



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. K. v Canada Employment Insurance Commission*, 2019 SST 863

Tribunal File Number: GE-18-2661

BETWEEN:

E. K.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Angela Ryan Bourgeois

HEARD ON: April 15, 2019

DATE OF DECISION: April 18, 2019

DECISION

[1] The appeal is dismissed. The Claimant must repay the benefits she received that she was not entitled to, even if she did not cause the overpayment.

OVERVIEW

[2] The Claimant, E. K., applied for and received benefits under the *Employment Insurance Act* during a temporary layoff from her job. Shortly after she returned to work, she was dismissed. Her employer continued to pay her salary for another pay period, and paid her severance and vacation pay.

[3] The Claimant contacted the Canada Employment Insurance Commission (Commission) to find out how to report her earnings. The Commission allocated her earnings based on her records of employment and information from the employer. The information from the employer changed a few times before the final allocation was completed.

[4] The allocation of earnings reduced the amount of benefits the Claimant was entitled to receive. Since she had already been paid benefits at the higher rate, the effect of the allocation was that she was overpaid benefits.

[5] The Commission decided that the Claimant had to repay the overpayment amount of \$2,503.

[6] The Claimant disagrees. She argues that she should not have to repay the overpayment amount because she did not cause the overpayment. She states that her employer caused the overpayment by making mistakes on her record of employment. As such, she submits that her employer should be responsible for the overpayment amount, not her.

[7] I must decide if the Claimant has to repay the overpayment amount.

ISSUE

[8] Does the Claimant have to repay the overpayment amount?

ANALYSIS

[9] When a claimant receives earnings from employment, the earnings must be allocated to weeks.¹

[10] When earnings are allocated to weeks during a benefit period, meaning the period when a claimant can receive benefits, the allocation can reduce the amount of benefits that are otherwise payable during those weeks.

[11] The Claimant does not dispute that she received earnings, or how the Commission allocated her earnings. She does not dispute that she was overpaid benefits in the amount of \$2,503. She has not provided any evidence or made any submissions to challenge the allocations and other calculations done by the Commission.

[12] As such, I accept the allocations and deductions made by the Commission, and accept that the overpayment amount is \$2,503.

[13] At the hearing, the Claimant stated that she was appealing the Commission's decision that she has to repay the overpaid benefits, not the allocation.

Does the Claimant have to repay the overpayment amount?

[14] Yes. Since the Claimant was paid more in benefits than she was entitled to receive, she must repay the amount she was overpaid.

[15] The Act states that Claimants must repay, without delay, amounts paid to them as benefits to which they are not entitled.²

[16] I understand the Claimant's argument, and agree that the overpayment resulted, at least partly, because of errors on her record of employment. However, the Act requires the Claimant to repay the benefits, even if she did not cause the overpayment.

¹ Earnings are the entire income of a claimant arising from any employment. Earnings are further defined in s 35 of the *Employment Insurance Regulations*. The requirement to allocate earnings to weeks is set out in s 36 of the *Employment Insurance Regulations*.

² This is set out in ss 43 and 44 of the Act.

[17] The Claimant was paid benefits that she was not entitled to receive, and as such, she must repay those benefits. The Act is clear on this point, and I cannot change the law. Further, I do not have jurisdiction to write-off the amount of the overpayment.³

CONCLUSION

[18] The Claimant must repay the overpayment amount.

[19] The appeal is dismissed.

Angela Ryan Bourgeois

Member, General Division - Employment Insurance Section

HEARD ON:	April 15, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	E. K., Appellant

³ In certain circumstances, the Commission can write-off amounts owing. This is set out in s 56 of the *Employment Insurance Regulations*. Appeals of these write-off decisions are to the Federal Court of Canada, not the Tribunal.