



Citation: *KS v Canada Employment Insurance Commission*, 2023 SST 1957

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

## Decision

**Appellant:** K. S.  
**Representative:** N. S.

**Respondent:** Canada Employment Insurance Commission

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**Decisions under appeal:** Canada Employment Insurance Commission reconsideration decisions (353813, 353811, 353809, 353812 and 353815) all dated January 9, 2020 (issued by Service Canada)

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**Tribunal member:** Leanne Bourassa

**Type of hearing:** Videoconference

**Hearing date:** July 6, 2022

**Hearing participants:** Appellant  
Appellant's representative

**Decision date:** August 14, 2023

**File numbers:** GE-20-485,  
GE-20-487,  
GE-20-524,  
GE-20-525,  
GE-20-527

## Decision

[1] The appeals are all dismissed. The Tribunal disagrees with the Appellant.

[2] The Respondent, the Canada Employment Insurance Commission (Commission) had the authority to review the claims in question when it did.

[3] The Commission has shown the Appellant received benefits she was not entitled to. She has to repay the benefits she was not entitled to receive.

## Overview

[4] The Appellant worked for a spa. In 2014, the spa closed down. The Appellant applied for Employment Insurance (EI) benefits and got them.

[5] The Commission was made aware that there were several unusual claims for benefits from employees of the spa. It began investigating the Appellant's employer. It discovered that applications for EI benefits were made for people who never worked for the employer. Benefits had been paid on those false claims and the money appeared to have been paid to the Appellant. The Commission gave the Appellant a warning against making false or misleading representations and is asking her to pay back the money that went into her bank account.

[6] The Appellant argues that she has been denied the right to procedural fairness and natural justice as the Commission has never provided the reasons for its decisions to issue a warning, or to require her to pay back this money. Also, she says she has never made inaccurate, false or misleading representations to Service Canada and never filed a request for the payment of EI benefits in the name of third parties. She says she has in no way benefited from any inaccurate, false or misleading representations made by another party. She claims to be a victim in this situation.

[7] The Commission argues that when it is of the opinion that a claimant provided false or misleading statements, it may reconsider a claim for benefits up to 72 months after the benefits have been paid or would have been payable. In these cases, the Appellant is also responsible to reimburse the benefits she received since she was not

entitled to them. It argues the Appellant admitted that she accepted to commit fraud by authorizing someone else to use her bank account for deposits of EI benefits.

[8] I have to decide if the Commission has the authority to review these claims. Then, I also have to decide if the Commission can hold the Appellant responsible for paying back the benefits.

## **Matters I have to consider first**

### **– This Appellant has six appeals before the Tribunal**

[9] The Appellant filed appeals of a total of six reconsideration decisions issued to her by the Commission.

[10] For the sake of efficiency, I held one hearing for all of the Appellant's appeals.

[11] One of the appeals is different from the others, so I issued a separate decision for that appeal.<sup>1</sup>

[12] This decision deals with the five appeals with similar facts.<sup>2</sup>

### **– There were delays in scheduling the hearing**

[13] The Appellant originally filed her Appeals with the Tribunal in February 2020. At that time, she said she wanted a hearing held 'In person'.

[14] During the COVID-19 pandemic, it was not possible to hold a hearing in person.<sup>3</sup> The Tribunal also had some difficulty contacting the Appellant's representative.

[15] As scheduling of hearings in person remained difficult, in 2022 we reached the representative and confirmed that if the Appellant wished, the hearing could go ahead more quickly via videoconference. The Appellant accepted that option, updated her

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<sup>1</sup> That decision is for Tribunal file number GE-20-482 and deals only with the Appellant's claim for benefits for herself.

<sup>2</sup> These are Tribunal files GE-20-485, GE-20-487, GE-20-524, GE-20-525 and GE-20-527 dealing with claims that the Appellant received benefits based on false applications.

<sup>3</sup> A hearing in person was originally scheduled for May 4, 2020 but on March 25, 2020 the hearing was adjourned in light of government instructions to self-isolate. The Appellant was offered a hearing via teleconference but said she would rather wait until a hearing in person was available.

representative's contact information, and a hearing was scheduled via videoconference.<sup>4</sup>

[16] At the opening of this videoconference hearing, the Appellant's representative told me that she had not received the Commission's submissions. I chose to adjourn the hearing and reschedule to allow the Appellant and her representative time to review the Commission's submissions. The hearing ultimately went ahead via videoconference on July 6, 2022.

## **Issues**

[17] The issues in all five files that this decision addresses are the same:

### **Issue 1: Did the Commission have the authority to review the claims that appeared to have been made by the Appellant?**

[18] When I decide if the Commission had the authority to review the claims, I have to look at whether it was within the time frames allowed by the law to review a claim for benefits. Then I also need to decide if the Commission exercised its discretion judicially when choosing to exercise its authority to review these claims.

