



Citation: *SN v Canada Employment Insurance Commission*, 2024 SST 729

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

## Decision

**Appellant:** S. N.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (653847) dated March 8, 2024 (issued by Service Canada)

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**Tribunal member:** Elyse Rosen

**Type of hearing:** Teleconference

**Hearing date:** May 8, 2024

**Hearing participant:** Appellant

**Decision date:** May 13, 2024

**File number:** GE-24-1137

## Decision

[1] The appeal is dismissed.

[2] I find that the Appellant was paid 27 weeks of benefits on his claim. But after the Commission reconsidered his claim and allocated the earnings he hadn't declared, he was only entitled to three weeks of benefits. This created an overpayment which the Appellant must repay.

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

[4] The Appellant isn't entitled to keep the overpayment on the grounds that he contributed to the EI system and therefore those payments belong to him.

## Overview

[5] The Appellant established a claim for EI benefits effective October 3, 2021.

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

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

[8] 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.

[9] The Appellant claims he only received three weeks of benefits on this claim. He says the Commission didn't pay him the benefits it says it paid him from the week of October 3, 2021, to the week of March 13, 2022. So, he doesn't believe he should have an overpayment.

[10] The Appellant 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.

[11] 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 committed by other claimants 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.

[12] 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.

## **Matters I have to decide first**

### **There are two different appeals**

[13] The Appellant has two appeals pending before the Tribunal.<sup>1</sup>

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

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

[16] 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.

### **Additional documents were added to the record**

[17] At the hearing, the Appellant argued that he only received three weeks of benefits on his claim. He contends that he never received the 24 weeks of benefits the Commission says were overpaid.

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<sup>1</sup> The other appeal is in file number GE-24-1139.

[18] I note that he raised this argument during the reconsideration process.<sup>2</sup> He didn't refer to it in his notice of appeal, but he raised it again at the hearing.

[19] At the hearing, the Appellant said he would provide a screenshot from his My Service Canada account (MSCA) and copies of his bank statements from Tangerine Bank to show that he was only paid three weeks of benefits.

[20] I gave the Appellant until the end of the day to provide those documents. I didn't give him more time than that because the Commission had asked him for those very same documents months prior to the hearing.<sup>3</sup> So he should have had them available if he intended to argue that he was only paid three weeks of benefits. And the *Social Security Tribunal Rules* (Rules) say that a claimant must file any evidence they intend to present before the hearing ends.<sup>4</sup> So, I decided that end of the day was more than sufficient in this case.

[21] The Appellant provided the excerpt of his MSCA within the delay I gave him. It has been labeled GD8 and will form part of the record.

[22] He didn't provide his bank statements. He said he couldn't get them within the deadline I gave. Instead, he provided an email from Tangerine bank indicating his request would take two business days. This email is part of GD8.

[23] Although I didn't give the Appellant permission to send me anything further outside the delay we agreed, prior to writing this decision he sent another letter from Tangerine bank. I have decided to accept it. It has been labelled GD9.

[24] The letter is a confirmation that the Appellant became a customer in 2017, and that he no longer holds any accounts at the bank. No statements were provided. No explanation was given as to why. And the date of closure of any accounts he did hold was not provided.

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<sup>2</sup> GD3-39.

<sup>3</sup> GD3-39.

<sup>4</sup> Section 52 of the Rules.

[25] Because the Appellant argued at the hearing that he only received three weeks of benefits despite not making that argument in his notice of appeal, and because I had given him permission to provide me with documents to that effect, I also asked the Commission to provide details of the payments it made to him. The Commission's response to my request has been labelled GD10 and will form part of the record.

## Issues

[26] How many weeks of benefits did the Appellant receive?

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

[28] Should the Appellant be able to keep the benefits he received?

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

## Analysis

### **The Appellant received 27 weeks of benefits**

[30] 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.<sup>5</sup> If the income is allocated to a week of unemployment during which you are entitled to receive benefits, it must be deducted from the benefits payable to you in that week.<sup>6</sup>

[31] In this case the Appellant admits that he was earning income from his job for the weeks of October 3, 2021, to March 13, 2022. He doesn't argue that the Commission didn't allocate the income he earned during that period correctly. But he says he didn't receive any benefits during that period. He contends that as a result, there were no benefits to deduct that allocated income from, and that there wasn't any overpayment.

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<sup>5</sup> See sections 35 and 36 of the *Employment Insurance Regulations* (Regulations).

<sup>6</sup> See section 19(2) of the *Employment Insurance Act* (Act).

[32] I'm unable to find that the Appellant only received three weeks of benefits.

[33] I note that in his notice of appeal, the Appellant appears to admit receiving the benefits he now argues he never received. He only asks that the overpayment be reduced by 50%.

[34] The Appellant had argued that his MSCA showed he only received three weeks of benefits during the reconsideration process. The Commission explained to him that this is because after it reviewed his claim, it found he was only entitled to benefits for three of the 27 weeks during which benefits were paid to him.<sup>7</sup> So now his MSCA only shows the three weeks he remained entitled to.

[35] The overpayment breakdown provided by the Commission confirms this.<sup>8</sup>

[36] Although there is some confusion as to where the benefits were deposited,<sup>9</sup> I conclude that it's more likely than not that the Appellant received them.

[37] The Appellant was asked, during the reconsideration process, to provide copies of his bank statements to support his pretension that he never received the benefits the Commission was claiming were overpaid. He never did so.

[38] He told me he would provide those statements following the hearing. However, from the letter from Tangerine bank that he did provide, it appears he never asked the

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<sup>7</sup> GD3-39.

