



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. C. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 6

Tribunal File Number: GE-16-2801

BETWEEN:

**R. C.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Teresa Jaenen

HEARD ON: January 3, 2017

DATE OF DECISION: January 13, 2017

## **REASONS AND DECISION**

### **PERSONS IN ATTENDANCE**

Mr. R. C., the Appellant (claimant) attended the teleconference hearing.

Ms. A. K. observed the hearing.

### **INTRODUCTION**

[1] On April 5, 2015 the Appellant made an application for employment insurance benefits. On December 11, 2015 following an investigation the Canada Employment Insurance Commission (Commission) adjusted the Appellant's claim and allocated earnings he failed to report. On December 14, 2015 the Appellant made a request for reconsideration. On June 27, 2016 the Commission maintained the original decision. On July 11, 2016 the Appellant appealed that decision to the *Social Security Tribunal of Canada* (Tribunal).

[2] The hearing was held by Teleconference for the following reasons:

- a) The fact that the credibility is not anticipated to be a prevailing issue.
- b) The fact that the appellant will be the only party in attendance.
- c) The information in the file, including the need for additional information.
- d) The form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

### **ISSUE**

[3] The Tribunal must decide whether the monies the Appellant received constitute earnings pursuant to section 35 of the *Employment Insurance Regulations* (Regulations) and if the monies were allocated in accordance with subsection 36 of the Regulations.

## **EVIDENCE**

[4] On November 20, 2015 the Commission contacted the employer who stated the Appellant started on May 6, 2015 and he works two days a week, Tuesday and Wednesday, 7 hours a day, 14 hours per week. The Appellant was earning \$24.16 per hour with 4% vacation pay. The employer stated that week of October 4, 2015 the Appellant received a raise and was earning \$26.00 per hour with 4% vacation pay. The Commission calculated for the weeks of May 3, 2015 the Appellant earned \$351.78 per week and for the weeks from October 4, 2015 to November 21, 2015 he earned \$378.56 per week. The employer confirmed these calculations were correct (GD3-11).

[5] On November 24, 2015 the Commission notified the Appellant to contact them no later than December 8, 2015 (GD3-12).

[6] On December 2, 2015 the Appellant attended the Service Canada office. The Commission explained to the Appellant that multiple errors had been discovered when he completed his reports and that he was declaring his hourly wage instead of his gross earnings for each week. The Appellant stated he was not aware that he was incorrectly reporting his earnings and he must have misunderstood the question. The Commission noted that he Appellant had correctly reported his hours and stated he understood the question. The Appellant stated he didn't pay attention to this bank account or what he was paid. The Commission stated they had reviewed the Appellant's earnings with the employer who confirmed the calculations. The Commission explained that the earnings will have to be corrected and this will result in an overpayment of \$4100.00. The Commission explained he will receive a notice of debt and advised him to declare the amount of \$379.00 on his reports and not \$25.00 as he had been (GD3-13 to GD3-14).

[7] On December 11, 2015 the Commission notified the Appellant that earnings had been adjusted on his claim and issued a notice of debt (GD3-15 to GD3-17).

[8] On April 12, 2016 the Appellant made a request for reconsideration stating that because it was EI's mistake he should not be penalized (GD3-18 to GD3-20).

[9] On June 26, 2016 the Commission contacted the Appellant who stated he would like the overpayment reconsidered. He stated he made mistakes on his reports and when they were corrected it resulted in a large overpayment. He stated he declared he number of hours worked and his hourly rate. He stated since it was an honest mistake he doesn't feel that he should have to repay the money he owes (GD3-21).

[10] On June 27, 2016 the Commission notified the Appellant they were maintaining the original decision and advised him of his right to appeal to the Tribunal (GD3-22 to GD3-24).

[11] On July 11, 2016 the Appellant filed a Notice of Appeal stating that he filed his reports on time and why did Service Canada wait until the end when the suddenly found out that they had overpaid him. He stated Service Canada overpaid him and why should he be penalized because they didn't correct the mistakes right away. Service Canada said it was an honest mistake (GD2-1 to GD2-9).

#### **EVIDENCE AT THE HEARING**

[12] The Appellant stated he has changed his address to Apt X, X X X, X, Manitoba, X X.

[13] The Appellant stated he started drawing EI on May 3, 2015 and he made his reports on time but the problem was he was claiming 25 hours and instead of putting in \$352.00 he was putting \$25.00. He stated he made the error right off the bat.

[14] The Appellant stated he is appealing because he didn't know how to fill out the reports and Service Canada was helping him fill out his reports at the Service Canada in The Pas.

[15] The Appellant stated that all of a sudden Service Canada picked it up and that he owed about \$3000.00 but he doesn't know why Service Canada didn't pick it up right away. He thought Service Canada would pick it up.