### **Issue 2: Were the Commission's decisions about penalties against the Appellant appropriate?**

[19] When deciding if the Commission's decisions about penalties against the Appellant were appropriate, I will have to look at whether the Commission could impose a penalty in these cases, could they impose a penalty on a third party and if it acted judicially when determining that a warning should be issued.

### **Issue 3: Is the Appellant required to repay the money the Commission is asking her to repay.**

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<sup>4</sup> A hearing via videoconference was scheduled for April 28, 2022, but was rescheduled to May 19, 2022 to accommodate the representative's availability.

[20] When deciding if the Appellant is required to repay the money that the Commission is asking her to repay, I will need to look at whether the Commission can require a third party to repay EI benefits that were overpaid.

## **Analysis**

### **The common facts**

[21] This decision deals with five reconsideration decisions that were made against the Appellant. In all five cases, the decision was the same: the Commission maintained its original decision that the Appellant made false or misleading statements and received EI benefits she was not entitled to. It also said it will not impose a monetary penalty given the circumstances under which the Appellant provided false information, but rather issued a warning.

[22] It is helpful at this point to review the facts common to the five cases in detail.

[23] The Appellant worked for the employer from March 25, 2011 until September 26, 2014. When the employer's business closed down, the Appellant applied for EI benefits and did receive benefits for herself.

[24] In late 2014 and early 2015, applications for benefits were made for several people with records of employment (ROEs) issued by the employer. The Commission paid benefits to these "claimants". In fact, the "claimants" did not know that an application for benefits had been made in their names.

[25] One of the "claimants" contacted the Commission in June 2015 to report that a claim appeared to have been made in his name, without his knowledge. Another individual also contacted the Commission, explaining that she had never worked for the employer who had issued a ROE for her.

[26] The Commission investigated these claims and found various irregularities with applications for benefits, ROEs and claims for benefits from "claimants" with ROEs from the employer.

[27] The Commission discovered that in the case of the five “claimants”, benefits had been paid out and had been deposited into a bank account belonging to the Appellant.

[28] On February 26, 2019, the Commission’s Integrity Services asked the Appellant to come for an interview on March 11, 2019.

[29] It appears that on March 2, 2019, a Notice of Debt was issued to the Appellant for an amount of \$524.00. A second Notice of Debt for an additional total amount of \$5,764.00 was issued on March 16, 2019. The Appellant doesn’t mention these notices, but they appear in the Commission’s submissions.

[30] The Appellant did not go to the March 11<sup>th</sup> interview but spoke to the Commission by phone on April 9, 2019. She asked why there had been a decision made in her case when she was appealing a Canada Revenue Agency decision about her own claim for benefits.<sup>5</sup> The Commission told her that the overpayments were related to benefit cheques she had cashed that she was not entitled to. She agreed to attend an interview on April 29, 2019.

[31] The Appellant received a statement of accounts dated April 20, 2019. This statement shows that she owed a total of \$6,288.00, plus \$2.87 in interest for a total of \$6,290.87. There is no explanation of the origin of this debt on the statement.

[32] The Appellant did meet with an investigator of Integrity Services on April 29, 2019. During that interview, she confirmed the following information:

- Her address between 2014 and 2016;
- That the employer, S.N., lived in the same building as her;
- That she originally had a bank account with BMO bank but after receiving too many cheques from the employer that “bounced”, her account was closed. So she opened a new account at RBC bank;

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<sup>5</sup> This was in the context of the matter dealt with in Tribunal file GE-20-482, but which is not relevant to the present decision.

- She recognized her signature on the documents related to the RBC account shown to her by the investigator;
- The account is a personal bank account and she is the only one with access to the account;
- She acknowledged that she authorized S.N. to use her bank account to deposit cheques because S.N. was having difficulty getting a bank account;
- She did not receive anything in exchange for the cheques deposited in her account and she did not recall why she didn't give the money back to S.N.;
- Her phone number with [company name] is the one the investigator showed her;
- When S.N. lost her companies, she "put" the Appellant on unemployment and told her she would be using the Appellant's address to receive documents related to employment insurance. The Appellant agreed to this and when she received mail that was not addressed to her, she passed it on to S.N.;
- She accepted to commit this fraud with S.N. because S.N. put pressure on her to agree. She did not face death threats, but felt she had no choice. That's why she gave her phone number for certain applications for benefits.

[33] Following this meeting, on May 10, 2019, the Commission issued a series of decision letters to the Appellant. In each of the cases, the Commission said that it had concluded that the Appellant had knowingly made one or more false or misleading claims or declarations while acting for the "claimant". Specifically, she had stated that the "claimant" had worked for the employer when they had not, she had submitted a false ROE and she was not entitled to receive benefits in the 'claimant's' name.

[34] Also, each of these letters said that the Appellant would not be asked to pay a monetary penalty given the circumstances under which she provided false information while acting for the claimants.