<sup>8</sup> GD10-3. I note that the Commission made an error in its submissions. Although in the text of its submissions it says the Appellant was paid 21 weeks of benefits, in the spreadsheet setting out the payments with respect to this claim it shows 27 weeks were paid. The spreadsheet is in keeping with the balance of the evidence. The Commission's error seems to stem from the fact that it provided a payment screen from a different claim, and for a different period, in error (GD10-2). When I look at all of the evidence in the record, including the Commission's decision letters and call logs, I'm satisfied that the Appellant received 27, and not 21, weeks of benefits on this claim and that the reference to 21 weeks is an error.

<sup>9</sup> In GD3-39 the Commission indicated that the benefits paid to the Appellant on this claim were deposited at Tangerine Bank. In GD10 the Commission answered my question about where the benefits were paid by providing the "banking information on file." But I didn't ask the Commission what banking information is currently on file. I asked where these benefits were deposited. I consider the Commission's submissions to be non-responsive to my question. I am going to rely on the other evidence I have. And from that evidence, I conclude that it's more likely than not that the benefits at issue were deposited into the Appellant's account at Tangerine Bank. I explain why in more detail, below.

bank for them. There isn't any reference in the letter to a request for statements. And the Appellant provided no explanation as to why they weren't provided.

[39] I draw a negative inference from the fact that the Appellant didn't have the statements available for the hearing in the first place and that he appears to never have even asked for them, despite saying at the hearing that he would provide them.

[40] I also note that during the reconsideration process the Appellant told the Commission that he didn't remember receiving EI during the weeks the Commission says he did, but that he **couldn't say for sure**.<sup>10</sup>

[41] He also confirmed to the Commission that he hadn't changed his banking information since providing it to the Commission in 2020.<sup>11</sup> According to the evidence, the Appellant was banking with Tangerine bank at the time benefits were paid.

[42] In my view, someone being asked to repay thousands of dollars they aren't sure they received would have done the necessary to verify if they did in fact receive them. And they would also have taken the necessary steps to prove their pretension that the amounts claimed were never received by providing copies of bank statements. The Appellant didn't do this despite saying on two occasions, both to the Commission and to me, that he would.

[43] Given all of the evidence, I find it more likely than not that the Appellant received 27 weeks of benefits during the weeks the Commission says it paid him benefits. I find the Commission's explanation of why his MSCA indicates that only three weeks of benefits were paid more credible than the Appellant's pretension that this is all he received. I don't accept that he only received three weeks of benefits.

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<sup>10</sup> GD3-39.

<sup>11</sup> GD3-39. According to the Commission's information, he was banking at Tangerine Bank at the time he was paid the benefits at issue.

## **The Commission acted judicially when it reconsidered the claim**

[44] 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.

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

[46] The law allows the Commission to reconsider a claim for benefits on its own initiative.<sup>12</sup> It has the discretion to decide whether or not it should do so. It has 36 months to do so,<sup>13</sup> 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.<sup>14</sup>

[47] 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.

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

[49] However, when the Commission makes a discretionary decision, it must act judicially.<sup>15</sup> 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.

[50] The Commission has a policy about when it will exercise its discretion to reconsider a claim (the reconsideration policy).<sup>16</sup>

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<sup>12</sup> See section 52 of the Act.

<sup>13</sup> See section 52(1) of the Act.

<sup>14</sup> See section 52(5) of the Act.

<sup>15</sup> See *Canada (Attorney General) v Purcell*, 1995 CanLII 3558 (FCA).

<sup>16</sup> See the *Digest of Benefit Entitlement Principles* (Digest), at section 17.3.3.



[51] 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.

[52] 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 Act<sup>17</sup>
- benefits were paid as a result of a false or misleading statement
- the claimant ought to have known there was no entitlement to the benefits received

[53] 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.

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

[55] 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.

[56] 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.<sup>18</sup>

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<sup>17</sup> **Structure of the act** is defined as the basic elements to set up a claim and pay benefits. This would include having enough hours to establish a claim.

<sup>18</sup> GD2-15 to GD2-29.

He says he doesn't understand why he was singled out. He contends this is also a form of discrimination. But I don't agree.

[57] 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.

[58] I don't think the article is relevant to the Appellant's claim. 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 the **CRA's** collection efforts with respect to the **CERB**. The Appellant is trying to compare apples with oranges.

[59] 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.

[60] 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.

[61] 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.

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

[63] 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.

[64] Although the Commission hasn't clearly set out what facts it considered when it made its decision to reconsider the Appellant's claim,<sup>19</sup> it appears to me from the evidence before me that it considered and followed its policy.

[65] In this case, 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.<sup>20</sup> He made false and misleading statements.

[66] 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.

[67] 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. This isn't a case where the overpayment results from a Commission error. Rather, the Appellant is directly to blame for the overpayment.

[68] 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.

[69] So, I find that the Commission acted judicially when it reconsidered the Appellant's claim. As a result, I won't interfere in its decision to do so.

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<sup>19</sup> The Commission should note that when it fails to do so, it makes it more difficult to conclude that it acted judicially.

<sup>20</sup> GD3-20 to GD3-31.

### **The Appellant can't keep the benefits he received**

[70] The Appellant 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.

[71] 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.<sup>21</sup> 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. He can't keep them.

### **The Tribunal can't reduce the debt**

[72] 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.

[73] 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.<sup>22</sup> Only the Federal Court of Canada has that power.

[74] 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.

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

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<sup>21</sup> See *Pannu v. Canada (Attorney General)*, 2004 FCA 90.

<sup>22</sup> See section 112.1 of the Act.

## **Conclusion**

[76] The appeal is dismissed.

[77] The Appellant received 27 weeks of benefits. After the allocation of his earnings, he was only entitled to three. This means he was overpaid.

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

[79] The benefits the Appellant received don't belong to him even though he contributed to the EI system and pays taxes. So, he must return them.

Elyse Rosen

Member, General Division – Employment Insurance Section