



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. D. v Canada Employment Insurance Commission*, 2019 SST 284

Tribunal File Number: GE-19-940

BETWEEN:

K. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Audrey Mitchell

HEARD ON: March 12, 2019

DATE OF DECISION: March 15, 2019

DECISION

[1] The appeal is dismissed. The vacation pay paid to the Appellant are earnings and the Respondent correctly allocated the earnings to the week of the vacation period.

OVERVIEW

[2] The Appellant's employer paid her two days of vacation pay while she was on employment insurance benefits. Because of the Respondent's investigation, the Appellant's employer reported earnings that it paid to the Appellant. The Respondent gave the Appellant an opportunity to explain the information the employer gave the Respondent. The Appellant responded that she had told the employer she could not return to work because she was still receiving benefits, and that she did not notice being paid vacation pay. She argued that the employer should have allowed her to return to work the following week. The Respondent allocated, in other words, assigned the Appellant's vacation pay to the week that the two vacation days occurred.

PRELIMINARY MATTERS

[3] Although the Appellant confirmed that she received all documents related to her appeal, she indicated that she did not read all of the documents. Because I am satisfied that the Appellant received and had sufficient opportunity to read all of the documents, I proceeded with the hearing. However, I gave the Appellant until March 14, 2019, to make addition submissions if she wishes after she reads all documents.

ISSUES

[4] Is the vacation pay that the employer paid the Appellant earnings?

[5] If so, did the Respondent correctly allocate the Appellant's earnings?

ANALYSIS

Issue 1: Is the vacation pay that the employer paid the Appellant earnings?

[6] I find that the \$587.63 in vacation pay the employer paid Appellant is earnings.

[7] The definition of employment is any employment under a contract of service or other contract of employment. The definition of income is any monetary or non-monetary compensation that an employer has given or will give to a claimant (subsection 35(1), *Employment Insurance Regulations*). Earnings include the entire income of a claimant arising out of any employment (subsection 35(2), *Employment Insurance Regulations*).

[8] A claimant's income is considered earnings if it is earned by labour or is given in return for work or if there is sufficient connection between the claimant's employment and the sum of money received (*Canada (AG) v. Roch*, 2003 FCA 356).

[9] The Appellant did not dispute that the employer paid her \$587.63 for two days of vacation pay in the week of February 12, 2017. She explained that she emailed the employer to say that she could not have earnings while collecting employment insurance benefits, but the employer insisted that she had to return to work or take vacation.

[10] Because the Appellant does not dispute the Respondent's evidence that the employer paid her \$587.63 in vacation pay in the week of February 12, 2017, I find there is sufficient connection between the Appellant's employment and the wages paid to her. For the same reason, I also find that the wages arose out of the Appellant's employment with the employer, and therefore find that the wages constituted earnings within the meaning of the *Employment Insurance Regulations*.

Issue 2: Did the Respondent correctly allocate the Appellant's earnings?

[11] Having found that the vacation pay that the employer paid to the Appellant is earnings, I find that the Respondent has correctly allocated the earnings.

[12] Earnings to be paid to a claimant as vacation pay for a specific vacation period must be allocated to the week of the vacation period (subparagraph 36(8)(a), *Employment Insurance Regulations*).

[13] The Respondent allocated the Appellant's earnings to the week of February 12, 2017. Again, the Appellant did not dispute having received the earnings or that the employer paid her for vacation days on February 16, 2017 and February 17, 2017. As a result, I find that the

Respondent correctly allocated or assigned the Appellant's vacation pay of \$588.00 (rounded) to the week of February 12, 2017, when the vacation period occurred.

[14] The Appellant argued that because she had told the employer that she could not return to work or have earnings while collecting employment insurance benefits, the employer should have to repay the overpayment. She did not appear to be disputing the amount of the overpayment; rather she said that it was not fair that she is the one who has to repay it.

[15] While I understand the Appellant's frustration at having to repay benefits, not realizing that the employer paid her two days of vacation pay, and having told the employer that she could not have earnings while she was collecting employment insurance benefits, I do not have jurisdiction to consider the requirement to repay the overpayment (section 112.1, *Employment Insurance Act*)

[16] I find that the Respondent correctly allocated the Appellant's \$588.00 in earnings to the week of February 12, 2017, the week in which the Appellant's vacation period occurred.

CONCLUSION

[17] The appeal is dismissed.

Audrey Mitchell

Member, General Division - Employment Insurance Section

HEARD ON:	March 12, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	K. D., Appellant