



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *E. P. v. Canada Employment Insurance Commission*, 2018 SST 1109

Tribunal File Number: GE-18-1666

BETWEEN:

E. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Josée Langlois

HEARD ON: September 27, 2018

DATE OF DECISION: September 27, 2018

DECISION

[1] The appeal is allowed. The Tribunal finds that \$11,000 was paid to the Appellant as compensation for relinquishing her reinstatement rights, that the amount does not constitute earnings, and that it should not be allocated over her benefit period.

OVERVIEW

[2] The Appellant made an initial claim for benefits on January 26, 2018. On February 27, 2018, the Commission informed the Appellant that the \$14,558 received as severance pay would be allocated to her benefits. The Appellant states that a settlement was reached with the employer and that she received \$14,558. She maintains that, of that amount, she received \$11,000 for relinquishing her reinstatement rights and that, for that reason, this amount should not be allocated to her benefit period. The Tribunal must determine whether the \$11,000 the Appellant received constitutes earnings and whether it was allocated properly to her benefit period.

ISSUES

[3] Was the \$11,000 received by the Appellant paid to her for relinquishing her reinstatement rights?

[4] Does this amount constitute earnings? If so, was it allocated properly to her benefit period?

ANALYSIS

[5] The relevant statutory provisions are appended to this decision.

Issue 1: Was the \$11,000 received by the Appellant paid to her for relinquishing her reinstatement rights?

[6] The employer told the Commission that the Appellant decided on her own not to return to work after her sick leave and that her file had been handled as an [translation] “administrative closure.” The parties reached an agreement, and the employer paid the Appellant \$11,000 as severance pay. It told the Commission that this amount had been calculated by multiplying the

Appellant's pay by her years of seniority. The employer submits that it calculated this amount the same way it calculates severance pay.

[7] The employer told the Commission that the Appellant never asked to be reinstated. It also stated that it was the Appellant who said she wanted to leave her employment and that, after the medical adjudicator's decision ordering her reinstatement, the Appellant used her banked sick leave until January 6, 2018.

[8] The employer also sent the Commission documents, including email exchanges dated November and December 2017, indicating that the Appellant wanted to take additional leave following the medical adjudicator's reinstatement order because she needed time to think. An email dated December 7, 2017, indicates that the employer offered the Appellant a settlement.

[9] An email also shows that a union representative asked the employer to add the following paragraph to the settlement agreement:

[translation] The parties acknowledge that this amount is not paid in return for work completed, that it also does not arise out of employment, and that, as a result, this amount should not be subject to an allocation of earnings in accordance with sections 35 and 36 of the *Employment Insurance Regulations*.

[10] By way of context, the Appellant explained during the hearing that she filed four grievances between 2007 and 2018 for reasons including harassment. The Appellant states that a report indicates that her immediate superior's management style was abusive toward her.

[11] The Appellant stated to the Commission that she asked to be reinstated on November 21, 2016, and that she was reinstated on January 23, 2017. She stopped working again in August 2017 until the beginning of November 2017. The Appellant then met with a medical adjudicator, who ordered her return to work. At that time, the Appellant asked to be reinstated to another team, notably because there was still a problem with her immediate superior. The employer refused. The Appellant states that the employer paid her \$11,000 because it did not want her to return to work.

[12] The Appellant also testified that she negotiated her reinstatement. Although she did not want to be reinstated to her team because of the difficulties that presented, she submits that she suggested alternatives to the employer through her union representative. She asked to be transferred to another team to facilitate her reinstatement. The employer refused the Appellant's proposal, and her union representative explained to her that she had two options: reach an agreement by relinquishing her employment relationship and her reinstatement rights or be dismissed by her employer if she did not return to her position. The Appellant submits that the employer did not want her to be reinstated.

[13] The Appellant stated that she never negotiated directly with the employer but through her union representative. The representative told the Commission on April 25, 2018, that, while reaching the agreement, the Appellant never officially asked to be reinstated to her employment but that she wanted to be transferred to another team and that the employer refused.

[14] The Appellant testified that she applied for another position with the employer in November 2017 because she wanted to return to work but on another team. The Appellant's union representative argued that she was the applicant with the most seniority but that her application had not been retained.

