



Citation: *AC v Canada Employment Insurance Commission*, 2025 SST 807

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: A. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (672891) dated October 17, 2024
(issued by Service Canada)

Tribunal member: Ambrosia Varaschin

Type of hearing: In person

Hearing date: March 25, 2025

Hearing participants: Appellant
Interpreter

Decision date: April 2, 2025

File number: GE-24-3744

Decision

[1] The appeal is allowed.

[2] The Canada Employment Insurance Commission (Commission) didn't exercise its discretion judicially when deciding to reconsider the Appellant's claim. So, it cannot go back and reconsider its decision.

Overview

[3] The Appellant got \$(X) from her former employer. The Commission decided that the money is "earnings" under the law because it is severance pay/vacation pay/severance pay and vacation pay.

[4] The law says that all earnings have to be allocated to certain weeks. What weeks earnings are allocated to depends on why you received the earnings.¹

[5] The Commission allocated the earnings starting the week of (date) at an amount of \$(X) per week. This is the week that the Commission said that the Appellant was laid off/separated from her employment. The Commission said that being laid off/separated from her job is why the Appellant received the earnings.

[6] The Appellant disagrees with the Commission. The Appellant says that the money isn't earnings/not all of the money is earnings because ... (explain this in one or two sentences maximum).

[7] The Appellant also says that the Commission didn't allocate the earnings correctly because ... (explain this in one or two sentences maximum).

Matter I have to consider first

Can the Commission reconsider the claim?

[8] I find that the Commission failed to use its discretionary power to reconsider the Appellant's claim judiciously because it violated its own reconsideration policy. This

¹ See section 36 of the *Employment Insurance Regulations* (EI Regulations).

means I have the power to decide whether or not the Commission can reconsider the Appellant's claim for benefits.

[9] The Appellant argues that it is unfair that the Commission repeatedly changed its decisions on her claim when she did her utmost to comply with the law. She says it is not her fault that her employer submitted multiple incorrect Records of Employment (ROEs) or that the Commission incorrectly administered her benefits. She says that the Commission treated her terribly because she has limited English language skills, going so far as to hang up on her when she became confused because she was being told many different things and received wildly different notices of debt.

[10] The Appellant also stated that even though her claim was promptly reconsidered and then appealed, the Commission did not freeze her overpayment like it is supposed to while the overpayment is under review. As a result, the Canada Revenue Agency has been withholding her benefit payments and tax refunds. This also means that interest has been accruing since the Notice of Debt was issued.

[11] The *Employment Insurance Act* (EI Act) says the Commission **may** reconsider any claim for benefits within 36 months of them being paid, or 72 months if it is of the opinion that false or misleading statements were made.² This is called a discretionary power. The Commission must use this power fairly. In legal terms, this means the Commission must exercise its discretion judicially.³

[12] I must respect the Commission's discretionary power. Usually, this means that I can't change the Commission's decision even if I disagree with it. But, if the Commission didn't "exercise its discretion judicially" (in other words, make its decision fairly), then I can decide that the Commission can't reconsider its original decision.

² See section 52 of the EI Act.

³ See *T-Giorgis v Canada (Attorney General)*, 2024 FCA 47; *Puig v Canada (Attorney General)*, 2024 FCA 48; and *Molchan v Canada (Attorney General)*, 2024 FCA 46.

[13] So, I asked the Commission to explain why it reconsidered its original decision, and subsequent decisions, and how that decision was made judicially. I also asked it to explain why the Appellant's debt was not frozen.⁴

[14] The Commission says that it made an error when it failed to freeze all of the Appellant's overpayment, and that it acted to suspend the debt immediately. It did not, however, state that it contacted the CRA to issue the Appellant her tax refunds and benefit payments that were improperly withheld from her. It also didn't say it took the required step to remove all interest that had accrued improperly while the debt should have been seized. If, for some reason, this overpayment is reinstated, the Commission must amend the interest amounts to reflect the periods the debt should have been frozen but was not.

[15] I understand that **this error has caused significant financial hardship upon the Appellant, as she relies on her benefit payments and tax refunds to get by.** Unfortunately, I have no power to provide a remedy to the Appellant other than to chastise the Commission for its oversight. I recommend that she contact the Office of Client Satisfaction to submit a complaint about the inexcusable treatment she received from Service Canada and the Commission, in addition to failing to freeze debt payments.

[16] To ensure a consistent and fair application of Section 52 of the EI Act, the Commission developed a *Reconsideration Policy*. It says that the Commission will only reconsider claims where:

- Benefits have been underpaid.
- Benefits were paid contrary to the structure of the EI 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.⁵

⁴ See GD12.

⁵ See 17.3.3 of the *Digest of Benefit Entitlement Principles* (Digest).

[17] The Commission knew that it did not exercise its discretion judicially when it reconsidered the Appellant's claim in November 2023:

In this case, there was no underpayment, earnings issue is not a structure of the Act, benefits were not paid because of a false or misleading statement, and the did not know there was no entitlement to the benefits received. Therefore, the Reconsideration Policy was not applied to this case correctly.

As per the Policy, the revised earnings should be allocated to begin in the week the recalculation was done, that is, the week of September 3-16, 2023. The original allocation period, March 26, 2023 to July 22, 2023 will be reinstated.⁶

And yet, the Commission continued to break its policy when it reviewed the Appellant's claim in December 2023, January 2024, February 2024, March 2024, and April 2024. The Commission maintained its own policy violation throughout June, August, September and October 2024.

[18] The Commission admits "that the Reconsideration Policy under Section 52 was applied incorrectly."⁷ But, it argues that the Appellant's earnings still need to be allocated, and any overpayments must be repaid.

[19] I disagree.

[20] The Supreme Court of Canada has decided that the Commission's policies are relevant to its decision to reconsider as a way to ensure fairness and uniformity in exercising its discretion judicially.⁸ And, while not bound by the decisions of the Appeal Division, I do agree with the application of this decision in *MS v Canada Employment Insurance Commission*.⁹

[21] I also note that in *CJ v Canada Employment Insurance Commission*, a case with near identical facts to this appeal, the Commission conceded that the General Division failed to exercise its jurisdiction when it didn't consider whether or not the Commission should have reconsidered the claimant's benefits.¹⁰ The Appeal Division found that the

⁶ See GD13-4.

⁷ See GD13-1

⁸ See *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 699 SCC 2 SCR 817.

⁹ See *MS v Canada Employment Insurance Commission*, 2022 SST 933 at paras 41-43.

¹⁰ See *CJ v Canada Employment Insurance Commission*, 2024 SST 484.

Commission did not exercise its discretion judicially, and therefore could not reconsider the claim.

[22] Since the Commission violated its own reconsideration policy when it reviewed the Appellant's claim, the result of multiple reconsiderations is null and void because they had no right to reconsider her claim in the first place. To quote the Commission, "in this case, there was no underpayment, earnings issue is not a structure of the Act, benefits were not paid because of a false or misleading statement, and the claimant did not know there was no entitlement to the benefits received." So, the Commission cannot reconsider the Appellant's claim.

[23] Since I have found that the Commission cannot reconsider the Appellant's claim, I don't need to consider whether or not she had earnings, or how they should be allocated.

Conclusion

[24] The appeal is allowed.

[25] The Commission did not exercise its discretion fairly, so I have stepped into its shoes and determined it cannot reconsider the Appellant's claim.

Ambrosia Varaschin
Member, General Division – Employment Insurance Section