



Citation: *JB v Canada Employment Insurance Commission*, 2024 SST 1300

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

## Decision

**Appellant:** J. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (665337) dated June 14, 2024 (issued by Service Canada)

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**Tribunal member:** Harkamal Singh

**Type of hearing:** Teleconference

**Hearing date:** September 17, 2024

**Hearing participant:** Appellant

**Decision date:** October 7, 2024

**File number:** GE-24-2792

## Decision

[1] The appeal is dismissed.

## Overview

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

[3] The Appellant was working while on EI benefits. He didn't report some of his earnings on his online reports. And he reported other weeks of his earnings incorrectly.

[4] The Commission reviewed the Appellant's answers about whether he had earnings and decided that he knowingly provided false or misleading information when he didn't report all of his earnings. As a result, it allocated the Appellant's actual earnings to the weeks in which his wages were earned. It also imposed a penalty of \$4,167.

[5] The Appellant doesn't disagree that he provided false or misleading information to Service Canada about his earnings while claiming EI benefits. However, he disagrees with the total amount of debt he has to repay. He testified that when he spoke with a Service Canada agent over the phone, he was informed that he would have to pay back approximately \$5,000 in EI benefits. The next day, when he checked his online Service Canada account, he discovered that the amount had increased to approximately \$20,000. The Appellant is confused about the discrepancy between the amounts and why the debt is higher than what he was initially told.

## Issues

[6] I have to decide the following issues:

- a) Earnings and allocation – did the Appellant receive earnings and, if so, did the Commission allocate the earnings correctly?

- b) Penalty and violation – did the Appellant knowingly make false or misleading statements on his claim reports? If so, did the Commission properly decide the penalty amount? Did it properly decide to impose the violation?

## Analysis

### Earnings and allocation

#### - Did the Appellant receive earnings?

[7] The law says that earnings are the entire income that you get from any employment.<sup>1</sup> The law defines both “income” and “employment.”

[8] **Income** can be anything that you got or will get from an employer or any other person. It doesn’t have to be money, but it often is.<sup>2</sup>

[9] **Employment** is any work that you did or will do under any kind of service or work agreement.<sup>3</sup>

[10] The Commission says the Appellant received earnings in the form of wages for the weeks of November 20, 2022 to December 24, 2022 from X and X, January 29, 2023 to March 11, 2023 from X and May 7, 2023 to June 3, 2023 from Calm Air International LP.<sup>4</sup>

[11] The Appellant doesn't dispute that he worked during these periods.<sup>5</sup>

[12] I find the Appellant received earnings as defined in the law during the weeks identified by the Commission.

#### - Did the Commission allocate the earnings correctly?

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<sup>1</sup> See section 35(2) of the EI Regulations.

<sup>2</sup> See section 35(1) of the EI Regulations.

<sup>3</sup> See section 35(1) of the EI Regulations.

<sup>4</sup> GD3-140-GD3-142

<sup>5</sup> GD3-150 to GD3-152

[13] The law says that earnings have to be allocated to certain weeks. What weeks earnings are allocated to depend on why you received the earnings.<sup>6</sup>

[14] The Appellant received wages from his employers X, X, X and Calm Air International LP.<sup>7</sup>

[15] The Appellant's earnings are income received from his employer for work performed.

[16] There is a section in the law on allocation that applies to earnings that are paid or payable for this reason.<sup>8</sup> Earnings paid as wages are allocated to the weeks that the Appellant worked and earned those wages.

[17] The Commission allocated the Appellant's wages to the weeks he worked for each employer, as reported on the records of employment and employer payroll information.<sup>9</sup>

[18] The Commission has correctly allocated the Appellant's wages to the weeks that he worked.

## **Penalty & Violation**

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

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

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<sup>6</sup> See section 36 of the EI Regulations.

<sup>7</sup> GD3-98 to GD3-99, GD3-104 to GD3-105, GD3-108 to GD3-109, GD3-114 to GD3-115

<sup>8</sup> Section 36(4) of the EI Regulations.

<sup>9</sup> GD3-140-GD3-142

<sup>10</sup> Section 38 of the *Employment Insurance Act*.

[20] It's not enough that the information is false or misleading. The Commission has to show that it is more likely than not the Appellant **knowingly** provided it, **knowing** that it was false or misleading.<sup>11</sup>

[21] If it's clear from the evidence 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 did not do it knowingly.<sup>12</sup>

[22] I do not need to consider whether the Claimant intended to defraud or deceive the Commission when deciding whether he is subject to a penalty.<sup>13</sup>

[23] The Commission may impose a penalty for each false or misleading statement knowingly made by the Appellant.

[24] In addition to the penalty, the Commission also has the discretion to impose a violation.<sup>14</sup> The violation increases the number of hours of insurable employment that the Appellant requires to qualify for benefits.

[25] The Commission says the Appellant made false or misleading statements on 10 claim reports.<sup>15</sup>

[26] The claim reports asked the Appellant to declare the hours that he worked in each claim week, and the earnings before deductions he had in those weeks. The Appellant responded by declaring that he had no work or earnings on his reports from November 20, 2022 to May 27, 2023.<sup>16</sup>

[27] The Commission says that the Appellant knowingly made false or misleading statements with those responses because he was employed and receiving wages

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<sup>11</sup> *Bajwa v Canada*, 2003 FCA 341; the Commission has to prove this on a balance of probabilities, which means it is more likely than not.

