



Citation: *SN v Canada Employment Insurance Commission*, 2024 SST 731

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

Decision

Appellant: S. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (647486) dated March 9, 2024 (issued by Service Canada)

Tribunal member: Elyse Rosen

Type of hearing: Teleconference

Hearing date: May 8, 2024

Hearing participant: Appellant

Decision date: May 13, 2024

File number: GE-24-1139

Decision

[1] The appeal is dismissed.

[2] The Appellant admits that he received earnings while he was receiving Employment Insurance (EI) benefits. He doesn't dispute that the Canada Employment Insurance Commission (Commission) allocated those earnings correctly.

[3] The reasons the Appellant gave for failing to report his earnings don't excuse him from having to repay the overpayment resulting from the allocation of his earnings.

[4] I find that the Commission acted judicially when it reconsidered the Appellant's claim and created an overpayment. So, I won't be interfering in its decision. The overpayment resulting from the allocation of earnings stands.

[5] The Appellant withdrew his appeal of the penalty at the hearing. So, the penalty stands.

Overview

[6] The Appellant established a claim for EI benefits effective April 17, 2022.

[7] While receiving benefits, the Appellant got a job.

[8] He didn't declare his job or the salary he received on his bi-weekly reports.

[9] The Commission found out that he was working and receiving a salary while receiving benefits. It reconsidered his claim and allocated the earnings the Appellant had received. This created an overpayment.

[10] The Commission also imposed a penalty of \$4,977 and issued a notice of serious violation.

[11] The Appellant asked the Commission to reconsider its decision. The Commission maintained its decision about the allocation of earnings. It reduced the penalty to \$3,982 and rescinded the violation.

[12] The Appellant appealed the Commission's reconsideration decision. He says he didn't declare his job and his earnings because he was on probation at his job. Moreover, he had a car accident that impeded his ability to do the tasks he was hired to do. He was afraid he would lose his job. So, he decided to continue collecting EI benefits just in case he did.

[13] He says he earns only \$55,000 a year. His salary goes to paying taxes and the bare necessities of life, such as rent, food and gas. He says he feels like a slave and is tired of working so hard and having nothing to show for it because so much of his money goes to the government.

[14] He says the Commission came back years later to impose a debt. He thinks this is unfair and that the Commission is discriminating against him. He argues that according to news reports he's read, the Commission hasn't tried to collect overpayments resulting from fraud against the EI system. He doesn't understand why the Commission is asking him to repay his overpayment when it has let so many other claimants off the hook.

[15] He claims he's unable to repay the debt resulting from the overpayment and would like it reduced by at least 50%. He says if he doesn't receive this relief, he will have to quit his job and leave the country or will have to declare bankruptcy.

[16] At the hearing, the Appellant confirmed he isn't appealing the penalty.

Matter I have to decide first

There are two different appeals

[17] The Appellant has two appeals pending before the Tribunal.¹

[18] The other appeal also relates to the allocation of earnings the Appellant failed to declare, but earnings from a different employer.

¹ The other appeal is in file number GE-24-1137.

[19] I heard both appeals together. But I am writing two different decisions.

[20] Inasmuch as the Appellant raised many of the same arguments in both appeals, and although my decisions are very similar, I decided that it would be easier to understand my decisions if I write a separate decision for each appeal.

Issues

[21] Can the Appellant be excused from having to repay the overpayment resulting from the allocation of his earnings?

[22] Did the Commission act judicially when it reconsidered the Appellant's claim and created an overpayment?

[23] Can the debt resulting from the overpayment be reduced?

Analysis

The Appellant can't be excused from repaying the overpayment

[24] The law says that any income you receive in connection with employment (earnings) must be allocated (in other words, applied to certain weeks) for the purposes of determining the benefits payable to you.² If the income is allocated to a week of unemployment during which you would be entitled to receive benefits, it must be deducted from the benefits payable to you in that week.³

[25] The Appellant doesn't dispute that he received income while also receiving EI benefits. He accepts that the law entitles the Commission to allocate that income and to reduce his benefits accordingly. He doesn't argue that the Commission did that improperly.

² See sections 35 and 36 of the *Employment Insurance Regulations* (Regulations).

