



Citation: *RN v Canada Employment Insurance Commission*, 2023 SST 1958

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

## **Decision**

**Appellant:**

R. N.

**Respondent:**

Canada Employment Insurance Commission

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**Decision under appeal:**

Canada Employment Insurance Commission  
reconsideration decision (609555) dated September 8,  
2023 (issued by Service Canada)

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**Tribunal member:**

Suzanne Graves

**Type of hearing:**

Videoconference

**Hearing date:**

December 5, 2023

**Hearing participant:**

Appellant

**Decision date:**

December 31, 2023

**File number:**

GE-23-2718

## Decision

[1] The appeal on the penalty issue is allowed in part. The Canada Employment Insurance Commission (Commission) has proved that the Appellant knowingly provided false or misleading information, so the penalty remains. The Commission didn't take all the Appellant's mitigating factors into account, so the penalty amount is reduced.

[2] The appeal of the violation is dismissed. The Commission issued a notice of subsequent violation to the Appellant. It made this decision properly, so the violation remains.

## Overview

[3] The Appellant claimed employment insurance (EI) special benefits. To be paid EI benefits, claimants complete online reports. The reports ask a series of questions. Based on the answers, the Commission decides a claimant's EI benefit entitlement.

[4] The Commission reviewed the Appellant's answers about whether he had received earnings and decided he knowingly provided false or misleading information when he said he was not working. As a result, it imposed a penalty of \$6,590.

[5] The Commission issued a subsequent violation on September 8, 2023, because the Appellant had made two prior misrepresentations on recent claims. This means the Appellant must work more hours of insurable employment to qualify for benefits.

[6] The Appellant doesn't dispute that he gave false or misleading information when he reported that he wasn't working. He testified that he supports a disabled child and has addictions and multiple other health issues. He asks the Tribunal to consider his personal circumstances and to lower any interest payments.

## The Appellant made two appeals to the Tribunal

[7] In addition to this appeal, the Appellant also appealed another reconsideration decision of the Commission. My decision in that appeal is set out in a separate written decision of the Tribunal (GE-23-2717).

## Issues

[8] I must decide whether the Commission has proved that the Appellant knowingly provided false or misleading information on his claim reports. If he did, then I must decide whether the Commission properly decided the penalty amount.

[9] I also have to decide whether the Commission properly decided to impose a subsequent violation.

## Analysis

### **Did the Appellant knowingly provide false or misleading information?**

[10] To impose a penalty, the Commission has to prove that the Appellant knowingly provided false or misleading information.<sup>1</sup>

[11] It is not enough that the information is false or misleading. To be subject to a penalty, the Commission has to show that it is more likely than not that the Appellant knowingly provided it, knowing that it was false or misleading.<sup>2</sup>

[12] If it is clear from the evidence that the questions were simple and the Appellant answered incorrectly, then I can infer that the Appellant knew the information was false or misleading. Then, the Appellant must explain why he gave incorrect answers and show that he did not do it knowingly.<sup>3</sup> The Commission may impose a penalty for each false or misleading statement knowingly made by the Appellant.

[13] I don't need to consider whether the Appellant intended to defraud or deceive the Commission when deciding whether he is subject to a penalty.<sup>4</sup>

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<sup>1</sup> Section 38 of the *Employment Insurance Act* (EI Act).

<sup>2</sup> *Bajwa v Canada*, 2003 FCA 341; the Commission has to prove this on a balance of probabilities, which means it is more likely than not.

<sup>3</sup> *Nangle v Canada (Attorney General)*, 2003 FCA 210.

<sup>4</sup> *Canada (Attorney General) v Miller*, 2002 FCA 24.

[14] Each claim report asked the question: “Did you work or receive any earnings during the period of this report?” The Appellant responded: “No” on his claim reports, between April 7, 2022, and July 2, 2022.<sup>5</sup>

[15] The Appellant admits that he was working and that he received income during his benefit period. He doesn’t dispute that he made seven misrepresentations when he did not report his earnings. He testified that he made a mistake but was supporting his disabled child and struggling with health issues, including addictions, and needed the income in addition to his benefits.

[16] I find that the Commission has proved that the Appellant knowingly provided false or misleading information because he answered a straightforward question on his biweekly claim reports stating that he wasn’t working or receiving earnings.

