



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. H. v Canada Employment Insurance Commission*, 2019 SST 924

Tribunal File Number: GE-19-2328

BETWEEN:

A. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Candace R. Salmon

HEARD ON: July 16, 2019

DATE OF DECISION: July 26, 2019

DECISION

[1] The appeal is dismissed with modification. The Appellant received earnings and those earnings were properly allocated under the provisions of the *Employment Insurance Regulations*; however, the overpayment calculated by the Canada Employment Insurance Commission failed to consider that the Appellant was also underpaid in some weeks. Instead of an overpayment of \$3,804, the Appellant was only overpaid \$1,874. The Appellant is only liable to repay the overpayment of \$1,874.

OVERVIEW

[2] The Appellant, who I will refer to as the Claimant, made a claim for regular employment insurance (EI) benefits. The Canada Employment Insurance Commission, which I will refer to as the Commission, determined the Claimant made errors in reporting his earnings. The Commission found that the Claimant owed money back for the overpayment of those incorrectly paid benefits. The Claimant requested reconsideration, saying he reported all of the money he made, but the Commission declined to change its decision. The Claimant appeals the decision to the Social Security Tribunal (Tribunal).

ISSUES

[3] **Issue #1:** Did the Claimant receive monies from the employer that constituted earnings?

[4] **Issue #2:** If yes, were the earnings correctly allocated?

ANALYSIS

[5] When an EI claimant receives an amount of money from an employer, it has to be decided whether or not that money is “earnings” under the law.¹ If it is, then the earnings need to be allocated, meaning applied, to the proper weeks of the EI claim.² How the earnings get allocated depends on the reason why the monies were paid. Sums received from an employer are presumed to be earnings and must be allocated unless the monies fall within an exception or the sums do not

¹ *Employment Insurance Regulations*, section 35

² *Employment Insurance Regulations*, section 36

arise from employment.³ The burden is on the Claimant to demonstrate the amounts are not earnings.

[6] If earnings are allocated to weeks when EI is payable to a claimant, the earnings are deducted from the EI benefits.⁴

[7] The Commission allocates earnings paid as wages to the week the claimant worked and earned those wages.⁵

Issue 1: Did the Claimant receive monies from the employer that constituted earnings?

[8] I find the sums in question, being payment for work performed, are earnings.

[9] The Claimant made an initial claim for EI benefits on October 15, 2015.⁶ The Record of Employment states the Claimant was employed as a X from October 12, 2015, until July 9, 2016, but did not work in every pay period.

[10] The Claimant completed biweekly EI reports, where he was supposed to claim the earnings he had in each week so the Commission could determine his entitlement to benefits on a weekly basis. Copies of the biweekly reports show the Claimant sometimes claimed earnings on the report, and sometimes stated that he had none.

[11] The Claimant testified that he is not disputing the employer's records of how much money he made in earnings. His dispute is that he believes he claimed all of the money he made and does not believe he owes a further overpayment.

[12] As the monies in question were paid to the Claimant in compensation for work he performed, and he does not dispute this fact nor the amounts he was paid, I find the money in question is earnings.

³ *Employment Insurance Regulations*, section 35(7)

⁴ *Employment Insurance Act*, section 19

⁵ *Employment Insurance Regulations*, section 36(4)

⁶ While the Commission has stated the "initial application for benefits" was made on May 27, 2018, on the List of Documents Included in the Reconsideration File title page, a review of the initial claim shows the date it was submitted was October 15, 2015, at 6:32pm. This is on page GD3-10.

Issue 2: Were the earnings correctly allocated?

[13] I find the Commission incorrectly allocated the earnings when it determined the Claimant owed an overpayment of \$3,804.

[14] Once an amount of money is found to be earnings under the *Employment Insurance Regulations*, it is necessary to allocate that sum.⁷

[15] On March 14, 2017, the Commission sent a Request for Clarification of Employment Information to the Claimant, identifying numerous weeks when he either declared too little earnings, or too many earnings, as compared against the earnings information provided by the employer. The Claimant told the Commission to review its file because he had already seen a similar paper and paid an overpayment. He also stated that he thought the Commission had made mistakes and that he had already overpaid when repaying on previous claims.

