



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. S. v Canada Employment Insurance Commission*, 2019 SST 590

Tribunal File Number: AD-18-641

BETWEEN:

**C. S.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

---

DECISION BY: Shirley Netten

DATE OF DECISION: June 19, 2019

## DECISION AND REASONS

### DECISION

[1] The appeal is allowed. Earnings of \$66,400 for past wage loss are allocated at a rate of \$253 per week.

### BACKGROUND

[2] C. S. (Claimant) was in a motor vehicle accident in September 2009. He received sickness and regular Employment Insurance (EI) benefits between October 2009 and September 2010. The Claimant sued the individuals who were responsible for the motor vehicle accident and, in October 2014, his claim was settled for \$515,000. He received \$318,888 after payment of expenses and legal fees. The Canada Employment Insurance Commission (Commission) allocated this amount over 262 weeks (the period between the accident and the settlement) in the amount of \$1217 per week. Once applied against his EI benefits, the Claimant had an overpayment of \$18,081.

[3] The Commission's allocation decision was confirmed on reconsideration and on appeal to the General Division of the Social Security Tribunal (Tribunal). The Claimant was granted leave (permission) to appeal to the Tribunal's Appeal Division.

### AGREEMENT

[4] The Commission conceded that the General Division made an error of fact when it ignored evidence that only a portion, rather than all, of the settlement monies received were earnings. Two settlement conferences were then held in this matter, under section 17 of the *Social Security Tribunal Regulations*. The parties have agreed that the appropriate remedy is for me to substitute my decision for that of the General Division. The parties have further agreed that earnings of \$66,400 are to be allocated (rather than \$318,888), being \$253 per week, and applied against the EI benefits received.

[5] I accept the parties' agreement on the basis that the outcome is consistent with the relevant provisions of the *Department of Employment and Social Development Act* (DESDA)

and the *Employment Insurance Regulations* (Regulations), and with a reasonable interpretation of the evidence on file.

## **DISCUSSION**

[6] The grounds of appeal to the Appeal Division include that “the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.”<sup>1</sup>

[7] The General Division decision states that “there is no documentation on file to confirm that the amounts the Appellant’s Counsel is submitting [regarding the breakdown of the settlement monies] is correct”, and concludes that the entire sum of \$318,888 was earnings arising from employment. However, the General Division had extensive evidence to the contrary, supporting a finding that only a portion of the settlement funds were for past wage loss during the period that EI benefits were received. In particular, the General Division had been given the Mediation Summaries filed with the Supreme Court of British Columbia, the Claimant’s representative’s hand-written notes from the mediation, and correspondence from the insurance company that had paid out the settlement monies. I agree with the parties that the General Division made an error of fact regarding the nature of the settlement monies, without regard for the evidence before it.

[8] I have the authority to give the decision that the General Division should have given.<sup>2</sup> I accept the parties’ agreement that the Claimant received the sum of \$66,400 (\$100,000 less legal fees) for wage losses incurred while he was receiving EI benefits and beyond. This figure is consistent with the information given by the insurance company, as well as the overall settlement framework outlined in other documents. I further agree that the \$66,400 must be allocated to the 262 weeks between the date of accident and the date of settlement, resulting in earnings of \$253 per week.

---

<sup>1</sup> DESDA, s 58(1)(c)

<sup>2</sup> DESDA, s 59(1)

**CONCLUSION**

[9] The appeal is allowed. Earnings of \$66,400 for past wage loss are allocated at a rate of \$253 per week. The Claimant's EI benefits from October 2009 to September 2010 are to be recalculated, applying earnings of \$253 per week rather than \$1217 per week.

Shirley Netten  
Member, Appeal Division

REPRESENTATIVES:	J. Zak, for the Appellant  I. Thiffault, for the Respondent
------------------	---