



Citation: *RG v Canada Employment Insurance Commission*, 2024 SST 1235

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

Decision

Appellant: R. G.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (651788) dated May 8, 2024 (issued by Service Canada)

Tribunal member: Linda Bell
Type of hearing: Videoconference
Hearing date: August 21, 2024
Hearing participant: Appellant
Decision date: September 11, 2024
File number: GE-24-2017

Decision

[1] R. G. is the Appellant. I am dismissing his appeal.

[2] The Commission correctly allocated (in other words, assigned) the Appellant's earnings to his Employment Insurance (EI) claims. The allocation of earnings results in an overpayment of EI benefits.

[3] The Commission acted properly (judicially) when imposing a penalty, deciding the penalty amount, and issuing the violation. So, I am not reducing or removing the overpayment, penalty, or violation.

[4] If the Appellant is looking to have the interest charges or a portion of his debt written off, he may wish to contact the Canada Revenue Agency (CRA) by calling toll-free 1-800-864-5841.

Overview

[5] The Appellant applied for EI benefits. The Commission set up his claim (benefit period) starting November 8, 2020.

[6] To be paid EI benefits, claimants complete biweekly reports. The reports ask a series of questions. Based on the answers, the Commission decides the claimant's entitlement to benefits.

[7] The Commission reviewed the answers on the Appellant's reports, about whether he had worked and had earnings. The Commission decided that false or misleading information was provided when the Appellant answered "No," to the questions about whether he worked and had earnings.

[8] The Appellant's work and earnings from (X) weren't reported on his biweekly reports (claims). The Commission allocated the Appellant's earnings to the weeks worked. This allocation results in a \$22,969 overpayment of EI benefits. The

Commission also determined that 26 misrepresentations were made. So, it imposed a penalty of \$5,000 and a violation classified as very serious.¹

[9] Upon reconsideration, the Commission maintained the allocation of earnings and violation. But the Commission reduced the penalty by 50% to \$2,500.

[10] The Appellant appeals to the Social Security Tribunal (Tribunal). In his appeal he didn't dispute that he worked and had earnings. Nor did he dispute the allocation of his earnings. He says, among other things, that the Commission's reconsideration decision is a mistake. He believes his taxes and EI payments are discrimination and inhumane. He asks that the overpayment be forgiven because he is suffering from an economic and mental crisis.

Matters to consider first

Adjournments

[11] The hearing was initially scheduled on July 25, 2024, at 12:00 p.m. The Appellant submitted a request to adjourn the hearing to a Tuesday or Wednesday morning. So, the hearing was adjourned to Tuesday July 23, 2024, at 10:00 a.m. Eastern Time.

[12] On July 17, 2024, the Appellant sent a second request for adjournment asking that the hearing be rescheduled to a videoconference on a Tuesday or Wednesday after August 1, 2024. The Appellant's request was granted, and the hearing was adjourned to Wednesday August 21, 2024, at 10:00 a.m.

[13] The Appellant appeared at the August 21, 2024, hearing and gave affirmed testimony in English and in Cantonese.

¹ A previous violation was issued to the Appellant on February 27, 2020. See the decision letter at pages GD3-27 and GD3-28.

Interpreter Services

[14] The Appellant told the Tribunal that he required a Cantonese interpreter. The Tribunal arranged for an interpreter to attend the hearing and provide interpretation services for the Appellant.

[15] At the outset of the hearing the Appellant spoke clearly in English and was responsive to what I said in English. He said he was more comfortable with conducting the hearing with the assistance of the interpreter. Throughout the hearing the interpreter translated as requested by the Appellant from English to Cantonese and from Cantonese to English. The Appellant spoke both languages during his testimony. He decided when he wished to speak English or Cantonese. So, I find the Appellant had a full and fair opportunity to be heard.

Jurisdiction

[16] The Appellant requests that I make a ruling that Canada is in a state of disarray and Torontonians are experiencing poor living conditions. He also requests that I make a ruling that the Commission slandered and defamed him. I can't determine these issues that the Appellant says should be decided upon.² I've set out my reasons below.

[17] As a Member of the General Division of the Social Security Tribunal (Tribunal), my jurisdiction is exercised under the application of the *Employment Insurance Act* (EI Act) and the *Department of Employment and Social Development Act* (DESDA).

[18] Specifically, my authority to determine issues under appeal is provided under section 113 of the EI Act. This section of the EI Act states that a party who is dissatisfied with a reconsideration decision of the Commission, made under section 112, may appeal that decision to the Social Security Tribunal.