[35] On May 11, 2019, the Commission issued another notice of debt for an additional \$1,572.00.

[36] On June 14, 2019, the Appellant asked the Commission to reconsider its decision in all of these cases.

[37] On January 9, 2020, the Commission provided its answers in each of these cases. In each case, the Commission responded that after reconsideration, it had not changed its position and the decisions communicated on May 10, 2019 were maintained.

[38] The first question I have to answer is whether the Commission had the authority to reconsider the claims for benefits.

### **Issue 1: Did the Commission have the authority to review the claims made in late 2014 and early 2015?**

[39] I find that the Commission did have the authority to review the claims for benefits that led to payments of benefits that ended up in the Appellant's bank account.

[40] The Commission has the authority to revisit any of its decisions about benefits. But, there are also time limits set in the law that the Commission has to follow when it reviews its decisions.<sup>6</sup> Usually, the Commission has a maximum of three years to revisit its decisions.<sup>7</sup>

[41] In some cases, the Commission can go back even further than three years. The Commission can revisit decisions it made as much as six years earlier if it thinks that an incorrect statement was made.<sup>8</sup> This does not mean that the Commission has to prove that a false statement was made on purpose; it just means that the Commission has to have a reasonable reason for thinking that something said about benefits was wrong.

[42] The Appellant argues that in 2018 it was too late for the Commission to go back and look at its decision to pay benefits on those claims.<sup>9</sup> The Commission says that it can go back to look at the claims dating to 2014 and 2015 because it was of the opinion that false statements had been made.

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<sup>6</sup> This is set out in section 52 of the *Employment Insurance Act* (EI Act).

<sup>7</sup> Section 52(1) of the EI Act. Specifically, the law says the Commission has 36 months.

<sup>8</sup> Section 53(5) of the EI Act. The law says that the Commission has 72 months in these cases.

<sup>9</sup> Specifically, the Appellant says that the claim is "prescribed", meaning the Commission is outside of the legal time limits to claim against the Appellant.



– **When were the claims reconsidered**

[43] Under the law, the Commission does not have to have a reason for reviewing a claim for benefits if the review is done within 36 months of the claim having been paid or having been payable.<sup>10</sup>

[44] So, I need to know when the claim or claims were paid or payable. The following chart sets out the relevant dates for the files before me:

Tribunal file number	Name on application	Date of application for benefits	Date(s) benefits allegedly paid to the Appellant on this claim
GE-20-485	L.G.	April 28, 2015	May 14, 2015
GE-20-487	K.M.	January 8, 2015	April 14, 2015
GE-20-524	K. P-P.	December 30, 2014	May 22, 2015, June 5, 2015, June 19, 2015
GE-20-525	M.M.	April 28, 2015	May 29, 2015
GE-20-527	J. M.	December 28, 2014	May 22, 2015, June 5, 2015, June 19, 2015

[45] Since the Commission’s investigation was looking into all the applications for benefits made by “claimants” who had allegedly worked for the employer, I am of the view that if the Commission was “on time” for the oldest of these claims, it would be on time for a review in all of the cases before me.

[46] Considering the files before me, I find that the earliest date at which one of the claims could be paid or payable would have been December 28, 2014. That is the date of the application for benefits made in the name of J.M.

[47] There is evidence in the files showing that the Commission’s investigation into that claim, and all the other claims in the files before me, began as early as June 2015.

[48] On September 17, 2015, the Commission Integrity Services investigator (investigator) made an “Application to obtain a production order for Financial Data” and an “Application to obtain a general production order” (Applications for production), to get information about a bank account in the Appellant’s name and transactions that took

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<sup>10</sup> Section 52(1) of the EI Act.

place in that account from March 1, 2013 to August 22, 2015. It also asked for the names of persons authorized to transact on the account and any other accounts in the holder's name.

[49] In the Applications for production, the investigator says that the bank account holder used the account to cash EI payments and to receive direct deposits which she was not entitled to, in the name of several applicants.<sup>11</sup>

[50] In an affidavit in support of the Applications for production, the investigator explains that on June 9, 2015, the Commission was contacted by an individual explaining that he had been informed that there was an application for EI benefits made in his name.<sup>12</sup> He had not made that application for benefits and the phone number and address on the application for benefits were not his. He said he was a victim of identity fraud.

[51] The affidavit also says that on June 16, 2015, the investigator met with a second person who also claimed to be a victim of identity fraud and whose personal information had been used to open an application for benefits without her knowledge.

[52] A justice of the peace allowed the Applications for production. This means the bank was required to provide the information to the investigator.

[53] The bank in question answered these production orders on September 24, 2015. It confirmed that the bank accounts belonged to the Appellant. It also confirmed the Appellant was the owner of the bank account and the only person having authority to use it.

