Citation: *SF v Canada Employment Insurance Commission*, 2024 SST 1714

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	S. F.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (665796) dated June 28, 2024 (issued by Service Canada)

Tribunal member:	Nathalie Léger
Type of hearing:	Teleconference
Hearing date:	November 25, 2024
Hearing participant:	Appellant
Decision date:	December 16, 2024
File number:	GE-24-3561

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant had a benefit period established for sickness benefits as of April 3, 2022. She had a second benefit period established as of April 2, 2023.

[3] An initial calculation was made by the Commission from the records of employment (ROE) on file, establishing the Appellant's weekly benefit rate at $650.

[4] Unfortunately, it was later found that the earnings from a ROE not belonging to the Appellant had incorrectly been included in the initial calculation. The Commission recalculated the Appellant's weekly benefit rate and established it at $367.

[5] This created a $7,358 overpayment. The Appellant asked for the reconsideration of this overpayment, saying she should not be made to pay for the Commission's error. The Commission not only confirmed its decision, but it also refused to waive the debt because the calculation of the benefit rate goes to the structure of the Employment Insurance Act (Act).

[6] I have to decide if the Commission's decision is correct.

Issues

[7] Was the weekly benefit rate calculated correctly?

[8] Is the Appellant required to repay the overpayment of EI benefits?

Analysis

[9] The weekly benefit rate is the maximum amount a claimant can receive for each week in the benefit period. The basic benefit rate is 55% of the average weekly insurable earnings.[1]

[10] Generally, the benefit rate is calculated using a variable number of the best weeks of insurable earnings received in the qualifying period.[2] The notion of "insurable earnings" is defined in the Regulations.[3] For the present case, it is sufficient to say that to be considered insurable earnings, the earnings must have been paid to the claimant.

[11] In the case at hand, the Commission incorrectly added earnings from a ROE that did not belong to the Appellant to those that were earned by her.[4] It had for the effect of nearly doubling her earnings, which in turn meant that her weekly benefit rate was calculated at a much higher rate ($650) than what it should have been ($367).[5] It also reduced the amount of benefit weeks the Appellant was entitled to receive.

[12] The recalculation of the weekly benefit rate and the reduction in the number of weeks of benefit to which the Appellant was entitled had the effect of creating a $7,358 overpayment.[6]

[13] The Appellant does not contest that the earnings from the ROE that does not belong to her should not have been added to her insurable earnings.[7] She does not contest that the Commission made a mistake.

[14] But she says that she was not the one responsible for the mistake and therefore should not be held responsible for the overpayment.[8] Also, she says that she is now receiving disability benefits and does not have the capacity to repay this amount.

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[1] See section 14 of the *Employment Insurance Act*.
[2] See section 8(1) and 14(2) of the *Employment Insurance Act.*
[3] See section 2 of the *Insurable Earnings and Collection of Premiums Regulations*.
[4] See GD9-4.
[5] See GD3-33 to 36.
[6] See GD3-39.
[7] See GD3-44.
[8] See GD3-42.

[15] This is truly an unfortunate situation. I recognize that the Commission's error has created a large overpayment and additional stress and confusion for the Appellant.

[16] The Commission conducted its assessment in accordance with the law, so the overpayment is valid. I don't have any authority to waive the overpayment.[9] That authority rests with the Commission.

[17] Furthermore, the Commission has already considered the possibility of writing off the overpayment or a portion thereof but decided that it could not because the error went against the structure of the Act.[10]

[18] I sympathize with the Appellant given the circumstances she presented. However, as explained during the hearing, 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 law. There are no exceptions and no room for discretion. I can't interpret or rewrite the Act in a manner that is contrary to its plain meaning, even in the interest of compassion.[11]

Conclusion

[19] The appeal is dismissed.

Nathalie Léger

Member, General Division – Employment Insurance Section

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[9] See sections 112.1 and 113 of the *Employment Insurance Act*.
[10] See GD9-2.
[11] See the following decisions: *Wegener* v *Canada (Attorney General)*, 2011 FC 137; *Pannu* v *Canada (Attorney General)*, 2004 FCA 90, *Canada (Attorney General)* v *Hamm*, 2011 CAF 205, *Pike* v *Canada (Attorney General)*, 2019 FC 135.