



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. A. v Canada Employment Insurance Commission*, 2019 SST 563

Tribunal File Number: GE-19-1674

BETWEEN:

A. A.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: May 7, 2019

DATE OF DECISION: May 9, 2019

DECISION

[1] The appeal is dismissed. The Appellant A. A., whom I will refer to as the Claimant, is required to repay the overpayment of benefits that resulted from the allocation of her group wage-loss benefits.

OVERVIEW

[2] While in receipt of sickness Employment Insurance (EI) benefits, the Claimant was in receipt of short-term disability (STD) and long-term disability (LTD) wage-loss benefits from her group wage-loss provider.

[3] The Respondent, who is the Canada Employment Insurance Commission (Commission), allocated the STD and LTD benefits at \$511.00 per week starting from April 8, 2018. This retroactive allocation resulted in a \$3,036.00 overpayment of benefits.

[4] Upon reconsideration, the Commission maintained their decision that the Claimant's STD and LTD benefits are earnings to be allocated from April 8, 2018. The Claimant disagrees with having to repay the overpayment of EI benefits because she had contacted the Commission several times to notify them of her STD and LTD benefits.

ISSUES

[5] Was the Claimant in receipt of STD and LTD benefits, in the amount of \$511.00 per week, since April 8, 2018?

[6] If so, are the STD and LTD benefits considered earnings?

[7] If so, how are the STD and LTD benefits to be allocated?

[8] Can I reverse, reduce, or write of the overpayment?

ANALYSIS

a) Earnings

[9] The entire income from employment is earnings.¹ All pecuniary or non-pecuniary income received by the Claimant under a group wage-loss indemnity plan is income.²

[10] There is no dispute that the Claimant's STD and LTD wage-loss benefits are earnings for the purpose of EI benefits.³ Therefore, I will now consider the issue of allocation of these earnings.

b) Allocation

[11] Payments under a group sickness or disability wage-loss indemnity plan shall be allocated to the weeks in respect of which the payments are paid or payable.⁴ The rationale for allocating earnings that the Claimant receives, for a period while in receipt of EI benefits, is the avoidance of double compensation.⁵

[12] The Commission has the authority to reconsider a claim for benefits within 36 months after those benefits have been paid.⁶ In this case, the Claimant established a claim (benefit period) for EI benefits effective April 8, 2018. The Commission notified the Claimant five months later, on September 28, 2018, about the allocation of her STD and LTD benefits starting from effective April 8, 2018, resulting in an overpayment of EI benefits.

[13] Regarding the Claimant's argument that she did not receive \$511.00 per week, because her STD and LTD provider withheld deductions; it is settled law that the whole amount of earnings (the gross amount prior to deductions), is to be allocated.⁷

[14] After explanation of the foregoing, the Claimant does not dispute that she was in receipt of \$511.00 per, before deductions, for STD and later, LTD benefits, since the start of her claim

¹ Subsection 35(2) of the *Employment Insurance Regulations (Regulations)*

² Subsection 35(2) of the *Regulations*

³ Section 35 of the *Regulations*

⁴ Paragraph 36(12)(b) of the *Regulations*

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

⁶ Subsection 52(1) of the *Employment Insurance Act (Act)*

⁷ *Canada (Attorney General) v. Boone*, A-866-87

for EI benefits on April 8, 2018. Accordingly, I find that the Claimant's STD and LTD benefits are to be allocated at \$511.00 per week from April 8, 2018.⁸

[15] It is unfortunate that the Commission did not input the allocation of the Claimant's STD and LTD benefit amounts, into their computer system when she first contacted them, and prior to the payment of EI benefits. Had they done so, this overpayment of EI benefits could have been avoided.

c) Repayment of the Overpayment

[16] The Claimant testified that she had done everything she knew how to do in order to inform the Commission and avoid an overpayment. As such, the Claimant asserts that she should not have to repay the \$3,036.00 overpayment of EI benefits.

[17] I am truly 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.⁹

[18] Further, although the Claimant's circumstances are unfortunate, they do not change the fact that she received benefits in excess of the amount she was entitled to receive. Therefore, she is liable to repay those amounts.¹⁰ I cannot ignore, refashion, circumvent, rewrite, nor interpret the *Act* in a manner that is contrary to its plain meaning, even in the interest of compassion.¹¹

[19] As explained during the hearing, I do not have the jurisdiction to decide on matters relating to debt cancellation or reduction, as that authority belongs to the Commission.¹² As per the November 16, 2018, supplementary claim, the Commission states that they informed the Claimant that after reviewing her case for an overpayment write-off, due to the Commission's delay in allocating her STD and LTD benefits, they determined that she does not meet the conditions to have the overpayment written off.

⁸ Paragraph 36(12)(b) of the *Regulations*

⁹ Subsection 43(b) of the *Act*

¹⁰ Subsection 43(b) of the *Act*

¹¹ *Canada (Attorney General) v. Kneé*, 2011 FCA 301

¹² Section 56 of the *Regulations*

[20] The Commission is correct in stating that the *Act* provides that a claimant cannot request reconsideration of a decision by the Commission on a write-off matter and therefore, cannot appeal such a decision before the General Division of the Social Security Tribunal.¹³ It is the Federal Court of Canada, who holds jurisdiction to hear an appeal relating to a write-off issue.¹⁴

CONCLUSION

[21] The appeal is dismissed.

Linda Bell

Member, General Division - Employment Insurance Section

HEARD ON:	May 7, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. A., Appellant (Claimant)

¹³ Section 112.1 of the *Act*

¹⁴ *Bernatchez v. Canada (Attorney General)*, 2013 FC 111