³ See section 19(2) of the *Employment Insurance Act* (Act).

[26] Rather, he says he had a good reason for keeping the benefits he received while working. He was worried he would lose his job. He claims he needed the money, just in case.

[27] But the law doesn't provide for an exception on those grounds. It doesn't say that earnings won't be allocated or deducted from benefits if you need the money. It says that earnings must be allocated and deducted from benefits.

[28] The Appellant also argues that he pays taxes and has contributed to the EI program. He thinks he should be entitled to keep the benefits he received because he paid for them.

[29] But the EI program isn't a savings account, it's an insurance plan. Like other insurance plans, you have to meet certain requirements to receive benefits.⁴ In this case, the Appellant doesn't meet the requirements, so he wasn't entitled to the benefits he was paid. The monies he contributed to the EI fund don't belong to him, they are insurance premia meant to insure against the risk of unemployment. And he wasn't unemployed. So, he shouldn't have been paid benefits.

[30] I'm therefore unable to find that the Appellant should be excused from repaying the overpayment resulting from the allocation of his earnings.

The Commission acted judicially when it reconsidered the claim

[31] The Appellant doesn't understand why it took the Commission years to tell him his earnings should have been allocated and deducted from his benefits and that he has to pay back the benefits he received.

[32] He thinks the decision is unfair and that the Commission discriminated against him.

[33] The law allows the Commission to reconsider a claim for benefits on its own initiative.⁵ It has the discretion to decide whether or not it should do so. It has 36 months

⁴ See *Pannu v. Canada (Attorney General)*, 2004 FCA 90.

⁵ See section 52 of the Act.

to do so,⁶ but that delay can be extended to 72 months when the Commission is of the opinion that a false or misleading statement has been made.⁷

[34] In this case the Commission reconsidered the claim within 36 months of paying the Appellant benefits. So, it acted within the delay set out in the law.

[35] When the Commission decides to reconsider a claim on its own initiative, the Tribunal must be respectful of the Commission's discretion.

[36] However, when the Commission makes a discretionary decision, it must act judicially.⁸ This means it has to act in good faith and in a consistent and fair manner. It must consider all of the relevant facts, but only the relevant facts, to arrive at its decision. If it doesn't, then the Tribunal can substitute its own decision for the decision the Commission made.

[37] The Commission has a policy about when it will exercise its discretion to reconsider a claim (the reconsideration policy).⁹

[38] The reconsideration policy was developed to ensure a consistent and fair application of the law regarding discretionary reconsideration decisions, and to prevent creating debt when a claimant is overpaid benefits through no fault of their own.

[39] The reconsideration policy says that the Commission will only use this power when:

- benefits have been underpaid
- benefits were paid contrary to the structure of the EI Act¹⁰
- benefits were paid as a result of a false or misleading statement

⁶ See section 52(1) of the Act.

⁷ See section 52(5) of the Act.

⁸ See *Canada (Attorney General) v Purcell*, 1995 CanLII 3558 (FCA).

⁹ See the *Digest of Benefit Entitlement Principles* (Digest), at section 17.3.3.

¹⁰ **Structure of the act** is defined as the basic elements to set up a claim and pay benefits..

- the claimant ought to have known there was no entitlement to the benefits received

[40] The policy isn't law. But it's a factor the Commission should take into consideration when it decides whether it should reconsider a claim.

[41] The Appellant alleges discrimination. He says the Commission hasn't acted in a consistent and fair manner.

[42] When asked why he felt he had been discriminated against, the Appellant suggested that the Commission may have discriminated against him because he is of Middle Eastern origin. But he was unable to provide me with any facts that would support that allegation. And I see nothing in the record that would suggest that the Appellant was discriminated against because he is of Middle Eastern origin. So, I'm unable to find that he was discriminated against on that basis.

[43] He claims that the Commission doesn't try to collect overpayments in all cases. He says its all over the news. He referred to a news article to support that pretention.¹¹ He says he doesn't understand why he was singled out. He says this is also a form of discrimination. But I don't agree.