[16] The Appellant stated he is confused because Service Canada was helping him fill out his reports so they were the ones who were making the mistakes this is why he is appealing.

[17] The Appellant agreed that the reports do ask how many hours worked and the amount of the earnings and he guessed he was only inserting the hours, he didn't realize he was making a

mistake and he wants to know how come Service Canada didn't pick it up because they were helping him in The Pas.

[18] The Appellant stated in (GD3-15 to GD3-16) this is where he made the mistake because he was putting in 25 hours. The Tribunal asked the Appellant why he would have thought he was putting in 25 hours when he was only working 14 hours. He stated this was confusing as he was working 14 hours per week but that would be 28 hours. He stated Service Canada was helping him and they didn't pick it up and he is sure if they had of they would have caught it. He stated he believed he was doing everything right.

[19] The Appellant stated Service Canada said he made an honest mistake and why didn't Service Canada pick it up.

[20] The Appellant stated he made the reports on time, there was an error on his reports and Service Canada didn't pick it up until near the end of his claim. He stated he is in a jam and he doesn't have the money to pay it back.

[21] The Appellant stated he doesn't feel he should have to repay it. This is going to create a hardship for him and he would like to make an agreement.

## **SUBMISSIONS**

[22] The Appellant submitted that:

- a) He made an honest mistake when he made his reports and put in the hours he worked instead of his earnings;
- b) Service Canada was helping him and nobody picked up the mistake;
- c) Service Canada didn't pick up the mistake until near the end of claim and he doesn't believe he should have to repay the money; and
- d) Repaying the money will cause him hardship and he would like to make some type of agreement with the Tribunal before it renders a decision.

[23] The Respondent submitted that:

- a) The Appellant received money from his employer as wages which constitutes earnings pursuant to subsection 35(2) of the Regulations because the payment was made to compensate the Appellant for the performance of work;
- b) The monies were allocated in accordance subsection 36(4) of the Regulations to the weeks in which the services were performed; and
- c) The Commission argues the amendment of the weeks starting May 3, 2015 through to the week starting November 15, 2015 to include the Appellant's correct earnings was not a mistake made by the Commission. The Appellant had an obligation to correctly report his earnings and the Commission accepts that while he made an honest mistake it is nonetheless a mistake that must be corrected.

## **ANALYSIS**

[24] The relevant legislative provisions are reproduced in the Annex to this decision.

[25] The Tribunal must determine, in accordance with section 35(2) of the Regulations if the monies received for wages are earnings and if they were allocated pursuant to section 36(4) of the Regulations.

[26] The Tribunal finds the evidence on the file for the weeks of May 3, 2015 the Appellant earned \$351.78 per week and for the weeks from October 4, 2015 to November 21, 2015 he earned \$378.56 per week. The evidence supports that during these weeks of entitlement the Appellant declared earnings of \$25.00 per week.

[27] In this case there is no dispute that the monies the Appellant received were for wages and this information was substantiated by the Appellant and the employer the monies were received to the weeks the services were performed.

[28] The Tribunal finds that in accordance to section 35(2) of the Regulations that wages paid to the Appellant from the employer constitute earnings. As it is earnings, it must be

allocated to when those services are performed pursuant to subsection 36(4) of the Regulations (*Doblej v. Canada (AG)*, 2004 FCA 19 (CanLII)).

[29] The Appellant presents the argument that he made an honest mistake when he made his reports and put in the hours he worked instead of his earnings. He argues that Service Canada was helping him and nobody picked up the mistake. Service Canada didn't pick up the mistake until near the end of claim and he doesn't believe he should have to repay the money.

[30] The Respondent presents the argument that the amendment of the weeks starting May 3, 2015 through to the week starting November 15, 2015 to include the Appellant's correct earnings was not a mistake made by the Commission. The Appellant had an obligation to correctly report his earnings and the Commission accepts that while he made an honest mistake it is nonetheless a mistake that must be corrected.

[31] The Tribunal finds it unfortunate and sympathies with the Appellant's situation, however he was responsible to provide the correct information when he filed his reports, and provide the correct information in the event that he obtained assistance from a Service Canada agent.

[32] The Tribunal finds from the Appellant's oral evidence that he confirmed the questions asked when he made his report were how many hours worked and the amount of the earnings and he reported he didn't understand and he put hours in the earnings section. The Tribunal finds the Appellant did not provide any evidence to support that there was anything that prevented him from asking for assistance to understand the question.

[33] The Tribunal finds there is no evidence to support that the Appellant was provided with any incorrect information from Service Canada and that they would only be able to assist him with the information he provided.