### **Did the Commission properly decide the penalty amount?**

[17] The Commission’s decision on the penalty amount is discretionary.<sup>6</sup> This means that it is open to the Commission to set it at the amount it thinks is correct. I have to look at how the Commission exercised its discretion.

[18] I can only change the penalty amount if I first decide that the Commission did not exercise its discretion properly when it set the amount.<sup>7</sup>

[19] The Commission set the penalty amount by first calculating the amount of the net overpayment at \$6,590. It multiplied that amount by a factor of 150% because this was the Appellant’s third misrepresentation, and then reduced it by 50% to take into account his mitigating circumstances.

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<sup>5</sup> The relevant claimant reports are set out at GD3-21 to 63.

<sup>6</sup> *Canada (Attorney General) v Kaur*, 2007 FCA 287.

<sup>7</sup> *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: *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: *Attorney General of Canada v Purcell*, A-694-94.

[20] The Commission says that it took into account all of the Appellant's mitigating circumstances. Its decision refers to the facts that the Appellant has a disabled child to support and that he was under the influence of drugs at the time.<sup>8</sup>

[21] The Appellant says he is very sorry for his mistake. He argues that he was trying to make ends meet so that he could care for his disabled child. He testified that he has addiction issues, as well as other serious health problems, including three heart surgeries, diabetes, and several mental health conditions. The Appellant testified in a straightforward and forthright manner, and his evidence was consistent with medical evidence he filed, and previous statements he made to the Commission.

[22] I reviewed the Commission's record of its reconsideration decision and find there is no evidence it considered all of the Appellant's serious health conditions. I find that the Commission didn't exercise its discretion properly because it didn't take into account these additional relevant factors. So, I can make the decision that the Commission should have made on the penalty amount.

[23] In this case, I find the new penalty amount should be reduced by 30%, to take into account all of the Appellant's health issues. So, the new penalty amount is \$4,613.

### **Did the Commission properly decide to impose a violation?**

[24] In addition to the penalty, the Commission also has the discretion to impose a subsequent violation. It filed evidence that the Appellant had misrepresented his income on two prior claims within the previous 260 weeks.

[25] The violation increases the number of hours of insurable employment that the Appellant requires to qualify for benefits.

[26] As with deciding the penalty amount, the decision to impose a violation is also discretionary. So, I must review how the Commission exercised its discretion when it

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<sup>8</sup> The Commission's record of decision on the Appellant's penalty amount is at GD3-95 to 97.

decided to impose a violation by taking the same approach as I did when I reviewed how it decided the penalty amount.

[27] The Commission says it exercised its discretion in a judicial manner when issuing the notice of violation. It argues that it considered the overall impact on the Appellant, including mitigating circumstances, prior offences, and the impact on the ability of the Appellant to qualify on future claims. It notes that the Appellant already has a prior subsequent violation dated October 14, 2022.

[28] The Appellant doesn't dispute the Commission's evidence that he misrepresented his income and that he has received previous violation notices for misrepresenting his income on October 14, 2022, and February 14, 2020. He says that he has learned his lesson.

[29] At the hearing, the Appellant testified that he made a mistake because of his addiction and other health issues, and his need to support his family. He asks for forgiveness, and for the interest on his debt to be lowered or waived, based on his family and health circumstances.

[30] I find that the Commission exercised its discretion properly in deciding to impose a subsequent violation. The Commission's record of decision shows that it considered all of the relevant factors including the Appellant's multiple health conditions, the fact that he supports a disabled child, his ability to qualify for future claims and his prior violations. The Commission did not consider any irrelevant factors.<sup>9</sup> So, I cannot intervene in this decision.

[31] I acknowledge the Appellant's challenging circumstances. I have compassion for his situation, but I don't have any authority to order the Commission to forgive or reduce the interest on any debt.<sup>10</sup>

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<sup>9</sup> The Commission's record of decision on the subsequent violation is set out at GD3-99 to 100.

<sup>10</sup> *Canada (Attorney General) v Woods*, A-417-01.

## **Conclusion**

[32] The Appellant is subject to a penalty. The penalty amount is reduced by 30%. This means that the appeal on the issue of the penalty is allowed in part.

[33] The Commission properly imposed a subsequent violation. This means that the subsequent violation remains and the appeal on the issue of the violation is dismissed.

Suzanne Graves

Member, General Division – Employment Insurance Section