[44] First, the article the Appellant refers to is dated December 7, 2022. And it relates to the Canada Emergency Response Benefit (CERB) and to the efforts of the Canada Revenue Agency (CRA) to collect CERB from ineligible claimants. It doesn't refer to the Commission's current efforts to collect EI benefits paid in error.

[45] I don't think the article is relevant to the Appellant's situation. CERB was a benefit established during the pandemic in urgent and extraordinary circumstances. I can't draw any conclusions about how the **Commission** decides when it will pursue the collection of an overpayment of **EI benefits** from an article written 18 months ago about

¹¹ GD2-15 to GD2-29.

the **CRA**'s collection efforts with respect to the **CERB**. The Appellant is trying to compare apples with oranges.

[46] Second, discrimination generally means the unjust or prejudicial treatment of different categories of people, especially on the grounds of ethnicity, age, sex, or disability. As I've already established, I'm unable to find that the Appellant was discriminated against on the basis of his ethnicity.

[47] The fact that the Commission may not take steps to recover benefits wrongly paid in every case in no way suggests that the Appellant is being discriminated against.

[48] Third, many cases come before me where the Commission has reconsidered a claim and called upon the claimant to repay the resulting overpayment. This case isn't particularly different than any of those cases. Nothing in this case would suggest that the Appellant was treated any differently than these other claimants who were asked to repay EI benefits that were overpaid.

[49] So, I don't accept that the Commission acted in a discriminatory fashion when it decided to reconsider the Appellant's claim.

[50] The Appellant didn't allege that the Commission failed to consider relevant facts or that it considered irrelevant facts when it made its decision. But I will nonetheless look at whether or not it did.

[51] Although the Commission hasn't clearly set out what facts it considered when it made its decision to reconsider the Appellant's claim,¹² it appears to me from the evidence before me that it considered and followed its policy.

[52] In this case, the Commission says the Appellant failed to declare his job and his income on his bi-weekly reports. He answered no to questions about whether he had worked or had received any monies.¹³

¹² The Commission should note that when it fails to do so, it makes it more difficult to conclude that it acted judicially.

¹³ GD3-20 to GD3-31.

[53] Because the Commission had no information about the Appellant's job or the income he was receiving, it continued to pay him benefits. Had the Appellant completed his bi-weekly reports honestly and accurately, he wouldn't have received those benefits.

[54] Given these facts, I find that the Commission acted judicially when it decided to reconsider the Appellant's claim in order to allocate the income he received, and to create an overpayment for the benefits he was paid and wasn't entitled to. It followed its policy, which directs it to reconsider claims that result in an overpayment if the claimant made false or misleading statements or knew (or should have known) they weren't entitled to the benefits they received.

[55] I don't see any facts in the record that the Commission failed to consider and that were relevant to its decision. I also can't conclude that it considered any irrelevant facts.

[56] So, I find that the Commission acted judicially when it reconsidered the Appellant's claim. As a result, I won't be interfering in that decision.

The Tribunal can't reduce the debt

[57] The Appellant says he's unable to repay the debt created by the overpayment. I empathize with him. But as I explained to the Appellant at the hearing, that issue is beyond my jurisdiction.

[58] If the Appellant wants his debt, or any part of it, written off, he has to ask the Commission. Whatever decision the Commission makes about his request, the law says the Tribunal doesn't have the power to review that decision.¹⁴ Only the Federal Court of Canada has that power.

[59] If repaying the debt would cause the Appellant undue hardship, he can contact the Canada Revenue Agency (CRA) at 1-866-864-5823 and request a write-off for that reason. If the CRA concludes that he truly can't pay the debt, it will recommend to the Commission that it be written off.

¹⁴ See section 112.1 of the Act.

[60] He can also ask the CRA for repayment terms if that would make it easier for him to repay the debt.

Conclusion

[61] The appeal is dismissed.

[62] The Appellant doesn't dispute that his earnings were correctly allocated by the Commission. And he can't be excused from having to repay the overpayment resulting from the allocation.

[63] The Commission exercised its discretion judicially when it reconsidered the Appellant's claim and created an overpayment. So, the overpayment will stand.

[64] The Appellant hasn't appealed the penalty. So, the penalty will stand.

Elyse Rosen

Member, General Division – Employment Insurance Section