[19] Therefore, the issues I have authority to determine relate only to the Commission's reconsideration decision. This means I can only decide the issues

² See *Hamilton v. Canada (Attorney General)*, A-175-87.

relating to the allocation of the Appellant's earnings, the issuance of the penalty, and the violation.

[20] If the Appellant wishes to pursue his claims of discrimination or inhumane actions towards him, or other actions of the government, he may do so at the tribunal or court who has the authority to determine those issues.

Late documents and submissions

[21] The Appellant submitted evidence (GD09) by email, one hour before the start of the hearing. Those documents weren't added to the appeal file until after the hearing. He made submissions about these documents during the hearing. He also submitted arguments that the questions on the biweekly claim reports were unclear.

[22] In order to uphold the principles of natural justice, copies of the Appellant's late documents were sent to the Commission. The Commission was given an opportunity to provide submissions in response to the Appellant's late evidence (GD09 documents). The Commission was also asked to submit copies of the biweekly reports showing the questions asked and the Appellant's answers.

[23] Copies of the Commission's subsequent submissions and copies of the claim reports were sent to the Appellant. The Appellant was given an opportunity to reply no later than September 9, 2024. No reply was received from the Appellant by the deadline. Accordingly, I proceeded to determine the merits of this appeal.

Issues

[24] Are the wages paid to the Appellant earnings to be allocated to his EI claims?

[25] Did the Commission reconsider the claims within the allowable timeframe?

[26] Was false or misleading information knowingly provided?

[27] Did the Commission act properly (judicially) when imposing the violation, penalty, and setting the penalty amount?

[28] Can I write off or reduce the overpayment and interest charges?

Analysis

Are the wages paid to the Appellant earnings to be allocated to his claims?

[29] Yes, the wages paid to the Appellant from X, during the weeks starting April 4, 2021, to October 24, 2021, are earnings to be allocated to his claims.³

[30] The law says that the entire income from employment is earnings.⁴ All pecuniary or non-pecuniary income that is or “will be” received from an employer is income.⁵

[31] The Commission submits that the money paid to the Appellant constitutes earnings pursuant to subsection 35(2) of the Regulations. This is because the payment was made to compensate the claimant for work performed.

[32] The Appellant agrees that he worked for X during the period under review. He also agrees that he was paid wages for that work, which weren’t declared on his reports (claims).

[33] In his written submission to the Tribunal, the Appellant said he didn’t report his earnings because he was only guaranteed one day of work a week. He feared not having work, which caused him mental stress. His mental state is on the verge of falling apart and he doesn’t remember collecting EI benefits.

[34] The Appellant argued that section 35 of the EI Regulations doesn’t apply to his case. He confirmed that he was paid a wage as income for the work he performed at X. But he says he didn’t know he was paid a wage at the time he was completing his EI reports.

[35] After consideration of the forgoing, I find the evidence supports a finding that the employer paid the Appellant wages for the work he performed in the weeks of

³ See sections 35 and 36(4) of the *Employment Insurance Regulations* (EI Regulations).

⁴ See section 35(2) of the EI Regulations.

⁵ See section 35(1) of the EI Regulations.

November 8, 2020, to the week of October 24, 2021. This is income stemming directly from the Appellant's employment. So, I find as fact the wages paid to the Appellant by X are earnings.

Allocation

[36] Earnings that are paid or payable to a claimant are applied to their claims and deducted from their EI benefits. This is called allocation. The reason for allocating earnings is to avoid double compensation.⁶

[37] Earnings are allocated depending on the nature of the earnings: why were the earnings paid? Earnings that you receive for work you performed, must be allocated to the weeks that the work was done.⁷

[38] The Appellant agreed that his employer paid him the wages for the work he performed in the weeks from November 8, 2020, to the week of October 24, 2021. He didn't dispute that his weekly earnings were the amounts reported by the employer and allocated by the Commission in the February 7, 2024, decision letter.

[39] The Commission submitted copies of the payroll information forms that were completed by the employer. Those forms list the wages that were paid to the Appellant for each week of work. Those earnings match the amounts the Commission allocated to each week the Appellant worked from November 8, 2020, to the week starting October 24, 2021.

[40] After careful review of the documents on file, I find the Commission allocated the Appellant's earnings correctly. Those earnings were allocated to the weeks the work was performed in accordance with section 36(4) of the EI Regulations.

⁶ See *Canada (Attorney General) v. Walford*, A-263-78.

⁷ See section 36(4) of the EI Regulations.

