



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. D. v Canada Employment Insurance Commission*, 2019 SST 855

Tribunal File Number: GE-18-3754

BETWEEN:

B. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: February 18, 2019

DATE OF DECISION: February 19, 2019

DECISION

[1] The appeal is dismissed. The Claimant (Appellant) is required to repay the overpayment which resulted from the allocation of her recognition award (bonus).

OVERVIEW

[2] While in receipt of maternity Employment Insurance benefits, the Appellant reached her five-year anniversary of employment and was entitled to be paid a bonus of \$50.00. The bonus was deposited into the Appellant's bank account on March 14, 2018, after she returned to work from her maternity and parental leave. The employer issued an amended Record of Employment (ROE) which reflected the payment of the \$50.00 bonus.

[3] The Canada Employment Insurance Commission, who is the Respondent to this appeal, allocated the \$50.00 bonus retroactively, to the week of June 11, 2017. This retroactive allocation resulted in a \$50.00 overpayment of benefits.

[4] Upon reconsideration, the Respondent maintained their decision that the Appellant's bonus is earnings to be allocated to the week of June 11, 2017. The Appellant disagrees with the Respondent's assessment and requests that the overpayment be reversed.

ISSUES

[5] Is the Appellant's \$50.00 bonus considered earnings?

[6] If so, how is this bonus to be allocated?

[7] Can the overpayment be reversed or written off?

ANALYSIS

a) Earnings

[8] The entire income from employment is earnings.¹ All pecuniary or non-pecuniary income received by the Appellant from an employer is income.²

[9] There is no dispute that the Appellant's \$50.00 bonus is earnings, as defined in section 35 of the *Regulations*. Therefore, I will now consider the issue of allocation of this bonus.

b) Allocation

[10] The rationale for allocating earnings that the Appellant receives, for a period while in receipt of Employment Insurance benefits, is the avoidance of double compensation.³

[11] In the case at hand, the payment of the \$50.00 bonus was triggered by the Appellant reaching her 5-year anniversary date of employment, which occurred on June 11, 2017. The Respondent submitted evidence that the employer confirmed that the Appellant commenced her employment on June 11, 2012, so the 5-year service award or bonus transaction was payable to her on her anniversary date of June 11, 2017.

[12] Where the Appellant has earnings that arise from a transaction, those earnings are to be allocated to the week in which the transaction was triggered; which in this case is the Appellant's 5-year anniversary date of June 11, 2017.⁴

[13] I do not accept the Appellant's argument that the retroactive allocation would not have occurred if she were a man because the allocation of earnings, under section 36 of the *Regulations*, is not based on gender. Rather, the allocation of earnings is determined based on the triggering event and type of earnings paid. While it is true that a man cannot be paid maternity benefits, this does not change the fact that the Appellant was in receipt of earnings that are required to be allocated.

¹ Subsection 35(2) of the *Employment Insurance Regulations (Regulations)*

² Subsection 35(1) of the *Regulations*

³ *Canada (Attorney General) v. Walford*, A-263-78

⁴ Paragraph 36(19)(b) of the *Regulations*

[14] Regarding the Appellant's argument that she only received \$49.17, because her employer withheld employment insurance premiums from her bonus, it is settled law that the whole amount of earnings (the gross amount prior to deductions), is to be allocated.⁵

⁵ *Canada (Attorney General) v. Boone*, A-866-87

c) Retroactive Allocation

[15] The Respondent readily admits that the overpayment resulted from the retroactive allocation after they received the amended ROE. This being said, the Respondent has the authority to reconsider a claim for benefits within 36 months after those benefits have been paid.⁶

[16] Although an overpayment resulted from the retroactive allocation, this does not change the fact that the Appellant is in receipt of benefits she is not entitled to receive. Nor does it change the repayment requirements stipulated by paragraph 43(b) of the *Act*, which states the Appellant is liable to repay any amount paid by the Respondent as benefits which she is not entitled to receive.

[17] I do not have the authority to decide on matters relating to debt cancellation or write-off. The authority to write off or cancel a debt is held by the Respondent.⁷

[18] I sympathize with the Appellant given the circumstances she presented; however, there are no exceptions and no room for discretion. I cannot interpret or rewrite the *Act* in a manner that is contrary to its plain meaning, even in the interest of compassion.⁸ Accordingly, the Appellant is required to repay the overpayment.

CONCLUSION

[19] The appeal is dismissed.

Linda Bell

Member, General Division - Employment Insurance Section

HEARD ON:	February 18, 2019
METHOD OF PROCEEDING:	Teleconference

⁶ Subsection 52(1) of the *Employment Insurance Act (Act)*

⁷ Section 56 of the *Regulations*

⁸ *Canada (Attorney General) v. Kneé*, 2011 FCA 301