



Citation: *LL v Canada Employment Insurance Commission*, 2025 SST 321

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

## **Decision**

**Appellant:** L. L.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (0) dated February 20, 2025  
(issued by Service Canada)

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**Tribunal member:** Gary Conrad

**Type of hearing:** In writing

**Decision date:** March 17, 2025

**File number:** GE-25-599

## Decision

[1] The appeal is allowed.

[2] The Canada Employment Insurance Commission (Commission) did not act judicially when they decided to review the Appellant's claim because they failed to consider relevant factors.

[3] In making the decision the Commission should have made, I find they should not have gone back and reviewed the Appellant's claim.

[4] This means the decision the Appellant was outside of Canada, was not available while outside of Canada, and knowingly made false statements resulting in a penalty and violation, is rescinded.

## Overview

[5] The Commission says they became aware the Appellant was outside of Canada and had not reported it to them.

[6] The Commission made the following decisions: that they could not pay the Appellant benefits for the period they say she was outside Canada; that she was not available for the period they say she was outside Canada; and that she knowingly provided false information, so they imposed a penalty and violation.

[7] The Appellant argues that the Commission made their decision without speaking with her.

## Matter I have to consider first

### Form of hearing

[8] The Appellant asked for her hearing to be conducted in writing.<sup>1</sup>

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<sup>1</sup> GD02-3

[9] So, being mindful of the (non-binding) Appeal Division decisions which state the importance of following the Appellant's choice of hearing,<sup>2</sup> and that a hearing in writing is procedurally fair to an appellant,<sup>3</sup> all reasoning I find persuasive, I proceeded in writing.

## Issues

[10] Can the Commission go back and review the Appellant's claim?

[11] If so, did they do so properly?

[12] If they did the review properly, was the Appellant overpaid benefits?

## Analysis

### Reviewing the claim

[13] The law says the Commission may review a claim for benefits, for any reason, within 36 months after benefits have been paid.<sup>4</sup>

[14] The period of benefits the Commission says in is dispute starts on July 20, 2022, and runs until August 19, 2022.<sup>5</sup>

[15] The Commission's decision they could not pay the Appellant benefits and were levying a penalty was issued on June 19, 2024,<sup>6</sup> and the notice of debt was sent out June 22, 2024.<sup>7</sup>

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<sup>2</sup> *SB v Canada Employment Insurance Commission*, 2024 SST 1145

<sup>3</sup> *WL v Canada Employment Insurance Commission*, 2024 SST 872 at paras 24 and 25.

<sup>4</sup> Section 52(1) of the *Employment Insurance Act*

<sup>5</sup> GD03-35 and GD04-2

<sup>6</sup> GD03-35

<sup>7</sup> GD03-39

[16] According to caselaw, everything, the review, any recalculation on the claim, and notifying the Appellant with a decision and the amount to be repaid, must be done within that 36-month window to allow for a review for any reason.<sup>8</sup>

[17] I find that the Commission is within the 36-month time limit to review a claim for any reason, because there is less than 36 months between July 20, 2022, and June 22, 2024, so they are able to review the Appellant's claim.

### **Properness of the review**

[18] Just because the Commission can go back and do a review, does not mean that is the end of the analysis. They must also make their decision to do a review properly. In the case of EI, properly means "judicially".

[19] For their decision to have been made "judicially" the decision maker (here, the Commission) cannot have 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. Any discretionary decision that is not made "judicially" should be set aside.<sup>9</sup>

[20] The Commission says they obtained information from Canada Border Services Agency (CBSA) that the Appellant was outside of Canada. They say they compared this to the Appellant's claim reports and found the Appellant answered "No" to the question of if she was outside Canada.

[21] The Commission says that the Appellant made false or misleading statements, and they have the authority to review her claim according to the law.<sup>10</sup>

[22] I find the Commission failed to act judicially as they ignored a relevant factor when they made their decision to review the Appellant's claim.

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<sup>8</sup> See *Canada (Attorney General) v LaForest*, A-607-87 and *Briere v Canada (Attorney General)*, A-637-86

<sup>9</sup> *Canada (Attorney General) v Purcell*, 1 FCR 644

<sup>10</sup> RGD04

[23] The Commission's Digest of Benefit Entitlement Principles (Digest) section 17.3.3 Reconsideration Policy states that a review will only be performed if:

- benefits have been underpaid
- benefits were paid contrary to the structure of the *Employment Insurance Act*
- 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<sup>11</sup>

[24] The Commission has never argued, nor is there any evidence, that benefits were underpaid to the Appellant. They have never argued the Appellant ought to have known she was not entitled to benefits.