[16] A Commission agent spoke to the Claimant on June 14, 2017, and explained to him that he received a similar form in 2016, because it dealt with earnings from 2014. The Commission stated that the most recent form dealt with earnings from October 12, 2015, until July 9, 2016. The Claimant stated to the Commission that he receives a letter like this every year and ends up paying money he does not owe. He stated to the Commission that he “always declared all of his earnings” but “doesn’t always declare them in the correct weeks but he tries.”

[17] The Claimant had the opportunity to review his Record of Employment, and stated to the Commission that he agreed that the earnings provided by his employer were correct. He stated the discrepancies happened because he declared some earnings in the wrong week. He also stated that he thought he declared all of the money he earned, but may also have made a mistake in reporting net versus gross amounts of earnings.

[18] The Commission contacted the employer on June 19, 2017, who confirmed that the Claimant did not work or earn wages from July 24, 2016, until August 12, 2016.

⁷ Sums which are determined to be earnings under section 35 of the *Employment Insurance Regulations* must be allocated under the provisions of section 36 of the same regulations.

[19] The Commission issued a decision on February 6, 2018. It noted the instances where the Claimant made incorrect statements relating to his earnings in a specific week:

Week Beginning	Your earnings are (this is the earnings the employer reported)	Instead of (this is the number the Claimant reported having earned)
October 11, 2015	\$63	\$0.00
November 29, 2015	\$816	\$0.00
December 6, 2015	\$969	\$0.00
December 13, 2015	\$956	\$0.00
December 20, 2015	\$1,070	\$0.00
January 3, 2016	\$599	\$0.00
January 24, 2016	\$625	\$969
January 31, 2016	\$599	\$0.00
February 14, 2016	\$536	\$0.00
February 21, 2016	\$548	\$0.00
March 6, 2016	\$561	\$752
April 3, 2016	\$0.00	\$854
May 8, 2016	\$0.00	\$625
May 22, 2016	\$0.00	\$749
May 29, 2016	\$0.00	\$548
June 5, 2016	\$663	\$0.00
June 19, 2016	\$636	\$0.00
July 24, 2016	\$0.00	\$536
July 31, 2016	\$0.00	\$662
August 7, 2016	\$0.00	\$636

[20] The Commission issued a Notice of Debt on February 10, 2018, for a debt of \$3,804, reflecting the amount of overpaid benefits the Claimant received.

[21] The Claimant requested reconsideration of the debt on October 11, 2018, stating he knew that he missed a couple biweekly reports, but submitting that he also knew he claimed all of the income he made.

[22] The Commission spoke to the employer on April 10, 2019, to confirm the Claimant's earnings in each relevant week. The employer also provided a printed copy of its payroll related to the Claimant's income. The Claimant testified at the hearing that he did not dispute the employer's records, other than the first week where it stated he earned \$63.00, because he does

not recall ever having \$63.00 paid to him. On the balance of probabilities, I find the Claimant was paid this money. There is no dispute over the remainder of the employer's records relating to payment, and the Claimant would have received the money in a pay period and not as a stand-alone payment, which explains why he does not remember receiving a payment of this amount.

[23] The Commission issued a reconsideration decision on May 17, 2019, upholding its February 6, 2018, decision. The Claimant filed a Notice of Appeal on June 17, 2019, stating he had paid back benefits multiple times and does not believe he owes anything.

[24] It is clear from the chart above that there are weeks where the Claimant had earnings and claimed none, and also weeks where he claimed earnings but did not actually have any. The Claimant stated at the hearing that he missed a couple EI reports because his car needed repairs so he did not claim his earnings in that week, but stated he told someone at Service Canada that he did not claim his earnings, and was told that while he should not make a habit of doing it, it was not a problem. He explained that he then claimed his earnings as best he could but the delay in claiming a couple weeks put him off the normal schedule and he was always a little bit behind in claiming the amounts of money he earned.