[15] The Commission submits that the amount was not paid to the Appellant for her relinquishment of her reinstatement rights because the facts show that she never asked to be reinstated after January 6, 2018, and that she did not file any grievances proving it. Also, the Commission indicates that it does not support the Appellant's version of events that the employer did not want to reinstate her because the email exchanges on record show that the employer was expecting the Appellant to return to work on December 4, 2017. The Commission is of the opinion that it was actually the Appellant who did not want to be reinstated and that she exhausted her banked leave until January 6, 2018.

[16] What is more, the Commission states that the \$11,000 does not have to be considered compensation for the relinquishment of the Appellant's reinstatement rights just because the agreement says so. The Commission submits that the Appellant really received this amount as severance pay.

[17] An amount paid after a separation from employment may be considered paid for relinquishment of the right to reinstatement if that right exists, including under a collective agreement; if the appellant asked to be reinstated; and if the settlement agreement shows that the amount was paid as compensation for relinquishing the right to reinstatement (*Meechan v Canada (Attorney General)*, 2003 FCA 368).

[18] Claimants have a distinct, negotiable right to be reinstated to their employment, and the right to reinstatement must have existed and must be negotiable (*Plasse*, A-693-99; *Warren* [2012 FCA 74]).

[19] The agreement between the parties indicates that the Appellant received \$11,000 for relinquishing her reinstatement rights. This agreement allows for the administrative closure of the Appellant's file because she does not meet the normal requirements for the task. However, for obvious confidentiality reasons, the Commission's file does not show all of the negotiations between the Appellant or her union representative and the employer until the conclusion of the agreement. The Tribunal notes, however, that the employer informed the Commission that the Appellant refused to return to work after her sick leave and that she had been administratively dismissed. Yet, the Appellant testified that she had never been informed that the agreement allowed for her dismissal.

[20] The Tribunal sees the flaw in the Commission's interpretation. When the medical adjudicator ordered the Appellant's return to work, she contacted her union representative. The Appellant did not want to lose her employment. She expressed her desire to be reinstated but to another team. The submission of her application for a position on another team also shows the Appellant's willingness in this regard. However, the employer refused to grant her request to be reinstated to another team and instead proposed a settlement agreement to [translation] "administratively close" her file. The union representative told the Appellant that she had only two options: accept this agreement or be dismissed if she did not return to her position. Even though the Appellant was uncomfortable returning to her position and while the employer was not open to negotiating the Appellant's return to work with another unit, she proposed an alternative to facilitate her reinstatement. This proposal was negotiated in the talks that led to the

agreement between the employer and the Appellant, who was represented by her union. However, the employer did not grant the request.

[21] This is precisely what the case law requires: that the right to reinstatement exists, that the appellant has negotiated it, and that an agreement be reached specifying that compensation was paid for the appellant's relinquishment of their right to reinstatement. The Tribunal finds that the Appellant satisfies the criteria and that she has shown that she received the \$11,000 because she relinquished her right to be reinstated to her position.

[22] Admittedly, the employer calculated this payment as severance pay, and the employer usually gives such pay when an employee's employment is terminated.

[23] As the Appellant argued, the employer had no interest in reinstating her in her position. In recent years, she had filed four grievances about harassment and other issues, and this situation was causing friction at work. However, the Appellant did claim the right to reinstatement through her union representative, who was representing her to the employer. The representative argued for the option the Appellant desired, but the employer refused this alternative. Despite this refusal, the Appellant applied for another position during the conclusion of the agreement.

[24] Furthermore, the Appellant did not file an official grievance to be reinstated but, given the specific context between the employer and the employee, if the agreement had not been reached, she would have filed that grievance. However, and despite the agreement reached, the employer told the agent that the Appellant had been administratively dismissed. Yet, the Appellant never received the letter of dismissal because an agreement was reached and she then relinquished her right to reinstatement.

[25] Given the evidence on file and the testimony and arguments the Appellant presented during the hearing, the Tribunal finds that, of the [\$14,558] paid to the Appellant, \$11,000 was paid to her for relinquishing her right to reinstatement.

