

Federal Court



Cour fédérale

Date: 20210216

Docket: T-857-20

Citation: 2021 FC 150

[ENGLISH TRANSLATION]

Ottawa, Ontario, February 16, 2021

Present: The Honourable Mr. Justice Shore

BETWEEN:

GABRIELLE MARTINEAU

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

[1] This is an application for the judicial review of a Canada Employment Insurance Commission decision rendered on July 6, 2020, in which it refused to write off an employment insurance overpayment.

[2] The applicant has been an employment insurance claimant receiving sickness benefits since the fall of 2018. In 2019, after renewing her benefit application, she suspected an error had

been made and began a follow-up process with the Commission. It turns out that a record of employment was erroneously applied to her file in September 2019, impacting the calculation of her rate of benefits for the 2018 periods, retroactively, and for the 2019 periods.

[3] Between January and February 2020, the Commission advised the applicant that the benefit rate should indeed have been lower and that the overpaid amounts would have to be reimbursed. It then refused the application to write off the overpayment on the ground that the amounts had been received in the preceding 12 months. The following month, the Commission informed the applicant that it did not have the necessary powers to rule on the refusal to write off the overpayment.

[4] On July 16, 2020, the Commission elaborated on this by sending a notice of decision that under the *Employment Insurance Regulations*, SOR/96-332 [Regulations], ss 56(1)(e), 56(2), she could not write off the amount owing because, even though the overpayment was caused by a delay or error on their part, the applicant had been advised of the excess payment within 12 months.

[5] This judicial review addresses the reasonableness of the Commission's findings. A "reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at para 85).

[6] The applicant is asking this Court to order the Commission to present her with an apology letter and to write off the overpayment because she submits that she is not responsible for the error, that she did everything she could to inform the authorities involved and that the Commission was slow to take action to correct this error. No error of law or breach of a principle of natural justice was raised.

[7] The *Employment Insurance Act*, SC 1996, c 23, states that benefits to which the debtor was not entitled constitute a debt to Her Majesty and must be reimbursed.

[8] However, under paragraph 56(1)(e) of the Regulations, the Commission may write off an amount if the overpayment does not arise from an error made by the debtor, but is a result of a retrospective decision by the Commission in relation to the non-insurability of an employment or benefits received as a participant in a job creation program. The amount may also be written off under subsection 2 if it relates to benefits received more than 12 months before the debtor is informed.

[9] The formula in the section cited above therefore requires certain conditions to be met before the Commission can exercise its discretion.

[10] In this case, the applicant noted that she was not entitled to the overpayment that resulted from a retrospective decision on special sickness benefits. She was also informed of the overpayment and the obligation to repay this amount within 12 months.

[11] The circumstances in this case do not allow the Commission to exercise its discretion to write off the overpayment, despite the fact the applicant was acting in good faith (see *Girard v Canada (Attorney General)*, 2004 FC 882 at paras 24–26).

[12] While it is unfortunate that this situation caused such anxiety, the Court cannot intervene in the Commission's decision, as it was justified in relation to the facts and law that constrained the decision maker.

[13] For the reasons above, the Court dismisses the application for judicial review, without costs considering the factual timeline, despite the applicant's good faith.

JUDGMENT in T-857-20

THIS COURT'S JUDGMENT is that the application for judicial review be dismissed without costs.

Obiter

Considering the errors that were made inadvertently, the Court suggests that the applicant be given the opportunity to repay the amount in question in instalments as accepted by both parties.

“Michel M.J. Shore”

Judge

Certified true translation
Michael Palles, Reviser

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-857-20

STYLE OF CAUSE: GABRIELLE MARTINEAU v ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: CASE HEARD BY VIDEOCONFERENCE IN
MONTRÉAL, QUEBEC

DATE OF HEARING: JANUARY 28, 2021

**JUDGMENT AND REASONS
BY:** SHORE J.

DATED: FEBRUARY 16, 2021

APPEARANCES:

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FOR THE APPLICANT
(SELF-REPRESENTED)

Chantal Labonté

FOR THE RESPONDENT

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