Did the Commission reconsider the claims within the required timeframe?

[41] Yes. I find the Commission reconsidered the claims within the required timeframe.

[42] The law says the Commission may reconsider a claim for benefits within 36 months after the benefits have been paid or would have been payable.⁸ This period is extended to 72 months in cases where, if in the opinion of the Commission, a false or misleading statement or representation has been made in connection to a claim.⁹

[43] The Federal Court of Appeal has said the Commission must be “reasonably satisfied” of its opinion that a false or misleading statement had been made in order to extend the period of review to 72 months.¹⁰

[44] In this case the documents on file show that the Commission allocated the earnings on February 7, 2024. The Notice of Debt was issued to the Appellant on February 10, 2024, which is 39 months after the benefits were payable or paid.

[45] I recognize the week of November 8, 2020, is the first claim reconsidered and the Commission issued its letter to the Appellant on February 7, 2024, setting out each week of the allocation. That letter also states the Commission determined the Appellant had knowingly made 26 false representations when he didn’t properly report his earnings on his biweekly reports.

[46] The Commission states in the initial decision letter that it concluded that false representations were knowingly made. Knowingly means that a person knew that the information they were providing either was not or might not be accurate.

[47] In this case, I accept that the Commission was reasonably satisfied that false representations were knowingly made. This is because the Appellant knew he had

⁸ See section 52(1) of the EI Act.

⁹ See section 52(5) of the EI Act.

¹⁰ *Canada (Attorney General) v Langelier*, 2002 FCA 157; *Canada (Attorney General) v Dussault*, 2003 FCA 372.

worked during the weeks for which he was completing reports, but he failed to declare that work or his earnings. This means the period to reconsider the claims is extended to 72 months.

[48] As per the facts set out above, I find the Commission reconsidered the claims 39 months after the benefits were payable or paid. So, the Commission reconsidered the claims within the required 72-month time limit. This means the overpayment is valid.

Was false or misleading information knowingly provided?

[49] Yes. I find that the Commission has proven that false or misleading information was knowingly provided by the Appellant.

[50] To impose a penalty and violation, the Commission has to prove that the Appellant knowingly provided false or misleading information.¹¹ To be subject to a penalty, the Commission has to show that it is more likely than not that the Appellant provided the information, knowing that it was false or misleading.¹²

[51] If it is clear from the evidence that the questions were simple and the Appellant answered incorrectly, then I can infer that he knew the information was false or misleading. Then, the Appellant must explain why he gave incorrect answers and show that he didn't do it knowingly.¹³ The Commission may impose a penalty for each false or misleading statement knowingly made by the Appellant.

[52] The burden rests upon the Appellant to ensure his claims are completed truthfully. This is supported by the attestation agreed to when completing the reports online. The attestation page is presented displaying the questions and answers of the entire report. The Appellant is instructed to review the questions, answers, the Confirmation Statement, and to declare that the information he/she has provided is true

¹¹ Section 38 of the EI Act.

¹² *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.

¹³ *Nangle v Canada (Attorney General)*, 2003 FCA 210.

to the best of their knowledge. The Appellant must confirm understanding that there are penalties for knowingly making false statements.

[53] The Commission says the Appellant knew he was working during these weeks and knew he had been or would be paid for his work. But when asked if he had worked during the period of the reports the questioned on his biweekly claims was answered, "No."

[54] I am not convinced that the Appellant didn't know to report his work or earnings because he wasn't working at the exact time that he completed his biweekly reports. This is because the biweekly claim reports clearly state, "Did you work or receive any earnings **during the period of this report**? This includes work for which you will be paid later, unpaid work or self employment" [my emphasis added in bold text].

[55] Nor am I convinced that the Appellant failed to report his work and earnings because he found the questions on the reports confusing, ambiguous, or that he misunderstood the questions based on English being his second language. I have set out my reasons below.

[56] The Appellant explained how he came to Canada in 2005. He learned to speak and read some English when he was ten years old, but he didn't speak a lot of English before coming to Canada. He attended grade 11 and grade 12 in Canada where he attended ESL level "A" classes. He said he "absolutely can read and write at an "E" level." If a document is complicated, he might not fully understand it, but he can identify when he doesn't understand what he is reading.

[57] Throughout the hearing the Appellant spoke clearly in English when he chose to speak English. He also responded correctly to my statements and questions asked in English. Although he preferred to have the interpreter translate most everything that I said into Cantonese, he clearly displayed a good understanding of English during the hearing. He also explained that he had help writing his statements to the Tribunal. Not because he didn't understand English, but because he wanted to make sure his arguments were presented fully.