Issue 2: Does this amount constitute earnings? If so, was it properly allocated?

[26] Income arising out of any employment, whether in respect of wages, benefits, or other remuneration, must be taken into account unless it falls within an exception (section 35 of the [Employment Insurance] Regulations).

[27] A claimant's entire income arising out of any employment is to be taken into account when calculating the amount to be deducted from their benefits (section 35(2) of the Regulations and *McLaughlin v Canada (Attorney General)*, 2009 FCA 365 (CanLII)).

[28] The agreement reached between the parties states that [translation] “[t]he parties acknowledge that this amount is not paid in return for work completed, that it also does not arise out of employment.”

[29] The Tribunal has found that the \$11,000 was paid to the Appellant for relinquishing her right to reinstatement. Incidentally, this amount does not constitute earnings and should not be allocated to the Appellant's benefit period.

CONCLUSION

[30] The appeal is allowed.

Josée Langlois
Member, General Division – Employment Insurance Section

HEARD ON:	September 27, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	E. P., Appellant Daniel Breton, Representative for the Appellant

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;

(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*)

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*)

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*)

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;

(b) workers' compensation payments received or to be received by a claimant, other than a lump sum or pension paid in full and final settlement of a claim made for workers' compensation payments;

(c) payments a claimant has received or, on application, is entitled to receive under

(i) a group wage-loss indemnity plan,

(ii) a paid sick, maternity or adoption leave plan,

(iii) a leave plan providing payment in respect of the care of a child or children referred to in subsection 23(1) or 152.05(1) of the Act,

(iv) a leave plan providing payment in respect of the care or support of a family member referred to in subsection 23.1(2) or 152.06(1) of the Act, or

(v) a leave plan providing payment in respect of the care or support of a critically ill child;

(d) notwithstanding paragraph (7)(b) but subject to subsections (3) and (3.1), the payments a claimant has received or, on application, is entitled to receive from a motor vehicle accident insurance plan provided under a provincial law in respect of the actual or presumed loss of income from employment due to injury, if the benefits paid or payable under the Act are not taken into account in determining the amount that the claimant receives or is entitled to receive from the plan;

(e) the moneys paid or payable to a claimant on a periodic basis or in a lump sum on account of or in lieu of a pension; and

(f) where the benefits paid or payable under the Act are not taken into account in determining the amount that a claimant receives or is entitled to receive pursuant to a provincial law in respect of an actual or presumed loss of income from employment, the indemnity payments the claimant has received or, on application, is entitled to receive pursuant to that provincial law by reason of the fact that the claimant has ceased to work for the reason that continuation of work entailed physical dangers for

(i) the claimant,

(ii) the claimant's unborn child, or

(iii) the child the claimant is breast-feeding.

(3) Where, subsequent to the week in which an injury referred to in paragraph (2)(d) occurs, a claimant has accumulated the number of hours of insurable employment required by section 7 or 7.1 of the Act, the payments referred to in that paragraph shall not be taken into account as earnings.

(3.1) If a self-employed person has sustained an injury referred to in paragraph (2)(d) before the beginning of the period referred to in section 152.08 of the Act, the payments referred to in that paragraph shall not be taken into account as earnings.

(4) Notwithstanding subsection (2), the payments a claimant has received or, on application, is entitled to receive under a group sickness or disability wage-loss indemnity plan or a workers' compensation plan, or as an indemnity described in paragraph (2)(f), are not earnings to be taken into account for the purpose of subsection 14(2).

(5) Notwithstanding subsection (2), the moneys referred to in paragraph (2)(e) are not earnings to be taken into account for the purposes of section 14.

(6) Notwithstanding subsection (2), the earnings referred to in subsection 36(9) and allowances that would not be deducted from benefits by virtue of subsection 16(1) are not earnings to be taken into account for the purposes of section 14.