[25] Being outside Canada and periods of non-availability, are clearly stated in the Digest as things that are not considered contrary to the structure of the *Employment Insurance Act (Act)*.<sup>12</sup>

[26] This leaves the reason of benefits being paid for a false or misleading statement. The Digest says that if a false or misleading statement is involved then a claim can be reviewed for issues that are not related to the structure of the Act.

[27] The Commission argues that the Appellant was outside Canada from July 20, 2022, to August 19, 2022, and never told them this. They say this means she made false statements when she said she was available for work and when she said she was not outside Canada on her claim reports.<sup>13</sup>

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<sup>11</sup> [https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/digest/chapter-17/reconsideration.html#a17\\_3\\_3](https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/digest/chapter-17/reconsideration.html#a17_3_3)

<sup>12</sup> [https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/digest/chapter-17/reconsideration.html#a17\\_3\\_3](https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/reports/digest/chapter-17/reconsideration.html#a17_3_3) Scroll down to 17.3.3.2 Contrary to the structure of the act

<sup>13</sup> GD04-6

[28] I find that the Commission has not shown, on a balance of probabilities, that any false or misleading statement was ever made.

[29] According to the Commission, the basis for their belief that false or misleading statements were made about the Appellant being available for work and not being outside Canada, is that according to CBSA, the Appellant was outside of Canada from 20 July 2022 to 19 August 2022.<sup>14</sup>

[30] However, the Commission has not provided the evidence to support this statement.

[31] The Appellant cannot be asked to prove a negative fact, that she did not travel outside of Canada from July 20, 2022, to August 19, 2022.<sup>15</sup> Also, I do not see any agreement from the Appellant that she was ever outside the country.

[32] Further, if the Commission did get information from CBSA, then that evidence of the Appellant's travel outside the country was available to them,<sup>16</sup> so they could have supplied it.

[33] As the Federal Court of Appeal has stated, the Commission is required to produce some evidence of their claims, not just merely assert,<sup>17</sup> that the Appellant was outside of Canada from July 20, 2022, to August 19, 2022. They have failed to do this.

[34] Since the evidence to support the Appellant was outside the country was not provided by the Commission (their assertions not being sufficient) this means they have not shown the Appellant made false or misleading statements.

[35] That means, without false or misleading statements, going back to review a claim to look at availability or to see if someone was outside Canada, is something their Digest says they will not do.

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<sup>14</sup> GD04-3

<sup>15</sup> *Canada (Attorney General) v Terrion*, 2013 FCA 97 at para 16.

<sup>16</sup> See GD04-3 second paragraph under point 1).

<sup>17</sup> *Canada (Attorney General) v Terrion*, 2013 FCA 97 at para 16.

[36] Since the Commission did not follow their Digest, this means they ignored a relevant factor, so they did not act judicially, so I will give the decision the Commission should have given.<sup>18</sup>

### **The decision the Commission should have given**

[37] In making the decision the Commission should have given, I find the Appellant's claim should not have been reviewed.

[38] Taking into considering the Commission's own Digest, since the evidence does not support the Appellant made false or misleading statements, there is no evidence she was underpaid, and no one has argued she ought to have been aware she was not entitled to benefits, only something against the structure of the Act would result in a review.

[39] As being outside Canada and periods of non-availability are clearly stated in the Digest as things that are not considered contrary to the structure of the, there is no cause to review the Appellant's claim.

[40] This means the decision the Appellant was outside of Canada, was not available while outside of Canada, and knowingly made false statements resulting in a penalty, is rescinded.

### **Conclusion**

[41] The appeal is allowed.

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<sup>18</sup> I can do this pursuant to section 54(1) of the *Department of Employment and Social Development Act*.

[42] The Commission failed to act judicially when they decided to review the Appellant's claim. This means I can make the decision they should have made. In making this decision I find the Appellant's claim should not be reviewed.

[43] This means the decision the Appellant was outside of Canada, was not available while outside of Canada, and knowingly made false statements resulting in a penalty and violation, is rescinded.

Gary Conrad

Member, General Division – Employment Insurance Section