



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *Canada Employment Insurance Commission v. S. D.*, 2016 SSTADEI 326

Tribunal File Number: AD-15-45

BETWEEN:

**Canada Employment Insurance Commission**

Appellant

and

**S. D.**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Appeal Decision**

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DECISION BY: Pierre Lafontaine

HEARING DATE: June 23, 2016

DATE OF DECISION: June 23, 2016

## REASONS AND DECISIONS

### DECISION

[1] The Tribunal allows the appeal and sets aside the decision of the General Division to reduce the Respondent's overpayment by \$351.00.

### INTRODUCTION

[2] On January 15, 2015, the General Division of the Tribunal found that:

The allocation of earnings was performed with modifications in accordance with sections 35 and 36 of the *Employment Insurance Regulations* (the “*Regulations*”).

[3] The Appellant requested leave to appeal to the Appeal Division on February 5, 2015. The Tribunal wishes to point out that the General Division’s decision concerns seventeen (17) claimants, but that the Appellant requested leave to appeal in the Respondent's case only (GE-14-1288). Leave to appeal was granted on July 13, 2015.

### ISSUE

[4] The Tribunal must decide whether the General Division erred in finding that the earnings had been allocated with modifications in accordance with sections 35 and 36 of the *Regulations*.

### THE LAW

[5] Under subsection 58(1) of the *Department of Employment and Social Development Act*, the only grounds of appeal are that:

- a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) the General Division erred in law in making its decision or order, whether or not the error appears on the face of the record; or

- c) the General Division based its decision or order on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

## **ANALYSIS**

[6] On January 15, 2015, the General Division found that the monies paid to the Respondent constituted earnings, and it dismissed her appeal on the question of allocation. However, the General Division reduced the Respondent's overpayment by \$351.00

[7] The Appellant argues that the General Division erred when it found there had been no overpayment of \$351.00 for the week of November 4, 2012. It contends that all earnings, including vacation pay or severance pay, allocated during the two-week waiting period must be deducted, pursuant to s. 19(1) of the *Employment Insurance Act* (the “*Act*”), in the first three weeks for which benefits are otherwise payable.

[8] The Appellant states that the Respondent, as shown in Table GD11, received \$368.00 in the week starting October 21, 2012. Section 19(1) of the *Act* provides that all earnings received during the waiting period must be deducted from the benefits payable for the first three weeks for which benefits are otherwise payable. Since the first week for which benefits would otherwise have been payable is the week starting November 4, 2012, the \$368.00 in earnings received during the waiting period had to be deducted. At a rate of benefit of \$351.00, the maximum amount deductible under s. 39 of the *Regulations* amounted to \$351.00, which explains the \$351.00 overpayment for the week starting on November 4, 2012.

[9] The Respondent does not dispute the Appellant’s calculations, and even took steps to repay the overpayment (Exhibit AD3-1-2)

[10] Having regard to the arguments in support of the Appellant’s appeal and to the Respondent’s position, and after reviewing the file, the Tribunal agrees that the appeal should be allowed. The General Division obviously erred when it reduced the Respondent's overpayment by \$351.00.

## **CONCLUSION**

[11] The Tribunal allows the appeal and sets aside the decision of the General Division to reduce the Respondent's overpayment by \$351.00.

*Pierre Lafontaine*

Member, Appeal Division