



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. W. v Canada Employment Insurance Commission*, 2019 SST 560

Tribunal File Number: GE-19-1179

BETWEEN:

A. W.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: April 17, 2019

DATE OF DECISION: May 3, 2019

DECISION

[1] The appeal is dismissed. I find the Claimant's disability payments are earnings and were correctly allocated from November 9, 2017, through the week ending July 8, 2018.

OVERVIEW

[2] The Claimant made an initial claim for employment insurance sickness benefits after she was unable to continue working in July 2017. She later converted her claim to regular employment insurance benefits. In July 2018, the Claimant stopped her claim and informed the Canada Employment Insurance Commission (Commission) that she had been approved for long-term disability (LTD) payments through the insurance plan she had with her former employer for the period starting in November 2017. The Commission determined the Claimant's LTD payments were considered earnings and allocated the earnings to her weekly benefits starting in November 2017, until the end of her claim. This created an overpayment.

[3] The Claimant requested a reconsideration because the LTD payments are not taxable and should not be considered earnings. The Commission maintained its decision and the Claimant now appeals to the Social Security Tribunal (Tribunal).

ISSUES

[4] Does the money the Claimant received for LTD payments constitute earnings?

[5] If so, were the earning correctly allocated?

ANALYSIS

[6] Income is any pecuniary or non-pecuniary payment a claimant receives from an employer or any other person.¹ To be considered earnings, the income must be arising out of any

¹ The definition of income for benefit purposes is found at subsection 35(1) of the *Employment Insurance Regulations*

employment or there is a “sufficient connection” between the Claimant’s employment and the money received.²

[7] If a claimant receives earnings during a period for which benefits are claimed, an amount must be deducted from these benefits. The entire income of a claimant including payments a claimant has received under a group wage-loss indemnity must be taken into account when determining the amount to be deducted from a claimant’s benefits.³

Does the money the Claimant received constitute earnings?

[8] Yes, I find the Claimant’s disability payments constitute earnings, pursuant to paragraph 35(2)(c)(i) of the *Employment Insurance Regulations*, as the payments were paid from a group wage-loss indemnity plan.

[9] The following facts are not in dispute. The Claimant separated from her employment on July 12, 2017. She was approved in June 2018, to receive LTD payments commencing as of November 9, 2017.

[10] The Claimant stated at the hearing that she is receiving disability benefits, not wage-loss indemnity payments. She stated that she applied for disability in February or March of 2018, when she knew she would not return to work, and was approved in June 2018. At that time, she contacted the Commission to notify them of the disability payment and to stop her claim.

[11] The Claimant argued the disability benefits she received do not constitute income or earnings. In support of her argument, she provided a letter from the insurance company dated June 28, 2018, which states the payments are not taxable and that she will not be issued a T4. She stated at the hearing that there is no way for her to claim these payments as income to the Canada Revenue Agency and that no statutory deductions are removed from the payments before they reach her.

² The presence of a “sufficient connection” between earnings and employment was considered by the Federal Court of Appeal in *Canada (Attorney General) v. Roch*, 2003 FCA 356

³ Subsection 35(2) of the *Employment Insurance Regulations* lists the type of employment income to be considered when determining the amount of earnings to allocate against a claimant’s benefits. Payments received under a group wage-loss indemnity program are found at paragraph 35(2)(c)(i)

[12] The insurance provider's letter dated June 28, 2018, states the Claimant's claim for Group Long Term Disability benefits has been approved through to October 1, 2018. The letter also instructs the Claimant to notify the insurer if she receives income from any other source, as her benefits may be adjusted on that basis.

[13] The Commission submitted the Claimant was entitled to receive the LTD payments through her employer's insurance plan and because she was entitled to receive those payments through her employer, the payments constitute earnings. The Commission argued the Claimant's LTD payments are considered earnings under paragraph 35(2)(c) of the *Employment Insurance Regulations* because the payments were made to compensate the claimant for her wages lost when she was unable to work due to illness, as part of a group wage-loss indemnity plan. It also submits the Claimant was approved for benefits after serving her "elimination period" of 119 days after stopping her employment due to illness.

