



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. B. v Canada Employment Insurance Commission*, 2019 SST 851

Tribunal File Number: GE-19-786

BETWEEN:

B. B.

Appellant / Claimant

and

Canada Employment Insurance Commission

Respondent / Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Raelene R. Thomas

HEARD ON: March 11, 2019

DATE OF DECISION: March 28, 2019

DECISION

[1] The appeal is dismissed. The Claimant's Canada Pension Plan (CPP) retirement pension is earnings and the Commission correctly allocated the earnings.

OVERVIEW

[2] The Claimant was receiving Employment Insurance (EI) benefits when she began receiving a monthly CPP retirement pension. She returned to work, was laid off and established a renewal claim for EI benefits. The Respondent, the Canada Employment Insurance Commission (Commission), determined the CPP retirement pension was earnings and deducted the amount of the CPP retirement pension from the Claimant's EI benefits. The Claimant requested a reconsideration of the decision and the Commission upheld its initial decision. The Claimant appealed to the Social Security Tribunal (Tribunal) arguing that she had worked hours of insurable employment since she started to receive her CPP retirement pension, that she had established a second claim for EI benefits since starting her CPP retirement pension and that she could not afford the reduction in her EI benefits.

PRELIMINARY MATTERS

[3] The hearing was scheduled for March 5, 2019. The docket was sent to the Claimant via email as an attachment and the Claimant was not able to access the entire document. As a result, the Claimant did not have an opportunity to properly prepare for the hearing. In the interest of natural justice, I adjourned the hearing and arranged for the docket to be resent to the Claimant. As agreed, the hearing proceeded on March 11, 2019.

ISSUES

Issue 1: Is a Canada Pension Plan retirement pension earnings?

Issue 2: If so, did the Commission correctly allocate those earnings to reduce the EI benefits payable to the Claimant?

ANALYSIS

[4] When a claimant receives any income (monies) from other sources while also receiving EI benefits I must determine whether the monies received are defined as earnings in accordance with the *Employment Insurance Act* (Act). If I find the monies are earnings, I must then determine whether the monies should be allocated, that is deducted, from the claimant's EI benefits. To be considered earnings the income must arise out of employment.¹

Issue 1: Is a Canada Pension Plan retirement pension earnings?

[5] Earnings are those earnings which form the entire income of a claimant arising out of any employment, including the monies paid or payable to a Claimant on a periodic basis or in a lump sum on account of or in lieu of a pension.² The *Employment Insurance Regulations* (Regulations) define a pension to mean a retirement pension under the Canada Pension Plan.³ As a result, I find that the CPP retirement pension received by the Claimant is earnings as defined by the Regulations.

Issue 2: Did the Commission correctly allocate those earnings to reduce the EI benefits payable to the Claimant?

[6] The Claimant testified that she was eligible for a CPP retirement pension effective August 1, 2018. She was receiving EI benefits when she received her first CPP retirement pension cheque on August 27, 2018. That EI benefit period ended on December 1, 2018. The Claimant testified she established a new claim for EI benefits on December 2, 2018, having worked 420.50 hours of insurable employment. The Claimant testified that she earned 164.5 hours of insurable employment prior to starting her CPP retirement pension and 256 hours of insurable employment after her CPP retirement pension started. The Claimant stated that she was not able to earn 420 hours of insurable hours of employment after she became eligible for CPP retirement pension because she was laid off and that was not within her control. She submitted she should not be penalized for being laid off and unable to earn sufficient hours.

¹ *Employment Insurance Regulations*, section 35 (2)

² *Employment Insurance Regulations*, section 35 (2)(e)

³ *Employment Insurance Regulations*, section 35(1)

[7] The Claimant submitted that she was not appealing the reduction in her EI benefits applied from August 1, 2018, to the end of that EI benefit period on December 1, 2018, as she knew that EI benefits would be reduced for the first EI claim when a CPP retirement pension began. However, she testified no one she knew had their EI benefits reduced when they started a second EI claim following the receipt of a CPP retirement pension. The Claimant submitted that because she established a claim on December 2, 2018, after she began receiving her CPP retirement pension all the insurable hours used to establish that claim, including those earned prior to her receiving the CPP retirement pension should be counted so as to exempt her CPP retirement pension from being deducted from her EI benefits.

[8] The Commission submitted that pensions are not considered as earnings if the claimant has accumulated enough hours of insurable employment since they started receiving their pension to re-qualify for a new claim for employment insurance benefits. The Commission stated that although the Claimant had worked since commencing her pension she has not accumulated sufficient hours since the start of her pension to establish a new claim.

[9] The Regulations provide that a pension, including a CPP retirement pension, is not considered earnings, and therefore not deductible from EI benefits, where a Claimant accumulates enough hours of insurable employment to establish a benefit period (EI claim) after the date on which the pension became payable and those hours are accumulated during the period the Claimant received the pension.⁴

[10] After the hearing, the Claimant submitted three Records of Employment (ROEs) covering three periods of employment. It is clear that, as per her testimony, the Claimant earned 73 hours of insurable employment in an employment that ended on April 9, 2018, and 91.5 hours of insurable employment in an employment that ended on July 1, 2018. These periods of employment occurred prior to her receiving her CPP retirement pension. The Claimant also earned 256 hours of insurable employment from October 15, 2018 to November 27, 2018. Taken together these hours were sufficient to establish a benefit period (EI claim) on December 2, 2018. Unfortunately, for the Claimant, in terms of exempting the CPP retirement pension from deduction from her EI benefits the 256 hours of insurable employment earned after she

⁴ *Employment Insurance Regulations*, section 35(7)(e)

became eligible for her CPP retirement pension on August 1, 2018, were not sufficient to establish a benefit period (claim) for EI benefits.⁵ As a result, the Claimant does not meet the exemption requirements and the CPP retirement pension is not exempt from allocation (deduction) from her EI benefits.

[11] Pensions paid on a periodic basis are allocated (deducted) in the period for which the pension is paid or payable.⁶ The Commission deducted the CPP retirement pension beginning on August 1, 2018, according to the Claimant's testimony. The information in the file shows the Commission continued to allocate the CPP retirement pension on a weekly basis beginning with the Claimant's new benefit period (EI Claim) established on December 2, 2018. As a result, I find that the Commission has correctly allocated (deducted) the CPP retirement pension to the Claimant's EI benefits.

[12] I am sympathetic to the Claimant's financial circumstances that have resulted from the allocation (deduction) of the CPP retirement pension. The court has found however tempting as it may be in such cases (and this may well be one), adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.⁷ I must follow the law and render decisions based on the relevant Act, Regulations, and precedents set by the courts.

CONCLUSION

[13] The appeal is dismissed.

Raelene R. Thomas

Member, General Division - Employment Insurance Section

HEARD ON:	March 11, 2019
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⁵ 420 hours insurable employment is the minimum requirement to establish a benefit period

⁶ *Employment Insurance Regulations*, section 35(14)

⁷ *Canada (Attorney General) v. Knee*, 2011 FCA 301

METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	B. B., Appellant