<sup>12</sup> *Nangle v Canada (Attorney General)*, 2003 FCA 210.

<sup>13</sup> *Canada (Attorney General) v Miller*, 2002 FCA 24.

<sup>14</sup> Subsection 7.1(4) of the *Employment Insurance Act*; *Gill v Canada (Attorney General)*, 2010 FCA 182.

<sup>15</sup> GD3-137 to GD3-138, GD3-140 to GD3-142

<sup>16</sup> GD3-21 to GD3-90

during those weeks, as shown by the records of employment and payroll information provided by his employers.<sup>17</sup>

[28] The Appellant testified that he was fully aware he was required to report his earnings weekly, but chose not to because he wanted to receive EI benefits. He made a personal decision not to report his earnings even though he knew he should.<sup>18</sup> This implies that he agreed he made misrepresentations on his reports.

[29] I find that the Commission has proven that it is more likely than not that the Appellant knowingly provided false or misleading information. So, it had the right to impose a penalty on the Appellant.

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

[30] The Commission's decision on the penalty amount is discretionary.<sup>19</sup> This means that it is open to the Commission to set it at the amount it thinks is correct. I have to look at how the Commission exercised its discretion. I can only change the penalty amount if I first decide that the Commission did not exercise its discretion properly when it set the amount.<sup>20</sup>

[31] The Commission set the penalty amount after considering that the Appellant failed to report his earnings correctly for 10 claim reports covering 15 weeks of employment.<sup>21</sup>

[32] The Appellant did not argue the penalty amount or whether it was too harsh. He was confused as to the total amount he had to pay back to the Commission. It appears the Appellant was under the impression he only had to pay the penalty amount of

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<sup>17</sup> GD3-98 to GD3-99, GD3-104 to GD3-105, GD3-108 to GD3-109, GD3-114 to GD3-115

<sup>18</sup> (GD3-150 to GD3-153)

<sup>19</sup> *Canada (Attorney General) v Kaur*, 2007 FCA 287.

<sup>20</sup> *Canada (Attorney General) v Kaur*, 2007 FCA 287. The Commission's decision can only be interfered with if it exercised its discretionary power in a non-judicial manner or acted in a perverse or capricious manner without regard to the material before it: *Canada (Attorney General) v Tong*, 2003 FCA 281.

Discretion is exercised in a non-judicial manner if the decision-maker acted in bad faith, or for an improper purpose or motive, took into account an irrelevant factor or ignored a relevant factor or acted in a discriminatory manner: *Attorney General of Canada v Purcell*, A-694-94.

<sup>21</sup> GD3-137 to GD3-138, GD3-140 to GD3-142

\$4,167. However, the Notice of Debt shows two other rows showing overpayments of \$8334 & \$8676, which are included in the debt to be paid back.<sup>22</sup>

[33] These overpayments occurred because the Appellant received EI benefits for weeks in which he also had unreported earnings from his employers. When the Commission discovered the unreported earnings, it allocated those earnings to the weeks the Appellant claimed benefits, which resulted in the Appellant being paid more in benefits than he was entitled to receive. The law requires claimants to repay any EI benefits they receive that they were not entitled to, even if the overpayment was not the result of a deliberate action on their part.

[34] Therefore, in addition to the penalty of \$4,167 for knowingly making false or misleading statements, the Appellant must also repay the overpayments of \$8,334 and \$8,676 because he received those amounts in error due to his failure to report his earnings correctly.

[35] I find the Commission properly exercised its discretion in setting the penalty amount. The amount was calculated according to the Commission's policy of 50% of the overpayment caused by the misrepresentation, which is within the limits set by the law. The Commission considered the relevant factors, such as the number of false statements made by the Appellant and the resulting overpayment, and did not rely on any irrelevant or improper factors in its decision.

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

[36] As with deciding the penalty amount, the decision to impose a violation is also discretionary. So, I must review how the Commission exercised its discretion when it decided to impose a violation. I will take the same approach as I did when I reviewed how it decided the penalty amount.

[37] The Commission imposed a violation after considering that the Appellant had made 10 false or misleading representations about his earnings on his EI reports, and

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<sup>22</sup> GD3-143-GD3-144

the amount of the overpayment caused by the Appellant's failure to correctly report his earnings.<sup>23</sup>

[38] Since the overpayment amount was more than \$5,000, the Commission imposed a very serious violation.<sup>24</sup>

[39] I find that the Commission exercised its discretion properly because it considered all of the relevant factors and didn't rely on any irrelevant factors. This means I cannot disturb the Commission's decision to impose a very serious violation.

## **Conclusion**

[40] The appeal is dismissed.

Harkamal Singh  
Member, General Division – Employment Insurance Section

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<sup>23</sup> GD3-137 to GD3-138, GD3-140 to GD3-142

<sup>24</sup> See *Employment Insurance Act*, section 7.1(5).