



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *T. D. v Canada Employment Insurance Commission*, 2019 SST 857

Tribunal File Number: GE-19-963

BETWEEN:

T. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: March 29, 2019

DATE OF DECISION: April 1, 2019

DECISION

[1] The appeal is dismissed. The Claimant's earnings are allocated from the weeks starting on November 30, 2014, until the week ending February 28, 2018. I do not have the authority to write off or reduce the overpayment that results from this allocation.

OVERVIEW

[2] The Claimant took a medical leave of absence from her employment to undergo two eye surgeries. She submitted a claim for sickness benefits and a benefit period was established effective November 16, 2014. After her first surgery on November 19, 2014, the Claimant returned to work on December 4, 2014, until she had her second eye surgery on March 16, 2015.

[3] After experiencing processing delays, the Claimant sought the assistance of the Respondent, who is the Canada Employment Insurance Commission (Commission). The Commission processed all of the Claimant's bi-weekly reports at once; however, the Commission input these reports into their computer system without recording the Claimant's earnings for the period she had returned to work in-between her surgeries.

[4] The Commission conducted a review of the Claimant's benefits and determined that the money the Claimant received from her employer as wages and sick pay was earnings. The Commission allocated these earnings, to the weeks in which the Claimant worked and was entitled to the sick pay, which resulted in a \$4,534.00 overpayment of benefits. The Commission also imposed a \$437.00 penalty, which brought the total overpayment to \$4,971.00 (\$4,534.00 + \$437.00).

[5] Upon reconsideration, the Commission removed the penalty; however, they maintained their decision that the Claimant is required to repay the overpayment of benefits. The Claimant disputes this decision and argues that the Commission was biased because they had already made up their mind that she had to repay the overpayment, before they clarified her earnings with her employer.

ISSUES

[6] Is the money that the Claimant received from her employer for the period from December 4, 2014, until February 28, 2018, considered earnings?

[7] If so, are these earnings to be allocated to the Claimant's claims?

[8] If so, is the Claimant required to repay the overpayment of benefits?

[9] Do I have the authority to write off or reduce an overpayment of benefits?

ANALYSIS

a) Earnings

[10] Earnings are the Claimant's entire income from employment.¹ All pecuniary or non-pecuniary income received by the Claimant from an employer is income.²

[11] As explained during the hearing, when determining matters relating to the allocation of earnings, the Commission references dates as "weeks starting on" the Sunday date because a week runs from Sunday to Saturday.³ In the case at hand, the Claimant does not dispute the fact that, after her first surgery, she returned to work on Thursday, December 4, 2014, which falls during the "week starting on", Sunday, November 30, 2014.

[12] The Claimant conceded that the money paid to her by her employer as wages and sick pay meets the definition as earnings⁴. Accordingly, I find the money paid to the Claimant by her employer, as wages and sick pay during the week starting on November 30, 2014, through until the week ending on February 28, 2015, are earnings.

¹ Subsection 35(2) of the *Regulations*

² Subsection 35(1) of the *Regulations*

³ Subsection 2(1) of the *Employment Insurance Act*

⁴ Subsection 35(1) of the *Regulations*

b) Allocation

[13] The rationale for allocating earnings that the Claimant receives while in receipt of Employment Insurance benefits is the avoidance of double compensation.⁵

[14] Earnings that are paid or payable to the Claimant under a contract of employment for the performance of services shall be allocated to the period in which the services were performed.⁶ That is to say, that the earnings that are payable to the Claimant for days worked are to be allocated to the week in which she does the work.

[15] Payments in respect of sick pay are to be allocated to the weeks in which the payments are paid or payable.⁷ Put another way, sick pay that is paid to the Claimant is allocated to the weeks in which the Claimant was sick and for which sick pay was paid.

[16] As set out above, the Claimant does not dispute that she returned to work on December 4, 2014, and had earnings and was entitled to 3 days of sick pay, prior to her second surgery. Therefore, the Claimant had earnings during the weeks starting on November 30, 2014, through until the week ending on February 28, 2015, as reported by the employer on the payroll information form.