[25] The Claimant expressed that he did not understand how he was being assessed an overpayment when he claimed all of the money he earned, and submitted his only error was that he did not claim the money in the proper weeks. By way of explanation, I told the Claimant that if he was paid \$500 in Week 1, Week 2, and Week 3, and claimed that money in each week, he may not be entitled to EI benefits at all. However, if he reported that he had no earnings in Week 1 and Week 2, but \$1500 in Week 3, that means he would likely be paid benefits for Week 1 and Week 2, but none in week 3. This means he claimed all of his earnings, but because the earnings were not claimed in the correct weeks he was paid EI benefits for two weeks where he was not entitled to receive them. The Claimant explained that he broke the earnings up and claimed, for example, \$750 in Week 2 and Week 3. Even if this is the case, the same result occurs—the Claimant would have been paid EI benefits in Week 1 when he was not entitled to receive any.

[26] After explaining the law to the Claimant, he stated that he understood but still believed that he was being charged too much money as an overpayment.

[27] I have reviewed the earnings, the benefits paid to the Claimant, and his reported earnings. I noted some discrepancy between what the Claimant was told he owed as an overpayment, \$3,804, and the amount the Claimant appeared to actually have been overpaid. On July 17, 2019, I asked the Commission to investigate this issue, and provide an updated breakdown of the over and under payments in each relevant week, to determine the actual over or under payment. The Commission replied on July 18, 2019, with the updated breakdown. I have reviewed this document and find that I agree with the Commission that the Claimant was paid monies which are earnings, and that he was overpaid due to errors in claiming the earnings. The amount of the overpayment, however, is less than the Commission initially stated to the Claimant because the original total of \$3,804 failed to consider the weeks when the Claimant was underpaid. The Claimant was underpaid \$1,930. The underpaid weeks create a credit to the overpayment, and a final overpayment owing of \$1,874, instead of \$3,804.

[28] The breakdown is:

Week Beginning	Your earnings are (this is the earnings the employer reported)	Benefits paid to Claimant by Commission	Benefits that the Claimant was entitled to receive	This created an over or under payment of (negative numbers mean these amounts were underpaid)
October 25, 2015	\$0.00	\$386	\$323	\$63
November 29, 2015	\$816	\$386	\$0.00	\$386
December 6, 2015	\$969	\$386	\$0.00	\$386
December 13, 2015	\$956	\$386	\$0.00	\$386
December 20, 2015	\$1,070	\$386	\$0.00	\$386
January 3, 2016	\$599	\$386	\$86	\$300
January 31, 2016	\$599	\$386	\$86	\$300
February 14, 2016	\$536	\$386	\$118	\$268
February 21, 2016	\$548	\$386	\$112	\$274
April 3, 2016	\$0.00	\$0.00	\$386	(-\$386)
May 8, 2016	\$0.00	\$0.00	\$386	(-\$386)
May 22, 2016	\$0.00	\$0.00	\$386	(-\$386)
May 29, 2016	\$0.00	\$0.00	\$386	(-\$386)

June 5, 2016	\$663	\$386	\$38	\$348
June 12, 2016	\$0.00	\$0.00	\$386	(-\$386)
June 19, 2016	\$636	\$386	\$65	\$321
August 14, 2016	\$0.00	\$386	\$0.00	\$386

[29] Based on the information in the chart above, I find the Claimant was overpaid \$1,874. This is the amount the Claimant is liable to repay to the Commission.

CONCLUSION

[30] The appeal is dismissed with modification. The Claimant received earnings and those earnings were properly allocated under the provisions of the *Employment Insurance Regulations*; however, the overpayment calculated by the Commission failed to consider that the Claimant was also underpaid in some weeks. Instead of an overpayment of \$3,804, the Claimant was only overpaid \$1,874. The Claimant is only liable to repay the overpayment of \$1,874.

Candace R. Salmon

Member, General Division - Employment Insurance Section

HEARD ON:	July 16, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	A. H., Appellant