It also includes an attestation certification, which says the page is evidence under the law of the facts without further proof.¹⁹

¹⁶ See section 52(5) of the EI Act.

¹⁷ GD7-1.

¹⁸ GD4B-1.

¹⁹ GD7-3. Section 134(1)(c) of the EI Act says that "a document appearing to be certified by the Commission...stating the amount of any contributions paid, payable or owing or the amount of any

[38] And the Commission says it sent the Appellant letters on July 7, 2022 asking him for more information about his voluntary leaving and earnings, but he didn't respond.²⁰

[39] The Appellant says he basically can't remember anything about the period when he was employed in 2017. He was addicted to methamphetamine and his memories of that time are either extremely fuzzy or non-existent. He was also dealing with undiagnosed severe depression due in part to his drug addiction. He didn't mean to make any mistakes then if that is what happened. And he didn't get the Commission's July 7, 2022 letter because he was homeless at the time.²¹

[40] I find the Appellant to be credible. His testimony was calm, clear, and detailed, and I could tell he was trying his best to recall information from the period when he was employed with X even though it was very difficult for him to do so. Since I find him to be credible, I have no reason to doubt what he says here. He also provided a letter from an addictions counsellor saying that he enrolled in a program for people with substance abuse and mental health concerns in November 2022, which I find strengthens his testimony on this subject too.²²

[41] Even so, I find the Appellant's testimony and evidence doesn't change the fact that the Commission has submitted a document (the Full Text Screen Payment page) showing that he didn't report earnings for the weeks mentioned above. And the Appellant hasn't submitted any evidence to counter what the Commission says here, meaning he hasn't shown that he did in fact report those earnings.

[42] I also acknowledge the Appellant says he can't remember much from that time due to his drug addiction and didn't mean to do anything wrong.

benefits or other amount paid to or owing by any person...is evidence of the facts appearing in the document...without further proof."

²⁰ GD4A-1, GD4B-1.

²¹ GD2-3, GD3A-21 to GD3-30, GD3B-27 to GD3B-36, GD3A-31, GD3B-37, hearing recording.

²² GD3A-24, GD3B-30.

[43] I believe the Appellant when he says this. But unfortunately, I find the Appellant doesn't have to mean to do anything wrong to still be found to have made a false or misleading statement or misrepresentation.

[44] The Court of Appeal has noted in several decisions that to extend the review period from 36 months to 72 months, the Commission doesn't have the burden to show that the false or misleading statement or misrepresentation be made knowingly.²³ This means the Appellant didn't have to intentionally be giving a false or misleading statement or misrepresentation.

[45] And I acknowledge the Appellant says that he didn't get the Commission's July 7, 2022 letters because he was homeless at the time.

[46] I believe the Appellant when he says this. But unfortunately, I find this doesn't cancel out the Commission's document and attestation saying the Appellant didn't report earnings for the weeks mentioned above, which the law says represents evidence of the facts without further proof.²⁴

[47] And I also note the Commission spoke to the Appellant's former employer to verify the details of his employment and earnings before it sent the Appellant the letters on July 7, 2022.²⁵

[48] In other words, even though the Appellant couldn't respond to the Commission's July 7, 2022 letters because he never got them, I find the Commission has shown that it already had reason to believe at that time that a false or misleading statement or misrepresentation was made based on other new information about the Appellant's claim that it had discovered.

²³ See, for example, *Attorney General (Canada) v Langelier*, 2002 FCA 157 and *Attorney General (Canada) v Dussault*, 2003 FCA 372.

²⁴ See section 134(1)(c) of the EI Act.

²⁵ GD3B-14.

[49] As a result, I find the Commission has proven, on a balance of probabilities, that it was reasonable for it to conclude that the Appellant made a false or misleading statement or misrepresentation in relation to his claim for benefits.

[50] This means the Commission can extend the time for reconsidering the Appellant's claim from 36 months to 72 months.

[51] I therefore find the Commission was acting within the law and could go back to verify and reconsider (change) its decision on the Appellant's entitlement to benefits.