[54] A third application for production was made by the investigator on October 5, 2015 for a general production order. In this application, the Commission asked the bank for additional details including copies of cheques cashed through the account and

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<sup>11</sup> This document can be found in file GE-20-485 at GD3-22. The exact wording of the reason is « *Le(s) titulaire(s) du compte bancaire a utilisé ce compte pour encaisser des mandes de prestations d'assurance-emploi, incluant les dépôts directs, au nom de plusieurs demandeurs différents, alors qu'il n'y avait pas droit.* »

<sup>12</sup> This individual is identified in the Application as K.M. who is the "claimant" in file GE-20-487.

again, all transactions made between March 1, 2013 to August 22, 2015. This application was also allowed.

[55] The bank responded to this third order on December 7, 2015. It provided copies of cashed cheques in the names of the “claimants” in these files and transaction details of the Appellant’s account for the period requested.

[56] What all this tells me is in the fall of 2015, the Commission was reconsidering applications for benefits that it had reason to believe were fraudulent because there was evidence the people listed as ‘claimants’ had not made any applications for benefits. This investigation led it to review the applications and any benefits that were paid out further to those applications.

– **The Commission did not conclude its review of the claims within 36 months**

[57] It is clear to me that the Commission’s review of the applications for benefits in the files before me began as early as June 2015. However, the law also suggests that for the review process to be completed, a notification of the decision setting out an overpayment has to be issued.<sup>13</sup>

[58] In the evidence before me, I see that on March 2, 2019, a Notice of Debt was issued to the Appellant for an amount of \$524.00. This was related to the file with an application for benefits that was made by a “claimant” on January 8, 2015 and for which benefits were paid on April 14, 2015.<sup>14</sup>

[59] A second Notice of Debt for an additional total amount of \$5,764.00 was issued on March 16, 2019. This was related to two files before the Tribunal. The first had an application for benefits made by a “claimant” on December 28, 2014.<sup>15</sup> The second had an application for benefits made by a “claimant” on December 30, 2014.<sup>16</sup> In both files, benefits were paid on May 22, June 5 and June 22, 2015.

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<sup>13</sup> *Canada (Attorney General) v. Laforest* (1988), 97 N.R.95 (Fed. C.A.)

<sup>14</sup> This is file GE-20-487.

<sup>15</sup> This is file GE-20-527.

<sup>16</sup> This is file GE-20-524.

[60] The Appellant's evidence shows that she also received a "Statement of account" dated April 20, 2019. This statement shows \$6,290.47 owing, which would represent the totals included on the Notices of Debt of March 2 and March 16, 2019, plus \$2.47 in interest.

[61] A final Notice of Debt was issued to the Appellant on May 11, 2019 for the amount of \$1,572.00. This was related to two files before the Tribunal. The first had an application for benefits made by a "claimant" on April 28, 2015 and benefits were paid on May 14, 2015.<sup>17</sup> The second also had an application for benefits made by a "claimant" on April 18, 2015 and benefits were paid on May 29, 2015.<sup>18</sup>

[62] In all of these cases, the Notice of Debt or Statement of Account was issued more than 36 months after the applications for benefits was made. The Notices were also issued more than 36 months after any of the benefits were paid.

[63] So, I find the Commission did not conclude its review of any of the claims in the files before me within 36 months of an amount having been paid or payable.

[64] Now, I need to consider if the review was completed within 72 months and if so, was there evidence that the Commission was of the opinion that a false or misleading statement or misrepresentation had been made in connection with the claims.

– **The Commission did complete its review of the claims within 72 months**

[65] The Commission can still review a claim up to 72 months of the claim having been paid or payable if it is of the opinion that a false or misleading statement or representation has been made in connection with a claim.

[66] When considering whether or not the Commission was within the 72-month time limit for reviewing a claim for benefits, the Commission does not have to prove that there was misrepresentation. It only has to show that at the time, in its opinion, a false or misleading statement or representation was made.

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<sup>17</sup> This is file GE-20-485.

<sup>18</sup> This is file GE-20-525.

[67] From the evidence outlined above, in particular the investigator's affidavits in support of the Applications for production, it is clear to me that in the Commission's opinion, several false or misleading statements or representations had been made. It has shown that as early as June 9, 2015, there was reason to believe that at least one of the "claimants" in the files before me was a victim of identity theft.

[68] With respect to the Appellant herself, once the Commission received confirmation from the bank in September 2015 that the bank account in which benefits had been deposited belonged to the Appellant and not the "claimants" named in the applications for benefits, it had evidence that the Appellant was involved in the misleading claims or representations.

[69] In the multiple decision letters sent to the Appellant on May 10, 2019, the Commission explained to the Appellant that following an investigation it had concluded she had made misleading claims or declarations. Specifically, it says she had filed claims for EI benefits in the claimant's names, submitted false ROEs and received payment of benefits where the citizen named in the application never worked for the employer in question and she was not entitled to receive EI benefits in their name.<sup>19</sup>

[70] Even if I consider that the Commission only advised the Appellant on May 10, 2019, of the conclusion of the investigation's findings that she had made false and misleading statements in each of the files before me, it was still within 72 months of the date that the first Application for benefits had been submitted.<sup>20</sup>

[71] Even if the Commission was within the time limits to review a claim for benefits, it is not required to review any claim. In the next section, I will look at whether the Commission should have reviewed the claims for benefits in the files before me.