[34] The Tribunal relies on CUB 27239A where Umpire J. Reed stated:

*I recognize that the CEIC officials are often in a difficult position. If advice is sought from them and they do not give it, they are criticized for not being helpful. If advice is sought and they give it, is possible that they do so on the basis of one side of the story only, or without fully understanding all the ramifications of the facts they are told.*

*There should be some way of formalizing and documenting request for advice and the answers so given so that if misinformation is given the claimants are not disadvantaged thereby. As it stands now, however, Umpires have no jurisdiction to take such misinformation into account when they hear appeals (Granger v. C.E.I.C) A-684-85.*

[35] The Tribunal finds as the Appellant had been paid EI benefits for the weeks beginning May 3, 2015 to the week of November 15, 2015 which he incorrectly declared his earnings which created an overpayment and benefits he was not entitled to which have to be repaid.

[36] The Appellant repeatedly argued that Service Canada didn't pick up his mistake, however the Tribunal finds since he received the money, and since he was not entitled to it, Service Canada's failure to pick up his mistakes do not excuse him from having to repay it. The Federal Court of Appeal is clear on that point (*Lanuzo v. Canada (AG)*, 2005 CAF 324 (CanLII))

[37] The Appellant presents the argument that repaying the money will cause him hardship and he would like to make some type of agreement with the Tribunal before it renders a decision.

[38] The Tribunal has no authority under the Act and its Regulations to grant a write-off or to agree to an arrangement, since this authority rests solely with the Respondent. The Tribunal can only recommend to the Appellant to address his written request directly to the Respondent, pursuant to Regulation 56, so that a decision is rendered by the Respondent on the issue of write-off.



[39] The Tribunal relies on (*Michel Villeneuve* (2005 FCA 440 (CanLII) – A-191-05) where Justice Gilles Létourneau of the Court stated as follows:

“Finally, it is not necessary to elaborate on the issue at length, but forgiving, writing off or extinguishing a debt are not powers within the jurisdiction of an umpire sitting on a claimant's appeal against a decision by a board of referees upholding the Commission's allocation of the earnings: Other decisions were rendered by the Court to the effect that the Tribunal is not able to rule on the matter of writing off an overpayment (*Mugette, Filiatrault*, A-874-97; *Gladis H. Romero*, A-815-96; and *Jean -Roch Gagnon*, A-676-96).

[40] In this case the Tribunal sympathies with the Appellant's situation and his inability to repay the monies; however the Tribunal is bound by the legislation and therefore cannot alter the provisions to exempt the Appellant from the requirements of the Act.

[41] The Tribunal relies on (*Canada (AG) v. Knee*, 2011 FCA 301 (CanLII)) where the Courts reaffirmed the principle whereby adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.

## **CONCLUSION**

[42] The appeal is dismissed.

Teresa Jaenen  
Member, General Division - Employment Insurance Section

## ANNEX

### THE LAW

**35 (1)** The definitions in this subsection apply in this section.

**employment** means

(a) any employment, whether insurable, not insurable or excluded employment, under any express or implied contract of service or other contract of employment,

(i) whether or not services are or will be provided by a claimant to any other person, and

(ii) whether or not income received by the claimant is from a person other than the person to whom services are or will be provided;

(b) any self-employment, whether on the claimant's own account or in partnership or co-adventure; and

(c) the tenure of an office as defined in subsection 2(1) of the *Canada Pension Plan*. (*emploi*)

**income** means any pecuniary or non-pecuniary income that is or will be received by a claimant from an employer or any other person, including a trustee in bankruptcy. (*revenu*)

**pension** means a retirement pension

(a) arising out of employment or out of service in any armed forces or in a police force;

(b) under the *Canada Pension Plan*; or

(c) under a provincial pension plan. (*pension*)

**self-employed person** has the same meaning as in subsection 30(5). (*travailleur indépendant*)

(2) Subject to the other provisions of this section, the earnings to be taken into account for the purpose of determining whether an interruption of earnings under section 14 has occurred and the amount to be deducted from benefits payable under section 19, subsection 21(3), 22(5), 152.03(3) or 152.04(4) or section 152.18 of the Act, and to be taken into account for the purposes of sections 45 and 46 of the Act, are the entire income of a claimant arising out of any employment, including

(a) amounts payable to a claimant in respect of wages, benefits or other remuneration from the proceeds realized from the property of a bankrupt employer;

**36 (1)** Subject to subsection (2), the earnings of a claimant as determined under section 35 shall be allocated to weeks in the manner described in this section and, for the purposes referred to in subsection 35(2), shall be the earnings of the claimant for those weeks.

(4) Earnings that are payable to a claimant under a contract of employment for the performance of services shall be allocated to the period in which the services were performed.