Did the Commission act judicially when it made its decision to go back and review the Appellant's claim?

[52] Yes, it did.

[53] While the Commission can go back and review the Appellant's claim for benefits for the period from September 11, 2017 to October 5, 2017, its decision to do so is discretionary.

[1] This means that the Commission doesn't have to do a review, but it can choose to do so if it wants. The section of the law that I mentioned above that allows the Commission to review a claim says it may review a claim, not that it must review a claim.

[2] What this means is that I can only interfere with (meaning change) the Commission's decision if it didn't exercise its discretion properly when it made the decision.²⁶

[3] For the Commission to have used its discretion judicially, it must not have done the following things when it made the decision to review the Appellant's claim for benefits for the period from September 11, 2017 to October 5, 2017:

²⁶ See *Canada (Attorney General) v Kaur*, 2007 FCA 287. The Commission's decision can only be interfered with if it exercised its discretionary power in a non-judicial manner or acted in a perverse or capricious manner without regard to the material before it: see *Canada (Attorney General) v Tong*, 2003 FCA 281. Discretion is exercised in a non-judicial manner if the decision-maker acted in bad faith, or for an improper purpose or motive, took into account an irrelevant factor or ignored a relevant factor or acted in a discriminatory manner: see *Attorney General of Canada v Purcell*, A-694-94.

- acted in bad faith
- acted for an improper purpose or motive
- took into account an irrelevant factor
- ignored a relevant factor
- acted in a discriminatory manner²⁷

[54] The Appellant testified that he doesn't feel the Commission acted in bad faith. He understands the Commission is just doing its job.

[55] I find the Commission didn't act in bad faith. The Appellant doesn't think it did, and I see no evidence that would lead me to conclude it did.

[56] The Appellant testified that he doesn't feel the Commission acted for an improper purpose or motive. He reiterated that he understands the Commission is just doing its job.

[57] I find the Commission didn't act for an improper purpose or motive. The Appellant doesn't think it did, and I see no evidence that would lead me to conclude it did.

[58] The Appellant testified that he doesn't think the Commission took into an account an irrelevant factor. He's not sure exactly what an irrelevant factor would be, but he doesn't think the Commission relied on one here.

[59] I find the Commission didn't take into account an irrelevant factor. The Appellant doesn't think it did, and I see no evidence that would lead me to conclude it did.

[60] The Appellant testified that the Commission ignored a relevant factor, specifically his personal challenges. He didn't get the Commission's July 7, 2022 letters because he was homeless. He's severely depressed and likely has been for many years. He can't remember anything about his employment in 2017 because of his drug addiction and mental illness. And he was recently diagnosed with cancer. So, the Commission's decision has made things a lot worse and he thinks it should consider his current situation.

²⁷ See *Canada (Attorney General) v Kaur*, 2007 FCA 287.

[61] I understand the Appellant feels the Commission ignored his personal challenges in the past and present. But I find this isn't a relevant factor when it comes to the Commission's decision to review his claim, unfortunately.

[62] In my view, relevant factors are things related in some way to the Appellant's claim and the issues the Commission says it looked at when it decided to review his claim, which in this case is the Appellant's voluntary leaving from his employment and his earnings from that job.

[63] That said, I don't see how the Appellant's personal challenges is a relevant factor here. This is because I find it doesn't sufficiently explain why he didn't tell the Commission he was working and didn't report his earnings while he was receiving benefits and submitting reports. In my view, it's reasonable to believe that if the Appellant could submit his reports, which the Commission says he did, then he also should have been able to complete those reports accurately, which the Commission says he didn't do and which the Appellant doesn't dispute.

[64] Even if I were to accept that the Appellant's personal challenges is a relevant factor, I don't see any evidence that the Commission was ever aware of that at any point before it made its decision to review the Appellant's claim or before it made its decision regarding the Appellant's voluntary leave and earnings following its review.

