



Citation: *PA v Canada Employment Insurance Commission*, 2025 SST 313

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: P. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (709229) dated January 8, 2025
(issued by Service Canada)

Tribunal member: Harkamal Singh

Type of hearing: Teleconference

Hearing date: February 5, 2025

Hearing participants: Appellant

Decision date: February 11, 2025

File number: GE-25-194

Decision

[1] The appeal is dismissed. The Employment Insurance Commission (the Commission) correctly allocated the Appellant's earnings in accordance with sections 35 and 36 of the Employment Insurance Regulations and appropriately exercised its discretion in issuing a warning rather than imposing a monetary penalty for misrepresentation.

Overview

[2] The appellant is appealing the Commission's decision regarding undeclared earnings during his benefit period from March 20, 2022 to July 9, 2022. The Commission discovered through a Record of Employment from X. that the Appellant had failed to report any earnings in eight benefit weeks and underreported his earnings in another eight weeks while receiving Employment Insurance benefits.

[3] The Appellant argues there is a discrepancy between the earnings shown on his Record of Employment and the Commission's allocation of his earnings. He acknowledges making erroneous entries on his reports but maintains he was not intentionally misleading the Commission. The Commission argues that the earnings were correctly allocated based on when they were earned, as shown in the employer's records. While the Commission initially imposed a monetary penalty and violation for misrepresentation, after reconsidering the circumstances - including the Appellant's explanation about his precarious work situation and mental health challenges - it removed both the monetary penalty and violation, replacing them with a warning.

Issues

[4] Did the Commission correctly allocate the Appellant's earnings from X. for the period of March 20, 2022 to July 9, 2022, in accordance with sections 35 and 36 of the Employment Insurance Regulations?

[5] Was the Commission's decision to issue a warning, rather than impose a monetary penalty, appropriate given the circumstances of the Appellant's misrepresentation?

Analysis

[6] The Employment Insurance Regulations outline how earnings must be allocated during benefit periods and what constitutes earnings for Employment Insurance purposes.

Issue 1: Did the Commission correctly allocate the Appellant's earnings from X. for the period of March 20, 2022 to July 9, 2022, in accordance with sections 35 and 36 of the Employment Insurance Regulations?

[7] Under subsection 35(2) of the Employment Insurance Regulations, earnings include "the entire income of a claimant arising out of any employment." Section 36(4) requires that earnings payable to a claimant under a contract of employment be allocated to the period in which the services were performed.

[8] I find that the Commission correctly allocated the Appellant's earnings in accordance with the Regulations.

[9] The Record of Employment (ROE) from X. shows a detailed breakdown of the Appellant's earnings for each pay period from March 20, 2022 to July 9, 2022.¹ While the Appellant argues there is a discrepancy between the earnings shown on his ROE and the Commission's allocation, my review of the documentation reveals that the earnings amounts match exactly. The Commission's records focus specifically on those weeks where earnings were either not reported or underreported, while the ROE shows the complete earnings history.

[10] To illustrate this point more clearly, the Commission's letter dated May 10, 2023 provides a detailed comparison between what the Appellant reported and what he

¹ GD3-14

actually earned.² For example, for the week of March 20, 2022, the Commission's letter shows earnings of \$210.00, which corresponds to the amount of \$210.02 shown in Pay Period #34 on the ROE.³ The Commission rounded the amounts to the nearest dollar in its letter, while the ROE shows the exact amounts including cents. While this rounding may have caused some confusion for the Appellant, the underlying earnings amounts match the ROE precisely. The Commission's letter simply highlights those weeks where there were discrepancies between what was reported and what was earned, rather than listing all earnings for the period in question.

[11] The evidence shows that the Appellant failed to report any earnings in eight benefit weeks and underreported earnings in another eight weeks.⁴ When contacted by the Commission, the Appellant acknowledged that the earnings listed on the Request for Clarification of Employment Information form were correct.⁵

[12] The Appellant's explanation that his employer issued earnings at dates later than when the work was performed does not affect how these earnings should be allocated under the Regulations. Section 36(4) clearly requires that earnings be allocated to the period when the work was performed, not when payment was received. The Commission properly followed this requirement in allocating the earnings to the weeks when the Appellant performed the work.

[13] The amounts shown in Block 15C of the ROE provide an accurate weekly breakdown of the Appellant's earnings, with Pay Period #34 representing earnings from the first day worked (March 24, 2022) and subsequent pay periods showing earnings accumulated in each following week.⁶ These records formed the basis for the Commission's correct allocation of earnings.

² GD3-80

³ GD3-14

⁴ GD3-16 to GD3-75

⁵ GD3-78

⁶ GD3-14

Issue 2: Was the Commission's decision to issue a warning, rather than impose a monetary penalty, appropriate given the circumstances of the Appellant's misrepresentation?

[14] Under section 41.1 of the Employment Insurance Act, the Commission may issue a warning instead of imposing a monetary penalty for misrepresentation. The Commission's decision to issue a warning must be based on a reasonable assessment of the circumstances surrounding the misrepresentation.

[15] I find that the Commission's decision to replace the monetary penalty with a warning was appropriate and reasonable given the circumstances of this case.

[16] The evidence shows that during the Commission's reconsideration process, the Appellant provided important context about his situation. He explained that the reporting discrepancies occurred during a particularly difficult period marked by precarious employment and mental health challenges.⁷ He admitted to making mistakes but emphasized that he had not intentionally provided false information, attributing the discrepancies to confusion caused by inconsistent pay periods and his challenging circumstances.

[17] The Commission initially imposed a monetary penalty of \$2,482 and a violation but, after considering the Appellant's explanation during reconsideration, modified its decision to replace these sanctions with a warning.⁸ This demonstrates that the Commission properly exercised its discretion by taking into account relevant mitigating factors.

[18] The Appellant's candid acknowledgment of his errors, his explanation of the circumstances, and his current financial hardship all support the Commission's decision to issue a warning rather than maintain the monetary penalty. The Commission's approach aligns with the principle that penalties should be proportionate to the circumstances and that mitigating factors should be considered.

⁷ GD3-90 to GD3-91

⁸ GD3-92 to GD3-93

Conclusion

[19] The appeal is dismissed. The Commission correctly allocated the Appellant's earnings and appropriately exercised its discretion in issuing a warning rather than imposing a monetary penalty. Both decisions are consistent with the Employment Insurance Act and its Regulations.

Harkamal Singh
Member, General Division – Employment Insurance Section