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<sup>19</sup> A similar letter is found in each file. While this letter refers to a decision not to impose a monetary penalty, which decision is subject to a different article of the law, it does speak to the Commission's opinion that there was misrepresentation, which would allow the review of the Applications and claims for benefits to be reviewed within 72 months of the benefits being paid.

<sup>20</sup> While I recognize that the Appellant says she received a Statement of Account earlier, dated April 20, 2019, for the purposes of evaluating the 72 month limit, I have considered the latest date at which the Commission communicated a decision to the Appellant.

– **Did the Commission exercise its discretion properly when deciding to review the allegedly fraudulent claims?**

[72] The law says that the Commission “may reconsider a claim for benefits” within the appropriate timeframes. This means the decision to revisit a decision is a discretionary power: the Commission can choose whether or not they will revisit a claim for benefits.

[73] The Commission must exercise this discretion “judicially”. This means that a decision made in bad faith, for an improper purpose, in a discriminatory manner, considering irrelevant factors, or failing to consider relevant factors, must be set aside.<sup>21</sup>

[74] While neither party has directly made arguments that the Commission did or did not exercise its discretion appropriately when deciding to review the claims in these appeals, recent decisions of the Tribunal’s Appeal Division have suggested that it would be an error of law for me to fail to turn my thoughts to this question.<sup>22</sup>

[75] To decide if the Commission acted judicially, I have to consider what could guide the Commission’s decision to reconsider a claim for benefits. Since the law does not set out when the Commission should reconsider a claim, the Commission established an administrative policy to guide its decision making.

[76] The Commission’s policy is presented in Chapter 17 of its Digest of Benefit Entitlement Principles (Digest). While I am not bound by these rules, I do find them instructive in understanding what rules the Commission sets for itself to ensure consistency and coherence in its decision making.

[77] In this policy, the Commission should consider whether:

- a) benefits have been underpaid
- b) benefits were paid contrary to the structure of the EI Act

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<sup>21</sup> *Suresh v. Canada (Employment and Immigration Commission)*, [2000] 2 FC 592, *Canada (Attorney General) v. Purcell*, 1995 CanLII 3558 (FCA), [1996] 1 FC 644.

<sup>22</sup> In particular, *MS v. Canada Employment Insurance Commission*, 2022 SST 933.

- c) benefits were paid as a result of a false or misleading statement, or
- d) the claimant ought to have known there was no entitlement to the benefits received.<sup>23</sup>

[78] The Appeal Division and other Tribunal decisions lead me to understand that these are relevant factors that should be considered if the Commission is exercising this sort of discretionary authority judicially. This policy sets out relevant factors to be considered at the first step of deciding whether or not to exercise the discretion to reconsider.

[79] In this case, there is nothing to suggest benefits to the Appellant were underpaid. So, I will only look at whether the Commission considered any of the other three questions when deciding to review the applications for benefits made in the name of the “claimants” in the appeals before me.

– **Did the Commission consider relevant factors when it decided to re-examine the applications for benefits**

[80] The Commission did not specifically explain its reasons for deciding to reconsider the claims for benefits in the cases before me. So, I have to rely on the documentation it supplied to understand why it decided to reconsider these claims.

[81] It is clear from the evidence that the Commission was undertaking a serious investigation of the circumstances surrounding applications made where ROEs were issued by the Appellant’s former employer.

[82] From the investigator’s Applications for production, I can see that the Commission was investigating fraud involving the purchase and sale of false ROEs. This request in and of itself is not evidence that benefits were paid contrary to the structure of the EI Act or as a result of false or misleading statements. It only suggests that at that point, the Commission was of the opinion that false or misleading statements may have been made.

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<sup>23</sup> See Chapter 17.3.3 of the Digest of Benefit Entitlement Principles

[83] The investigator's affidavit in support of the Applications for production is also useful for understanding that the Commission already had evidence before it that supported its decision to review the applications for benefits.

[84] As mentioned above, as of June 9, 2015, the Commission had been alerted to the fact that an application for benefits was made for a "claimant" who was not aware of the application and alleged that he was a victim of identity theft. That, in itself, would raise questions for the Commission as to whether Applications for benefits like his, where the employer had issued a ROE, were legitimate and if benefits had been paid on claims related to those applications.

[85] My review of the Application for benefits made in the name of the "claimant" who alleged he was a victim of identity theft shows that the phone number for the "claimant" is the same as that of the employer, although their names are different. In light of the "claimant's" allegation of identity theft, it was relevant for the Commission to wonder if benefits had been paid contrary to the structure of the EI Act or as a result of false or misleading statements.