[65] Instead, I find the evidence shows the Commission only became aware of the Appellant's personal challenges once he submitted his reconsideration request on August 22, 2023.²⁸ And I find the Commission also appears to have considered the Appellant's personal challenges during the reconsideration phase since it referred to them in its submissions.²⁹

[66] So, for the above reasons, I find the Commission didn't ignore a relevant factor.

²⁸ GD3A-21 to GD3A-30, GD3B-27 to GD3B-36.

²⁹ GD4A-1, GD4B-1.

[67] The Appellant testified that he doesn't feel the Commission discriminated against him.

[68] I find the Commission didn't discriminate against the Appellant. The Appellant doesn't feel it did, and I see no evidence that would lead me to conclude it did.

[69] I therefore find the Commission's decision to review the Appellant's claim for benefits was done judicially.

[70] I will now move on to look at whether the Commission acted judicially when it decided to impose a penalty on the Appellant in relation to his claim.

Did the Commission act judicially when it decided to impose a penalty on the Appellant in relation to his claim?

[71] Yes, it did.

[72] The Commission's decision on imposing a penalty is discretionary.³⁰ This means it's up to the Commission to set the penalty it thinks is correct.

[73] I have to look at how the Commission exercised its discretion. I can only change the penalty if I first decide that the Commission didn't exercise its discretion properly when it decided to issue the penalty.³¹

[4] As discussed above, for the Commission to have used its discretion judicially, it must not have done the following things when it made the decision to impose a penalty on the Appellant in relation to his claim:

- acted in bad faith
- acted for an improper purpose or motive
- took into account an irrelevant factor
- ignored a relevant factor
- acted in a discriminatory manner³²

³⁰ See *Canada (Attorney General) v Kaur*, 2007 FCA 287.

³¹ See *Canada (Attorney General) v Kaur*, 2007 FCA 287.

³² See *Canada (Attorney General) v Kaur*, 2007 FCA 287.

[74] The Commission may impose a penalty for each false or misleading statement knowingly made. But the Commission can only impose a monetary penalty within 36 months from the day on which the Appellant knowingly provided the false or misleading information.³³ The law provides that the Commission may issue a non-monetary penalty in the form of a warning, up to 72 months after the day on which the act or omission occurred.

[75] The Commission imposed a non-monetary penalty in the form of a warning letter for the false or misleading statement or misrepresentation it says the Appellant made.³⁴ It didn't say why it felt it acted judicially when it decided to impose the penalty.³⁵

[76] The Appellant testified that he doesn't feel the Commission acted in bad faith here either. He understands the Commission is just doing its job.

[77] I find the Commission didn't act in bad faith. The Appellant doesn't think it did, and I see no evidence that would lead me to conclude it did.

[78] The Appellant testified that he doesn't feel the Commission acted for an improper purpose or motive here either. He thinks the Commission is just doing its job.

[79] I find the Commission didn't act for an improper purpose or motive. The Appellant doesn't think it did, and I see no evidence that would lead me to conclude it did.

[80] The Appellant testified that he doesn't think the Commission took into an account an irrelevant factor here either. As he said above, he's not sure exactly what an irrelevant factor would be, but he doesn't think the Commission relied on one here.

[81] I find the Commission didn't take into account an irrelevant factor. The Appellant doesn't think it did, and I see no evidence that would lead me to conclude it did.

[82] The Appellant testified that the Commission ignored a relevant factor here, which again is his personal challenges. As discussed above, he was homeless and has ben

³³ See section 40(b) of the EI Act.

³⁴ GD3B-20 to GD3B-21.

³⁵ GD7-2.

severely depressed for a while, he was addicted to methamphetamine and can't remember much about his employment in 2017, and he was recently diagnosed with cancer.

[83] I understand the Appellant feels the Commission ignored his personal challenges in the past and present. But I find this isn't a relevant factor when it comes to the Commission's decision to impose a penalty, unfortunately.