(7) That portion of the income of a claimant that is derived from any of the following sources does not constitute earnings for the purposes referred to in subsection (2):

(a) disability pension or a lump sum or pension paid in full and final settlement of a claim made for workers' compensation payments;

(b) payments under a sickness or disability wage-loss indemnity plan that is not a group plan;

(c) relief grants in cash or in kind;

(d) retroactive increases in wages or salary;

(e) the moneys referred to in paragraph (2)(e) if

(i) in the case of a self-employed person, the moneys became payable before the beginning of the period referred to in section 152.08 of the Act, and

(ii) in the case of other claimants, the number of hours of insurable employment required by section 7 or 7.1 of the Act for the establishment of their benefit period was accumulated after the date on which those moneys became payable and during the period in respect of which they received those moneys; and

(f) employment income excluded as income pursuant to subsection 6(16) of the Income Tax Act.

(8) For the purposes of paragraphs (2)(c) and (7)(b), a sickness or disability wage-loss indemnity plan is not a group plan if it is a plan that

(a) is not related to a group of persons who are all employed by the same employer;

(b) is not financed in whole or in part by an employer;

(c) is voluntarily purchased by the person participating in the plan;

(d) is completely portable;

(e) provides constant benefits while permitting deductions for income from other sources, where applicable; and

(f) has rates of premium that do not depend on the experience of a group referred to in paragraph (a).

(9) For the purposes of subsection (8), *portable*, in respect of a plan referred to in that subsection, means that the benefits to which an employee covered by the plan is entitled and the rate of premium that the employee is required to pay while employed by an employer will remain equivalent if the employee becomes employed by any other employer within the same occupation.

(10) For the purposes of subsection (2), *income* includes

(a) in the case of a claimant who is not self-employed, that amount of the claimant's income remaining after deducting

(i) expenses incurred by the claimant for the direct purpose of earning that income, and

(ii) the value of any consideration supplied by the claimant; and

(b) in the case of a claimant who is self-employed in farming, the gross income from that self-employment, including any farming subsidies the claimant receives under any federal or provincial program, remaining after deducting the operating expenses, other than capital expenditures, incurred in that self-employment;

(c) in the case of a claimant who is self-employed in employment other than farming, the amount of the gross income from that employment remaining after deducting the operating expenses, other than capital expenditures, incurred therein; and

(d) in the case of any claimant, the value of board, living quarters and other benefits received by the claimant from or on behalf of the claimant's employer in respect of the claimant's employment.

(11) Subject to subsection (12), the value of the benefits referred to in paragraph (10)(d) shall be the amount fixed by agreement between the claimant and the claimant's employer and shall be an amount that is reasonable in the circumstances.

(12) Where the claimant and the employer do not agree on the value of the benefits referred to in paragraph (10)(d), or where the value fixed for those benefits by agreement between the claimant and the claimant's employer is not reasonable in the circumstances, the value shall be determined by the Commission based on the monetary value of the benefits.

(13) The value of living quarters referred to in paragraph (10)(d) includes the value of any heat, light, telephone or other benefits included with the living quarters.

(14) Where the value of living quarters is determined by the Commission, it shall be computed on the rental value of similar living quarters in the same vicinity or district.

(15) Where the remuneration of a claimant is not pecuniary or is only partly pecuniary and all or part of the non-pecuniary remuneration consists of any consideration other than living quarters and board furnished by the employer, the value of that consideration shall be included in determining the claimant's income.

(16) For the purposes of this section, living quarters means rooms or any other living accommodation.

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.

(2) For the purposes of this section, the earnings of a claimant shall not be allocated to weeks during which they did not constitute earnings or were not taken into account as earnings under section 35.

(3) Where the period for which earnings of a claimant are payable does not coincide with a week, the earnings shall be allocated to any week that is wholly or partly in the period in the proportion that the number of days worked in the week bears to the number of days worked in the period.

(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.

(5) Earnings that are payable to a claimant under a contract of employment without the performance of services or payable by an employer to a claimant in consideration of the claimant returning to or beginning work shall be allocated to the period for which they are payable.

(6) The earnings of a claimant who is self-employed, or the earnings of a claimant that are from participation in profits or commissions, that arise from the performance of services shall be allocated to the weeks in which those services are performed.