[86] I have no evidence before me to suggest that the Commission acted in bad faith or with improper purpose when choosing to review the applications for benefits where an ROE had been issued by the employer. While the Appellant believes she was denied due process, I do not believe that the Commission acted in a discriminatory manner, as it did uncover evidence that she was connected to the false applications and that merited further investigation. Finally, I do not see that the Commission considered any irrelevant factors when deciding to go forward with the review of the applications.

[87] So, I find it did act judicially when exercising its discretion to review the applications for benefits made by the "claimants".

## **Issue 2: Were the Commission's decisions about penalties against the Appellant appropriate?**

[88] In all five cases before me, the Commission wrote in its May 10, 2019, letter to the Appellant:



“We will not ask you to pay a monetary penalty given the circumstances under which you provided false information while acting for “claimant” However if we discover other acts or omissions, heavier penalties or prosecution could result. Please ensure you always provide complete and accurate information in the future.”

[89] When deciding if the Commission’s decisions about penalties against the Appellant were appropriate, I will have to look at whether the Commission could impose a penalty in these cases, could they impose a penalty on a third party and if it acted judicially when determining that a warning should be issued.

[90] The onus is on the Commission to prove that it was allowed to issue a penalty and that it acted judicially when determining the amount of the penalty.

[91] The law says the Commission could not impose a penalty more than 36 months after the day on which the act or omission occurred.<sup>24</sup>

[92] However, the Commission can issue a warning instead of a penalty.<sup>25</sup> In that case, the warning may be issued within 72 months after the day on which the act or omission occurred.<sup>26</sup>

– **The Commission had the authority to impose a penalty on the Appellant**

[93] When certain infractions occur, the Commission may impose a penalty on a claimant **or any person acting for a claimant.**<sup>27</sup>

[94] The Commission says that the Appellant provided false information while acting for the “claimants” in these cases. It provided its notes about why it reached the decisions it did about the penalties in each of the cases before me.

[95] In all the cases, the Commission says that the Appellant accepted deposits or endorsed and cashed cheques issued in the name of the “claimants” into her bank

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<sup>24</sup> See section 40(b) of the EI Act.

<sup>25</sup> See section 41.1 (1) of the EI Act.

<sup>26</sup> See section 41.1 (2) of the EI Act.

<sup>27</sup> See section 38(1) of the EI Act.

account when she knew she had no right to do so. So, it says she participated in, assented to or acquiesced in an act or omission mentioned in the law.<sup>28</sup>

[96] In reviewing the evidence, I'm not convinced that the Appellant made the Applications for benefits or submitted the false ROEs on behalf of the "claimants". I am also not convinced that she was the one who endorsed the cheques that were deposited into her bank account. It is clear to me that she did not know the "claimants" and was not knowingly "acting on their behalf".

[97] However, the Appellant did tell the Integrity Services investigator that she had allowed her phone number and address to be used by S.N. and these appear on some of the applications for benefits. Her representative confirmed to the Commission that she had admitted "cashing the payments" in the name of the 5 "claimants".<sup>29</sup> At the hearing before me, she also confirmed that she had accepted, albeit under pressure from S.N., that her phone number, address and bank account could be used by S.N. who may have been the one who made the false applications.

[98] So even though the Appellant did not know the "claimants", I do find that she had participated in making false or misleading misrepresentations in relation to claims for benefits in their names. She did this because she agreed to money from fraudulent claims being deposited in her bank account. While she may not have understood the scheme, she was complicit in it. By allowing her account to be used, she was enabling the misleading representation that she, or the claimant in whose name the benefits were paid, were entitled to those benefits.

[99] However, there is a time limit within which the Commission can impose a penalty and I will look at that now.

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<sup>28</sup> This is based on section 38(1)(h) of the EI Act.

<sup>29</sup> See the Commission's notes in file GE-20-485 at GD3-124.

– **But, the Commission was out of time to impose a penalty**

[100] The Commission can not impose a penalty if 36 months have passed since the day on which the act or omission occurred.<sup>30</sup>

[101] In the cases before me, the Commission issued decisions on May 10, 2019. These decisions related to events that took place, at the latest, in 2015.

Alleged claimant	Date of Application for benefits	Date(s) benefits allegedly paid to the Appellant for this claim
L.G.	April 28, 2015	May 14, 2015
K.M.	January 8, 2015	April 14, 2015
K. P-P.	December 30, 2014	May 22, 2015, June 5, 2015, June 19, 2015
M.M.	April 28, 2015	May 29, 2015
J. M.	December 28, 2014	May 22, 2015, June 5, 2015, June 19, 2015

[102] I note that the last payment on behalf of any of the ‘claimants’ in these appeals went into the Appellant’s bank account on June 23, 2015. A decision issued on May 10, 2019 was issued 47 months after the latest event that could have given rise to a penalty. So, the Commission would have been out of time to impose a penalty on the Appellant.