[84] In my view, relevant factors are things related in some way to the Commission's decision to impose a penalty, which was because it believes the Appellant gave a false or misleading statement or misrepresentation in relation to his claim following its post-audit investigation.³⁶

[85] That said, I don't see how the Appellant's personal challenges is a relevant factor here. As discussed above, this is because I find it doesn't sufficiently explain why he didn't tell the Commission he was working and didn't report his earnings while he was receiving benefits and submitting his reports. In my view, it's reasonable to believe that if the Appellant could submit his reports, which the Commission says he did, then he also should have been able to complete those reports accurately, which the Commission says he didn't do and which the Appellant doesn't dispute.

[86] Even if I were to accept that the Appellant's personal challenges is a relevant factor, I don't see any evidence that the Commission was ever aware of that at any point before it decided to impose a penalty on the Appellant.

[87] Instead, I find the evidence shows the Commission only became aware of the Appellant's personal challenges once he submitted his reconsideration request on August 22, 2023.³⁷ And I find the Commission also appears to have considered the Appellant's personal challenges during the reconsideration phase since it referred to them in its submissions.³⁸

³⁶ GD3B-20 to GD3B-21.

³⁷ GD3A-21 to GD3A-30, GD3B-27 to GD3B-36.

³⁸ GD4A-1, GD4B-1.

[88] So, for the above reasons, I find the Commission didn't ignore a relevant factor.

[89] The Appellant testified that he doesn't feel the Commission discriminated against him here either.

[90] I find the Commission didn't discriminate against the Appellant. The Appellant doesn't feel it did, and I see no evidence that would lead me to conclude it did.

[91] I therefore find the Commission's decision to impose a penalty on the Appellant was done judicially.

[92] Since I have found the Commission acted judicially when it decided to review the Appellant's claim and acted judicially when it decided to impose a penalty on the Appellant, I will now move on to look at the Commission's actual decisions upon reviewing the Appellant's claim.

[93] In this case, the Commission made decisions on two issues after reviewing the Appellant's claim: voluntary leaving and earnings. Both issues relate to the Appellant's employment from September 11, 2017 to October 5, 2017. I will look at the issue of voluntary leaving first and then turn to the earnings.

Did the Appellant voluntarily leave his job without just cause?

[94] Unfortunately, yes.

[95] The Commission says the Appellant voluntarily left his job without just cause on October 5, 2017. It says this means he is disqualified from receiving benefits starting the week of October 1, 2017.³⁹

[96] I accept that the Appellant voluntarily left his job. He told the Commission⁴⁰ and testified that he can't remember why he quit, which I find means he agrees that he did in fact quit. And I see no evidence to contradict this.

³⁹ GD4A-1.

⁴⁰ GD3A-31, GD3B-37.

[97] The law says you are disqualified from receiving benefits if you left your job voluntarily and you didn't have just cause.⁴¹ Having a good reason for leaving a job isn't enough to prove just cause.

[98] The law explains what it means by "just cause." The law says you have just cause to leave if you had no reasonable alternative to quitting your job when you did. It says you have to consider all the circumstances.⁴²

[99] It is up to the Appellant to prove he had just cause.⁴³ He has to prove this on a balance of probabilities. This means he has to show that it is more likely than not that his only reasonable option was to quit. When I decide whether the Appellant had just cause, I have to look at all of the circumstances that existed when the Appellant quit.

[100] The Appellant's ROE says he worked from September 11, 2017 to October 5, 2017, at which point he quit.⁴⁴

[101] The Appellant testified that he can't remember why he quit. The only thing he can remember is that he was working for a company that had a contract with a university, but the university then dissolved that contract and told him and his co-workers that they could either stay with the university under a new contract or remain with the company and work on other projects. But he can't remember what he chose to do then. He might have stayed with the university for a while and gone back to the company later, but he really can't remember.

[102] Based on the circumstances that existed when the Appellant quit, I find that he had reasonable alternatives to leaving that he didn't explore before he quit.

[103] First, I find the Appellant could have kept working instead of quitting when he did.

[104] I find the Appellant hasn't provided any evidence that he couldn't keep working when he quit. He says the university dissolved his company's contract and gave

⁴¹ Section 30 of the *Employment Insurance Act* (Act) explains this.

⁴² See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the Act.

⁴³ See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.