[14] The employer stated to the Commission that the disability or wage-loss insurance was a group plan through the employer, that coverage is mandatory while the employee is employed with them and employees pay for their own premiums.

[15] At the hearing, the Claimant confirmed that the employees were members of the plan and that coverage was mandatory while employed.

[16] I acknowledge the Claimant's argument that her LTD benefits are non-taxable; however, the fact that her benefits were non-taxable has no bearing on the determination of earnings according to the *Employment Insurance Act* as taxation of LTD benefits is a separate matter determined by the Canada Revenue Agency under the *Income Tax Act*.

[17] The evidence provided by the Claimant and the employer indicates that the Claimant's LTD benefit plan was purchased through her workplace, thus it is related to a group of persons who are all employed by the same employer, and was mandatory for employees to purchase. Further, the letter dated June 28, 2018, from the Claimant's insurance provider identifies the LTD plan as a group plan. The letter also instructs the Claimant to notify the insurer if she receives income from any other source, as the LTD benefits may be adjusted as necessary. For these reasons, I find that the Claimant's LTD benefits are paid under a disability wage-loss

indemnity plan in accordance with paragraph 35(2)(c)(i) of the *Employment Insurance Regulations*.

[18] Payments under a wage-loss indemnity plan are considered earnings, unless the wage-loss indemnity plan is not a group plan.⁴ To determine if the Claimant's LTD plan is not a group plan, she must meet all the six specified conditions in subsection 35(8) of the *Employment Insurance Regulations*. Based on the Claimant's documentary evidence and the employer's statements to the Commission, I accept that the plan was not financed in part by the employer and that it provided constant benefits while permitting deduction for income from other sources. However, I find the evidence supports that the Claimant's plan is related to a group of persons who are employed by the same employer and that the plan was not voluntarily purchased by the Claimant. For these reasons, I find that the Claimant has not met every condition specified in the *Employment Insurance Regulations* and therefore her LTD benefits are considered to be made under a group wage-loss indemnity plan. As such, they are considered earnings.

[19] I also find there was a sufficient connection between these earnings and the Claimant's employment, as she received the LTD benefits from the insurance provider because of her participation in the employer's group wage-loss indemnity plan. As such, these earnings arise out of her employment.

Were the earnings correctly allocated?

[20] Yes. I find the earnings were correctly allocated by the Commission to the weeks of November 9, 2017 to the week ending July 8, 2018.

[21] Once a sum has been found to be earnings, it is necessary to allocate the sum.⁵ LTD payments shall be allocated to the weeks in respect of which the payments are paid or payable.⁶

[22] It is undisputed that the Claimant was paid disability benefits for the period from November 9, 2017 to July 8, 2018. The Claimant also received employment insurance benefits

⁴ Paragraph 35(7)(b) of the *Employment Insurance Regulations*

⁵ If a claimant received earnings while in receipt of employment insurance benefits, the earnings must be allocated pursuant to section 36 of the *Employment Insurance Regulations*.

⁶ The allocation of LTD payments is provided for under subsection 36(12) of the *Employment Insurance Regulations*

during this same period and therefore, I find that a portion of the Claimant's LTD benefits needs to be allocated from November 9, 2017 to July 8, 2018.

[23] For the above reasons, I conclude the Claimant had earnings arising from employment under subsection 35(2) of the *Employment Insurance Regulations*. And, in accordance with subsection 36(12) of the *Employment Insurance Regulations*, those earnings were allocated correctly.

[24] The Claimant gave compelling statements at the hearing that she is receiving minimal LTD benefits and having to repay employment insurance benefits has placed her in a situation of severe financial distress. She stated her medical condition is worsening and the stress of dealing with collection calls and this appeals process has been overwhelming.

[25] I truly sympathize with the Claimant's circumstances and acknowledge that she has acted truthfully and with outstanding perseverance throughout this whole process. Unfortunately, in dealing with cases I must follow the law and render decisions based on the legislation and precedents set by the courts. Rigid rules are always apt to give rise to some harsh results that appear to be at odds with the objectives of the statutory scheme. 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

CONCLUSION

[26] The appeal is dismissed.

Catherine Shaw
Member, General Division - Employment Insurance Section

HEARD ON:	April 17, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	A. W., Appellant/Claimant