[17] I am not convinced by the Claimant's argument that the Commission was biased when rendering their reconsideration decision or that their decision was made without clarifying the Claimant's earnings. This is because the documents on file, which include the Record of Employment (ROE), Supplementary Records of Claim, and the payroll information obtained from the employer, support that the Commission verified the Claimant's earnings with the employer on numerous occasions in writing and verbally, prior to rendering their reconsideration decision on January 22, 2019.

[18] The Claimant initially argued that she could not confirm whether the amounts listed on these documents were correct because she could not gain access to her previous bank account.

⁵ *Canada (Attorney General) v. Walford*, A-263-78

⁶ Subsection 36(4) of the *Regulations*

⁷ Paragraph 36(12)(a) of the *Regulations*

She later conceded that her employer appeared to have reported her gross earnings correctly; however, she also stated she could not be certain.

[19] The Claimant confirmed that during her conversation with the Commission on January 22, 2019, she discussed how she would clarify her earnings with her employer, which she failed to do prior to the hearing. When asked why she did not attempt to clarify her earnings with her employer, the Claimant stated that she was busy preparing a budget for Canada Revenue Agency (CRA) collections.

[20] While the Claimant may very well have been working on a budget for CRA collections she provided no evidence that she made any effort to verify her earnings in the two months prior to the hearing. Further, I find the Claimant failed to present evidence that the amount of her earnings, as reported by the employer, were incorrect. Rather, the Claimant kept referring to her failed attempts at matching the amounts reported by her employer with the amounts deposited into her bank account. As I explained during the hearing, the amounts listed in evidence are her gross wages before deductions, and the amounts deposited into her bank account would be her net pay after deductions; therefore, the amounts would never match.

[21] I favoured the Commission's evidence listing the amount of earnings paid to the Claimant, which included the ROE and the payroll information provided by the employer. The Commission verified these amounts with the employer during their telephone conversation on January 15, 2019, in which the employer states that the Claimant work from December 4, 2014, and in January and February 2015. The employer also states that during this period, they paid the Claimant 3 days of sick leave (sick pay).

[22] I find the amounts allocated by the Commission are consistent with the amounts listed on the request for payroll information and verified with the employer on January 15, 2019, and January 22, 2019. Accordingly, I find that the Claimant had earnings, as listed on the payroll information form, and those earnings are to be allocated to the weeks in which the services were performed, from the week starting on November 30, 2014, through until the week ending on February 28, 2015.⁸

⁸ Subsection 36(4) of the *Regulations*

[23] In the case of the 3 days of sick pay paid to the Claimant, I accept that these amounts fell in the period from the week starting on November 30, 2014, through until the week ending on February 28, 2015. These amounts were included in the gross wages reported by the employer on the payroll information sheet and are to be allocated to the week in which they were payable.

c) Repayment of the Overpayment

[24] During the hearing, the Claimant confirmed that she now understands that the remaining overpayment is the result of the allocation of her earnings during the 13 weeks she worked or was paid sick pay, in between her surgeries. These 13 weeks are from the week starting on November 30, 2014, through until the week ending on February 28, 2015.

[25] I am sympathetic to the Claimant's circumstances; however, there is no exception and no room for discretion. I am bound by the clear legislative provisions concerning her liability to repay the overpayment of benefits. The Claimant received benefits in excess of the amount she was entitled to receive; therefore, she is liable to repay that amount.⁹ I cannot ignore, re-fashion, circumvent, rewrite, nor interpret the *Act* in a manner that is contrary to its plain meaning, even in the interest of compassion.¹⁰

d) Write-off or Reduction of Overpayment

[26] As discussed during the hearing, I do not have the jurisdiction to decide on matters relating to debt cancellation, write offs, or reduction because that authority belongs to the Commission.¹¹ As such, the Claimant is at liberty to contact the Commission if she wishes to request that they consider reducing or writing-off of the overpayment given the circumstances whereby this overpayment resulted from the Commission's failure to input the Claimant's earnings, despite her attempts to report them.

⁹ Subsection 43(b) of the *Act*

¹⁰ *Canada (Attorney General) v. Kneé*, 2011 FCA 301

¹¹ Section 56 of the *Regulations*

CONCLUSION

[27] The appeal is dismissed.

Linda Bell

Member, General Division - Employment Insurance Section

HEARD ON:	March 29, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	T. D., Appellant (Claimant)