⁴⁴ GD3A-12, GD3B-11.

employees a choice to work for the university under a new contract or remain with the company, which I find shows he had a choice to continue working at the point.

[105] I also find the Appellant likely chose to continue working with his company rather than move over to work for the university. This is because the company, and not the university, issued his ROE⁴⁵, which I find means he quit while still working for the company.

[106] Additionally, I find the Appellant hasn't provided any evidence that he had to quit working when he did for any reason related to problems at work or something else. He didn't mention anything about that to the Commission or in his testimony. And although the Appellant did bring up his drug addiction, he didn't indicate to the Commission or in his testimony that he had to quit because of this specifically.

[107] I acknowledge the Appellant says he can't remember why he quit and can't remember much about his situation at the time. I believe him when he says this. But unfortunately, I find this doesn't change the fact that the Appellant hasn't provided any evidence that would lead me to conclude he had to quit when he did, which means he could have kept working instead.

[108] Second, I find the Appellant could have found other work before quitting.

[109] As discussed above, I find the Appellant hasn't provided any evidence that would lead me to conclude he had to quit when he did, whether that was related to problems at work or something else. Because of this, I find the Appellant wasn't facing an urgent situation where he had to quit, which means he also could have stayed and found other work before quitting.

[110] So, I find the Appellant had reasonable alternatives to leaving when he did, for the reasons set out above. This means he didn't have just cause for leaving his job and is disqualified from receiving benefits as of October 1, 2017.

⁴⁵ GD3A-12, GD3B-11.

Is the money that the Appellant received earnings?

[111] Yes. I find the Appellant received \$1,099.00 in earnings.

[112] **Income** can be anything that you got or will get from an employer or any other person. It doesn't have to be money, but it often is.⁴⁶ Case law says that severance pay is earnings.⁴⁷

[113] **Employment** is any work that you did or will do under any kind of service or work agreement.⁴⁸

[114] The Appellant's former employer told the Commission that the Appellant earned \$250.00 for the week beginning September 10, 2017, \$430.00 for the week beginning September 17, 2017, \$333.00 for the week beginning September 24, 2017, and \$86.00 for the week beginning October 1, 2017, for a total of \$1,099.00.⁴⁹

[115] The Commission says the Appellant reported earnings of \$0 for these weeks. It says that the money the Appellant received is earnings because the money was paid to him as wages.⁵⁰

[116] The Appellant told the Commission that he accepts that this money is earnings if that's what his former employer says. He also testified that it's hard for him to disagree that this money is earnings because he can't remember what happened back then.

[117] The Appellant has to prove that the money is **not** earnings. The Appellant has to prove this on a balance of probabilities. This means he has to show that it is more likely than not that the money isn't earnings.

[118] I find the Appellant hasn't shown the \$1,099.00 he received isn't earnings.

⁴⁶ See section 35(1) of the EI Regulations.

⁴⁷ See *Blais v Canada (Attorney General)*, 2011 FCA 320.

⁴⁸ See section 35(1) of the EI Regulations.

⁴⁹ GD3B-14.

⁵⁰ GD4B-2.

[119] I find the Appellant doesn't dispute that he worked for his former employer, which I find means he earned money working for them. And as discussed above, he says he accepts that the money he receives is earnings if that's what his former employer says, which they do, as they told the Commission.

[120] I also find there's no evidence that would lead me to conclude the Appellant got this money from his former employer for some other reason other than work he did for them. He didn't mention any other reason when he spoke to the Commission or during his testimony.

[121] I therefore find the Appellant received the money for work he performed for his employer. In other words, the money was paid to him as wages.

[122] So, taken together, I find the money the Appellant received is in fact earnings. This is because the money was paid to him as wages, and the law says that earnings are the entire income you get from any employment.

[123] Since the \$1,099.00 is earnings, it will be allocated to the Appellant's claim.

Did the Commission allocate the earnings correctly?

[124] Yes. I find the Commission allocated the earnings correctly.

