



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. R. v. Canada Employment Insurance Commission*, 2018 SST 342

Tribunal File Number: GE-17-2092

BETWEEN:

M. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

IN-PERSON HEARD ON: April 9, 2018

DATE OF DECISION: April 14, 2018

REASONS AND DECISION

DECISION

[1] The appeal is dismissed. The Tribunal finds the money the Appellant received from her employers is earnings and the money was correctly allocated to the period in which the work was performed.

OVERVIEW

[2] The Appellant established a claim for employment insurance benefits and while on claim an investigation by the Canada Employment Insurance Commission (Respondent) revealed the Appellant was employed during the benefit period and failed to declare her earnings from the week's starting July 19, 2015, to November 8, 2015. The Appellant conceded that she did work and have earnings but because of circumstances beyond her control she didn't declare the money because she was struggling financially and trying to keep herself out of a homeless shelter where she would have been in danger. The Respondent notified the Appellant that the money she received from the employers was considered earning and was applied against her claim that resulted in an overpayment. Initially the Respondent imposed a penalty and violation as it was determined the Appellant knowingly made false statements; however following a request for reconsideration the Respondent overturned the penalty and violation. An overpayment for the undeclared earnings of \$3212.00 remained that the Appellant must repay. The Appellant argued that she does not agree with the amount owing.

PRELIMINARY ISSUES

[3] The Appellant advised the Tribunal that her current address on file would be changing shortly but she did not have a forwarding address at this time. She stated she could be contacted by email and possibly could have her mail sent to a friend. The Appellant was advised by the Member to contact the Tribunal to submit an email waiver and keep the Tribunal apprised of changes to contact information.

ISSUE

[4] Did the money the Appellant receive from her employers for working constitute earnings? If so, how should the earnings be allocated?

ANALYSIS

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

Issue: Did the money the Appellant receive from her employer for training/working constitute earnings?

[6] For income to be considered earnings pursuant to subsection 35(2) of the *Employment Insurance Regulations* (Regulations), the income must be earned by labour or given in return for work or there is a sufficient connection between the claimant's employment and the sum received (*Canada (A.G.) v. Roch* 2003 FCA 356).

[7] The Tribunal finds the money the Appellant received were earnings pursuant to subsection 35(2) of the Regulations because the employers paid the Appellant for work for the period beginning the week of July 19, 2015, to the week of November 8, 2015.

[8] The Appellant has the onus of proof to show that the wages/training pay is not money derived from employment and should not be allocated.

[9] The Appellant initially argued that she didn't agree with the amounts of money but now concedes that she did work during the period in question and she was paid the amounts submitted by the employer. She knew her behaviour of not declaring the money was wrong but due to her mental health and financial situation, she was living in terror and in survival mode.

[10] The Appellant stating she is not disputing the facts that she received employment insurance benefits that she was not entitled to and will repay the overpayment of \$3212.00. She stated she had not realized that the Respondent had removed the disqualification and penalty which she no longer has to repay.

How should the money be allocated?

[11] When wages are payable to the Appellant in respect for services performed, they shall be allocated to the period in which the services were performed pursuant to subsection 36(4) of the *Employment Insurance Regulations* (Regulations) (*Bourdeau A-99-86; Boone 2002 FCA 257*).

[12] The Appellant conceded the money was paid to her for wages for the period of July 19, 2015, to November 8, 2015; therefore the money will be allocated to subsection 36(4) of the Regulations.

[13] The Tribunal finds the earnings must be allocated pursuant to subsection 36(4) because the money was paid to the Appellant for wages under an employment contract for the period of July 19, 2015, to November 8, 2015. The money must be allocated to the same period in which the services were performed.

CONCLUSION

[14] The appeal is dismissed.

Teresa Jaenen
Member, General Division - Employment Insurance Section

APPEARANCES:	M. R., Appellant D. R., Appellant's Mental Health Worker
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ANNEX

THE LAW

Employment Insurance Regulations

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;

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*)

(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.