[58] The Appellant testified that he had applied for EI benefits in 2014, 2017 or 2018. He also submitted a claim for the Emergency Response Benefit, which he called CERB, in 2020, plus this claim on November 26, 2020.

[59] The Appellant said he had help from staff at Service Canada when he completed his first claim in 2014. He also said he completed his claim for CERB in 2020 and his November 2020 claim by himself, without assistance. This is evidence that he knew enough English to answer the questions on those applications in 2020.

[60] The Appellant testified that he was denied benefits in 2014. When speaking about his 2017-2018 claim he said he completed reports and declared his work and earnings. He also submitted a claim for the Emergency Response Benefits, where he completed reports and reported his work and earnings. So, I find it is more likely than not that he knew he was required to report his work and earnings for the period of the biweekly reports he was completing.

[61] The questions on the reports are not ambiguous. The questions are clear and state, "Did you work or receive any earnings during the period of this report? This includes work for which you will be paid later, unpaid work or self employment."

[62] As explained by the Commission, the Internet Reporting Service has an Important Information page. That page describes that hours of work and gross earnings must be declared in the week they were earned, even if they will be paid later.

[63] Further, the Internet Reporting Service pages are then presented to a claimant one at a time. Each page displays a question (or questions) and either: a YES and NO button, a drop-down selection menu or a blank space for the claimant to provide their response. Each question includes a HELP button that when clicked by a claimant displays additional information or explanation.

[64] So, if the Appellant truly didn't understand the questions in 2020, (which I am not convinced that was the case, given that he reported his work and earnings on his previous claims). If he didn't understand, he ought to have reviewed the HELP function or asked for assistance in completing his reports, which he didn't do.

[65] Although the Appellant provides reasons why his work and earnings weren't reported, these don't change the fact that 26 misrepresentations were made. This is because it is more likely than not that he knew he worked and he knew he was paid wages for that work, but he declared no work and no earnings on his biweekly reports.

[66] After consideration of the evidence before me, I find it is clear from the evidence that the Commission has proven 26 misrepresentations were knowingly made when the Appellant completed his biweekly reports (claims). This means the Commission may impose a penalty and violation.

Did the Commission decide to issue the violation, penalty, and determine the penalty amount properly (judicially)?

[67] The Commission acted properly when deciding to issue the penalty and violation classified as subsequent. The Commission also decided the penalty amount properly (judicially). Here is what I considered.

[68] The Commission makes its own decisions about issuing a violation, penalty, and deciding the penalty amount. This is called a discretionary power.¹⁴ This means that it is open to the Commission to make these decisions and set the penalty at an amount it thinks is correct.

[69] Even though the Commission has discretionary power to issue a violation and penalty, and set the penalty amount, the Commission must make its decision fairly. The Commission must look at all the information when it makes a decision. The Commission should pay attention to important information about why your work and earnings weren't reported properly and ignore things that are not important.¹⁵

¹⁴ *Canada (Attorney General) v Kaur*, 2007 FCA 287.

¹⁵ In *Canada (Attorney General) v. Purcell*, A-694-94, the Federal Court of Appeal states that the Commission must consider all relevant factors, ignore irrelevant factors, act in good faith, and act in a manner that is not discriminatory.

[70] I must respect the Commission's discretionary power. Usually, this means that I can't change the Commission's decision. But, if the Commission didn't make its decision fairly, then I can step into the Commission's role.¹⁶

– **Violation**

[71] The classification of a violation is done according to the severity of the misrepresentation. The amount of the penalty is not a factor in the determination of the classification of the violation. The classification of the violation is determined only in accordance with the amount of the overpayment resulting from the misrepresentation unless the claimant has been issued a prior violation in the previous 260 weeks.¹⁷

[72] The Commission states the discovery of misrepresentation resulted in an overpayment of \$23,928. Consequently, the violation is classified as very serious.¹⁸

[73] The Commission determined that after considering the overall impact to the Appellant of issuing a Notice of Violation, including mitigating circumstances, prior offences and the impact on the ability of the claimant to qualify on future claims, it is determined that a violation is applicable in this case. The Commission submits that based on the claim, the violation will not likely have an impact on the Appellant.

[74] Although the Appellant argues that he suffers from depression, he's under pressure, and is struggling with financial hardship, these are personal circumstances and not mitigating circumstances considered when a violation is imposed. Accordingly, the violation, classified as very serious, remains in effect.