– **The Commission could still issue a warning**

[103] While the Commission was out of time to issue a monetary penalty in these cases, the law still allowed for it to issue a warning instead of setting an amount of a penalty. The law allows up to 72 months after the day on which the act or omission occurred.<sup>31</sup>

[104] As I mentioned above in the discussion of the time periods for reviewing a claim, the earliest action in any of these cases was the filing of an Application for benefits on December 28, 2014. The May 10, 2019 decisions were well within this 72-month limit.

<sup>30</sup> See section 40(b) of the EI Act.

<sup>31</sup> See section 41.1 (2) of the Act.

[105] In the May 10, 2019 decisions, the Commission said that “We will not ask you to pay a monetary penalty given the circumstances under which you provided false information while acting for (“claimant”). However, if we discover other acts or omissions, heavier penalties or prosecutions could result.”

[106] I would consider that statement to be a warning within the meaning of the EI Act. And this warning was given within the time period allowed in the EI Act.

[107] While the Commission has the authority to issue a penalty or warning in these cases, it was not obligated by law to do this. The decision was a discretionary one. So, I need to consider if the Commission exercised its discretion judicially when it decided to issue warnings in the files before me.

– **The Commission did act judicially when determining a warning should be issued**

[108] I find that the Commission did act judicially when deciding to issue a warning in the files before me.

[109] As mentioned above, for discretion to have been exercised judicially, it must not have been made in bad faith, for an improper purpose, in a discriminatory manner, having considered irrelevant factors, or having failed to consider relevant factors.<sup>32</sup>

[110] Each of the files include the Commission’s notes with respect to the factors that went into the decision to maintain the decision to issue a warning on reconsideration.

[111] From these notes, I can see that when considering whether to impose a penalty the Commission considered that the bank account that received the payments of benefits in these files belonged to the Appellant, that she acknowledged this during the interview with the investigator and that she admitted having received money that did not belong to her.

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<sup>32</sup> *Suresh v. Canada (Employment and Immigration Commission)*, [2000] 2 FC 592, *Canada (Attorney General) v. Purcell*, 1995 CanLII 3558 (FCA), [1996] 1 FC 644.

[112] It noted that funds issued in the name of someone else were claimed by the Appellant. It recognized that the Appellant said she had given the money to S.N. but she could not prove this. Since the Commission notes that the Appellant can't prove this, this factor is irrelevant, and it does not consider it in its penalty decision. Rather the Commission notes that the funds went into the bank account belonging to the Appellant, which is relevant.

[113] Most significantly, in each case, I note that the Commission recognized that the decision was being made more than 36 months after any infraction took place. So, it could not issue a penalty, only a warning.

[114] The Commission was not acting in bad faith or with improper purpose in investigating this fraud and in looking to hold the Appellant responsible for her part in the scheme. It did not act in a discriminatory manner as it did allow the Appellant to present her explanations before issuing a warning. It did consider relevant factors, such as the Appellant's admissions that she had received the money and the fact that it was not in time to issue monetary penalties.

[115] Even though the Commission issued warnings instead of monetary penalties against the Appellant, it still demanded that the Appellant repay the money that was paid into her accounts based on the false claims. To that end, it issued Notices of Debt for the amounts it says she is required to reimburse.

[116] I will now consider whether the Commission could ask the Appellant to repay this money.

### **Issue 3: Is the Appellant responsible for the overpayment**

[117] Yes, the Appellant is responsible for the overpayments in all of the cases.

[118] The law says that when someone receives EI benefits that they are not entitled to, they have to repay these benefits.<sup>33</sup> This is called an overpayment.

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<sup>33</sup> See sections 43 and 44 of the EI Act.

[119] The Appellant argues that she did not benefit from the situation in which she found herself. But, the evidence shows that she did receive the money that was paid out because of the false claims.

[120] There were two types of payments that were made based on the false applications for benefits; in some cases the payments were made by direct deposit, in others a cheque was issued and then endorsed by someone to the Appellant's name and deposited in the Appellant's account.

[121] The following table shows what the Commission paid as benefits to the false "claimants" and where the money went, according to the evidence I see in the file:

Date of payment	Alleged claimant	Amount of payment	Where it went
April 14, 2015	KM	\$448.00	Cheque deposited to Appellant's bank account May 4, 2015
May 14, 2015	LG	\$448.00	Cheque deposited to Appellant's bank account May 21, 2015
May 22, 2015	KPP	\$896.00	Direct deposit to Appellant's bank account May 26, 2015
May 22, 2015	JM	\$896.00	Direct deposit to Appellant's bank account May 26, 2015
May 29, 2015	MM	\$896.00	Cheque deposited to Appellant's bank account June 5, 2015
June 5, 2015	KPP	\$896.00	Direct deposit to Appellant's bank account June 9, 2015
June 5, 2015	JM	\$896.00	Direct deposit to Appellant's bank account June 9, 2015
June 19, 2015	KPP	\$448.00	Direct deposit to Appellant's bank account June 23, 2015
June 19, 2015	JM	\$896.00	Direct deposit to Appellant's bank account June 23, 2015

[122] While I am not convinced that the Appellant made the false applications for benefits or filed the bi-weekly claims for benefits that led to benefits being paid by direct deposit, the Commission has proven that the bank account receiving the money was held by the Appellant. In the file, I see evidence that on May 20, 2015, the bank

received requests to change the direct deposit information for the claims in the names of KPP and JM to the Appellant's account.