(6.1) The earnings of a claimant who is self-employed, or the earnings of a claimant that are from participation in profits or commissions, that arise from a transaction shall be allocated

(a) if the aggregate amount of earnings that arise from a transaction occurring in a week is greater than the maximum yearly insurable earnings referred to in section 4 of the Act divided by 52, to the weeks in which the work that gave rise to the transaction was performed, in a manner that is proportional to the amount of work that was performed during each of those weeks or, if no such work was performed, to the week in which the transaction occurred; or

(b) if the aggregate amount of earnings that arise from a transaction occurring in a week is less than or equal to the maximum yearly insurable earnings referred to in section 4 of the Act divided by 52, to the week in which the transaction occurred or, if the claimant demonstrates that the work that gave rise to the transaction occurred in more than one

week, to the weeks in which the earnings were earned, in a manner that is proportional to the amount of work that was performed during each of those weeks.

(6.2) The earnings of a claimant who is self-employed, or the earnings of a claimant that are from participation in profits or commissions, that do not arise from the performance of services or from a transaction shall be allocated equally to each week falling within the period in which the earnings were earned.

(7) The earnings of a claimant who is self-employed in farming shall be allocated

(a) if they arose from a transaction, in accordance with subsection (6.1); and

(b) if they were received in the form of a subsidy, to the week in which the subsidy was paid.

(8) Where vacation pay is paid or payable to a claimant for a reason other than a lay-off or separation from an employment, it shall be allocated as follows:

(a) where the vacation pay is paid or payable for a specific vacation period or periods, it shall be allocated

(i) to a number of weeks that begins with the first week and ends not later than the last week of the vacation period or periods, and

(ii) in such a manner that the total earnings of the claimant from that employment are, in each consecutive week, equal to the claimant's normal weekly earnings from that employment; and

(b) in any other case, the vacation pay shall, when paid, be allocated

(i) to a number of weeks that begins with the first week for which it is payable, and

(ii) in such a manner that, for each week except the last, the amount allocated under this subsection is equal to the claimant's normal weekly earnings from that employment.

(9) Subject to subsections (10) to (11), all earnings paid or payable to a claimant by reason of a lay-off or separation from an employment shall, regardless of the period in respect of which the earnings are purported to be paid or payable, be allocated to a number of weeks that begins with the week of the lay-off or separation in such a manner that the total earnings of the claimant from that employment are, in each consecutive week except the last, equal to the claimant's normal weekly earnings from that employment.

(10) Subject to subsection (11), where earnings are paid or payable to a claimant by reason of a lay-off or separation from an employment subsequent to an allocation under subsection (9) in respect of that lay-off or separation, the subsequent earnings shall be added to the earnings that were allocated and, regardless of the period in respect of which the subsequent earnings are

purported to be paid or payable, a revised allocation shall be made in accordance with subsection (9) on the basis of that total.

(10.1) The allocation of the earnings paid or payable to a claimant by reason of a lay-off or separation from an employment made in accordance with subsection (9) does not apply if

(a) the claimant's benefit period begins in the period beginning on January 25, 2009 and ending on May 29, 2010;

(b) the claimant contributed at least 30% of the maximum annual employee's premium in at least seven of the 10 years before the beginning of the claimant's benefit period;

(c) the Commission paid the claimant less than 36 weeks of regular benefits in the 260 weeks before the beginning of the claimant's benefit period; and

(d) during the period in which the earnings paid or payable by reason of the claimant's lay-off or separation from an employment are allocated in accordance with subsection (9) or, if the earnings are allocated to five weeks or less, during that period of allocation or within six weeks following the notification of the allocation, the claimant is referred by the Commission, or an authority that the Commission designates, under paragraph 25(1)(a) of the Act, to a course or program of instruction or training

(i) that is full-time,

(ii) that has a duration of at least 10 weeks or that costs at least \$5,000 or 80% of the earnings paid or payable by reason of the claimant's lay-off or separation from employment,

(iii) for which the claimant assumes the entire cost, and

(iv) that begins during one of the 52 weeks following the beginning of the claimant's benefit period.