[125] The law says that earnings have to be allocated to certain weeks. What weeks earnings are allocated to depend on why you received the earnings.⁵¹

[126] The Appellant's earnings are wages from his job. The Appellant's employer gave him those earnings in exchange for his work.

[127] The Commission says it allocated the Appellant's earnings to the weeks they were earned, specifically starting the week beginning September 10, 2017 to the week beginning October 1, 2017.⁵²

⁵¹ See section 36 of the EI Regulations.

⁵² GD4B-2.

[128] The Appellant doesn't dispute that the Commission allocated the earnings correctly. He confirmed this at the hearing. And I see no evidence that would lead me to conclude the Commission didn't allocate the earnings correctly.

[129] I therefore find the Commission allocated the earnings correctly. This means \$250.00 will be allocated to the week beginning September 10, 2017, \$430.00 to the week beginning September 17, 2017, \$333.00 to the week beginning September 24, 2017, and \$86.00 to the week beginning October 1, 2017.

Does the Appellant have to repay the money he now owes?

[130] Unfortunately, yes.

[131] The Appellant received benefits while he was working without declaring his employment to the Commission. And he hasn't shown that he quit that job with just cause.

[132] The Appellant also didn't declare earnings from that job to the Commission, so those earnings need to be allocated to the weeks when he received benefits.

[133] This means the Appellant has been paid more benefits than he was entitled to, so there is now an overpayment.

[134] The Appellant says he shouldn't have to pay back the money he now owes.⁵³ He testified that he didn't mean to make any mistakes. He can't afford to pay back the money he now owes. And his mental health will suffer even more if he is forced to pay back the money.

[135] I understand the Appellant is frustrated with how the law has been applied in his case. But unfortunately, I'm not allowed to re-write the law or interpret it in a different

⁵³ GD3A-21 to GD3A-23, GD3B-27 to GD3B-29.

way.⁵⁴ This means I can't make an exception for the Appellant, no matter how exceptional or compelling I find his circumstances.⁵⁵

[136] I also sympathize greatly with the Appellant's financial situation and his mental health challenges. But I don't have the power to erase his overpayment, unfortunately. The law doesn't allow me to do this, even if I find the circumstances are unfair. The overpayment remains the Appellant's responsibility to repay.⁵⁶

[137] These options are available to the Appellant:

- He can ask the Commission to consider writing off the debt because of undue hardship.⁵⁷ Should the Commission deny this request, the Appellant can appeal to the Federal Court. I note that the Commission has already told the Appellant that it will not consider doing this because it believes the Appellant made a false or misleading statement or misrepresentation⁵⁸, but the Appellant may wish to ask again anyway.
- He can contact the Debt Management Call Centre at CRA at 1-866-864-5823 about a repayment schedule or other debt relief measure.⁵⁹

Conclusion

[138] The appeal is dismissed.

[139] The Commission acted judicially when it decided to review the Appellant's claim for benefits.

[140] The Commission acted judicially when it decided to impose a penalty on the Appellant in relation to his claim.

⁵⁴ *Canada (Attorney General) v Knee*, 2011 FCA 301.

⁵⁵ *Pannu v Canada (Attorney General)*, 2004 FCA 90.

⁵⁶ Sections 43 and 44 of the *Employment Insurance Act* state that an appellant bears the responsibility for an overpayment.

⁵⁷ Section 56 of the *Regulations* gives the Commission broad powers to write off an overpayment when it would cause undue hardship were an Appellant to repay it.

⁵⁸ GD3A-32, GD3B-38.

⁵⁹ That's the phone number found on the Notice of Debt that was sent to the Appellant.

[141] The Appellant hasn't shown he had just cause for voluntarily leaving his job. This means he's disqualified from receiving benefits as of October 1, 2017.

[142] The Appellant received earnings from that job. These earnings are allocated to the weeks of September 10, 2017, September 17, 2017, September 24, 2017, and October 1, 2017.

[143] The Appellant received benefits he wasn't entitled to and must repay the money he now owes. I can't write off the overpayment.

Bret Edwards

Member, General Division – Employment Insurance Section