[123] I am also not convinced that the Appellant was the person who endorsed the cheques issued by the Commission and deposited into her bank account. It is fairly obvious that the signature on most of the cheques does not match the Appellant's signature as found on the bank's signature card. But, the Commission has proven that these cheques were deposited into the Appellant's bank account.

[124] It has proven this by providing a copy of the Appellant's bank statement for the period in question. In every case outlined in the table above, I can see an entry of funds that corresponds with the amount of benefits the Commission says was paid further to one of the claims made on behalf of a "claimant".

[125] The Appellant told me that she had been pressured by her employer S.N. to let her use her mailing address and bank account information because S.N. was having financial difficulties and could not have her own account. I accept that the Appellant felt threatened when S.N., who lived in the same building that she did, told her she could cancel the Appellant's EI benefits if she did not help. I understand that S.N. would drive the Appellant to the bank and demand that she withdraw money from her bank account for her.

[126] The reason I can not find the Appellant blameless in this case is that the Appellant did agree to allow the money from the employer's scheme to go into her bank account. She said as much to the investigator from the Commission and again during the hearing before me. She may not have known what the scheme was, or where the money was coming from, but she was allowing her phone number, address and bank account to be used for this purpose.

[127] Also, the Appellant says that she took the money that came into her account and gave it to S.N. She argues that she did not benefit from it. Unfortunately, that is not what the evidence shows.

[128] From the bank records the Commission submitted, I can clearly see the deposits into the Appellant's accounts. But I don't see corresponding withdrawals or specific transfers to another person. Even if I could, it would still not clear the Appellant from having received the money in the first place.

[129] I recognize that the Appellant likely wasn't the one who made the false applications for benefits or completed the claim reports that led to the benefits being paid. But, the law says that any person, not just claimants, must return benefits they receive to which they are not entitled.<sup>34</sup>

[130] The Appellant has also argued that the Commission should be trying to get the money back from S.N. and not from her.

[131] I do not have the authority to say who the Commission should seek repayment from. In this case, what I can say is that the Commission has proven that the Appellant got the money, so they can ask her to repay it.

[132] The Commission has shown that the Appellant received money that was paid based on false EI claims. The Appellant was not entitled to that money. So, she has to pay it back.

### **Other matters**

[133] The Appellant's primary argument in these matters is that she was denied procedural fairness. While the Tribunal does not have the authority to make findings with respect to procedural fairness, I think it is important to acknowledge this argument.

[134] I understand the Appellant's frustration with her situation. She has been called to account for events that occurred several years before she was invited to an interview with the Commission's Integrity Services Investigator. The first Notices of Debt issued against her were issued before she met with the Investigator and there was no real explanation of the origin of the debt.

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<sup>34</sup> Section 44 of the Act refers to "a person" not "a claimant."



[135] However, I would note two points: First, by letter dated February 26, 2019, the Appellant was invited to an interview on March 11, 2019. The Appellant did not attend that interview. She did not contact the Commission about the missed interview until April 9, 2019. At that point, she was told over the phone that the overpayment was related to the cashing of benefit cheques she was not entitled to, and she did not ask for any further information or dispute that statement at that time. This shows me she had two opportunities to discuss these matters before the statement of account on these files was issued on April 20, 2019.

[136] Secondly, I would note that the Appellant had the opportunity to ask the Commission to reconsider its decisions once they had been issued. She took advantage of the Request for Reconsideration process. In her request for reconsideration and again in her Notice of Appeal to the Tribunal the Appellant does not argue that she did not receive the funds that the Commission is asking that she repay.

[137] Since the Appellant's appeal before the Tribunal alleges that there has been a violation of her rights to natural justice, procedural fairness and due process, I have considered whether the Appellant is making a claim that should be dealt with through the Tribunal's Charter appeal process.

[138] I have concluded that this is not a case where the Appellant is raising a Constitutional challenge before the Tribunal. While the Appellant has alleged her rights were violated, she has not said that the violation was based on an article of a law or regulation. It is rather her treatment by the Commission that she feels is unfair. I do not have the authority to resolve that sort of question and would direct the Appellant to the Commission's Office for Client Satisfaction.

## **Conclusion**

[139] The appeals are all dismissed.

Leanne Bourassa  
Member, General Division – Employment Insurance Section