– **Penalty**

[75] The Commission may impose a penalty for any misrepresentation which is *knowingly* made by the claimant. *Knowingly* means the Commission can reasonably

¹⁶ *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.

¹⁷ See section 7.1(5) of the EI Act.

¹⁸ See section 7.1(5) of the EI Act.

conclude the claimant knew the information provided was untrue when he or she made it. There is no element of intent in this consideration.¹⁹

[76] The Commission submits that in the case at hand, it has met the onus of establishing that the Appellant made 26 misrepresentation(s) because he knew that he was employed with X from 2020 to 24 October 2021 when he reported that he did not work and did not earn any income during that period on claim. I agree, as set out above.

[77] The Federal Court of Appeal has supported the Commission's policy of establishing guidelines to ensure a certain level of consistency and to avoid capriciousness in matters involving the imposition of penalties.²⁰

[78] The Commission submits that it follows a policy when calculating the penalty amount. For a first misrepresentation, the penalty amount may be up to 50% of the overpayment caused by the misrepresentation. For a second misrepresentation, the penalty amount may be up to 100% of the overpayment caused by the misrepresentation. For a third or more misrepresentation, the penalty amount may be up to 150% of the overpayment caused by the misrepresentation.

[79] In this case, the Appellant made 26 misrepresentations, but only the weeks that fell within the 36-month timeframe were considered for the penalty. The Appellant has a \$19,058 overpayment for the weeks starting February 14, 2021. I agree with the Commission's calculations that the maximum penalty allowed initially was \$5,000.²¹

[80] Upon reconsideration, the Commission considered the Appellant's financial hardship as a mitigating circumstance and reduced the penalty by 50% to \$2,500.

[81] I recognize a penalty may contribute to the Appellant's financial hardship. I also acknowledge that he said he is struggling with depression and stress. But personal

¹⁹ See section 38 of the EI Act.

²⁰ See *Canada (AG) v. Gagnon*, 2004 FCA 351.

²¹ See the calculations set out at page GD4-6.

circumstances such as medical conditions, aren't considered as mitigating factors when determining a penalty amount.²²

[82] The Appellant presented no evidence that the Commission was motivated by an improper or discriminatory motive, or that the Commission acted in bad faith when issuing the subsequent violation and the penalty. He didn't point out any irrelevant factors the Commission relied on or relevant factors that were before them that they failed to consider when deciding to issue the violation and penalty. This means I can't remove or reduce the penalty or violation.

Can I write off or reduce the overpayment or interest charges?

[83] No. It is the Commission who has the legal power to write off part or all of an overpayment.²³ The Tribunal doesn't have that power.

[84] An overpayment is a debt the Appellant owes to Employment and Skills Development Canada (ESDC). So, the Appellant may wish to contact the Commission if he wishes to have the overpayment written off.

[85] As I understand, it is the CRA who may have the legal power to write off or forgive penalties and interest. So, the Appellant may get more information about his request to write off the interest charges from the CRA webpage Understanding interest – Canada.ca²⁴

[86] That website states that to make a request for interest relief he may fill out Form RC4288, Request for Taxpayer Relief – Cancel or Waive Penalties or Interest. For more information about relief from penalties or interest and how to submit your request, go to the Taxpayer relief provisions website.²⁵

²² In *Canada Employment Insurance Commission v MA*, 2022 SST 1018, the Appeal Division (AD) of this Tribunal confirmed that a claimant's personal circumstances, such as a medical condition, their ability to pay, or stress, aren't relevant to the Commission's discretionary decision.

²³ See section 56(1)(f)(ii) of the EI Regulations.

²⁴ <https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/corporations/corporation-payments/understanding-interest.html#frqvn>

²⁵ <https://www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/complaints-disputes/taxpayer-relief-provisions.html>

[87] If the Appellant is wanting to negotiate repayment arrangements, he may wish to contact the Canada Revenue Agency (CRA) to discuss repayment options, by calling toll-free 1-800-864-5841.

[88] I acknowledge that this may not be the result the Appellant was seeking. But my decision is not based on fairness or financial hardship. Instead, my decision is based on the facts before me and the application of the EI law. There are no exceptions and no room for discretion. I can't interpret or rewrite the EI Act in a manner that is contrary to its plain meaning, even in the interest of compassion.²⁶

Conclusion

[89] The appeal is dismissed.

Linda Bell
Member, General Division – Employment Insurance Section

²⁶ *Canada (Attorney General) v Knee*, 2011 FCA 301