(10.2) If any of the conditions under which the Commission may terminate the claimant's referral under paragraph 27(1.1)(b) of the Act exists, the earnings paid or payable to the claimant by reason of a lay-off or separation from an employment shall be re-allocated under subsection (9).

(11) Where earnings are paid or payable in respect of an employment pursuant to a labour arbitration award or the judgment of a tribunal, or as a settlement of an issue that might otherwise have been determined by a labour arbitration award or the judgment of a tribunal, and the earnings are awarded in respect of specific weeks as a result of a finding or admission that disciplinary action was warranted, the earnings shall be allocated to a number of consecutive weeks, beginning with the first week in respect of which the earnings are awarded, in such a manner that the total earnings of the claimant from that employment are, in each week except the last week, equal to the claimant's normal weekly earnings from that employment.

(12) The following payments shall be allocated to the weeks in respect of which the payments are paid or payable:

- (a) payments in respect of sick leave, maternity leave or adoption leave or leave for the care of a child or children referred to in subsection 23(1) or 152.05(1) of the Act;
- (b) payments under a group sickness or disability wage-loss indemnity plan;
- (c) payments referred to in paragraphs 35(2)(d) and (f);
- (d) workers' compensation payments, other than a lump sum or pension paid in full and final settlement of a claim made for workers' compensation payments;
- (e) payments in respect of the care or support of a family member referred to in subsection 23.1(2) or 152.06(1) of the Act; and
- (f) payments in respect of the care or support of a critically ill child.

(13) A payment paid or payable to a claimant in respect of a holiday or non-working day that is observed as such by law, custom or agreement, or a holiday or non-working day immediately preceding or following a holiday or non-working day that occurs at the establishment of the employer or former employer from whom the claimant receives that payment, shall be allocated to the week in which that day occurs.

(14) The moneys referred to in paragraph 35(2)(e) that are paid or payable to a claimant on a periodic basis shall be allocated to the period for which they are paid or payable.

(15) The moneys referred to in paragraph 35(2)(e) that are paid or payable to a claimant in a lump sum shall be allocated beginning with the first week that those moneys are paid or payable to the claimant in such a manner that those moneys are equal in each week to the weekly amount, calculated in accordance with subsection (17), to which the claimant would have been entitled if the lump sum payment had been paid as an annuity.

(16) The moneys allocated in accordance with subsection (14) or (15) shall not be taken into account in the allocation of other earnings under this section.

(17) The weekly amount shall be calculated in accordance with the following formula, according to the claimant's age on the day on which the lump sum payment is paid or payable:

A/B

where

A

is the lump sum payment; and

B

is the estimated actuarial present value of \$1 payable at the beginning of every week starting from the day on which the lump sum payment is paid or payable and payable for

the claimant's lifetime, as calculated each year in accordance with the following formula and effective on January 1 of the year following its calculation:

$$B = [\sum_{t=0} \text{to the infinity of } ({}_tP_x / (1+i)^t) - 0.5] \times 52$$

where

${}_tP_x$

is the probability that the claimant will survive for "t" years from the claimant's age "x" using the latest Canadian mortality rates used in the valuation of the Canada Pension Plan prorated in equal parts between males and females,

i

is the annualized long-term Government of Canada benchmark bond yields averaged over the 12-month period beginning on the September 1 and ending on the August 30 before the January 1 on which the estimated actuarial present values are effective, expressed as a percentage and rounded to the nearest one tenth of a percentage, and

t

is the number of years that the claimant survives according to the claimant's age for which the probability of survival is estimated by ${}_tP_x$.

Note: The estimated actuarial present values are published annually on the Service Canada website.

(18) Earnings that are payable to a claimant under a government program intended to encourage re-employment and that are payable to the claimant as a supplement to earnings arising from a contract of employment shall be allocated to the period for which they are payable.

(19) Where a claimant has earnings to which none of subsections (1) to (18) apply, those earnings shall be allocated

(a) if they arise from the performance of services, to the period in which the services are performed; and

(b) if they arise from a transaction, to the week in which the transaction occurs.

(20) For the purposes of this section, a fraction of a dollar that is equal to or greater than one half shall be taken as a dollar and a fraction that is less than one half shall be disregarded.