



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. K. v Canada Employment Insurance Commission*, 2019 SST 1484

Tribunal File Number: GE-19-2125

BETWEEN:

L. K.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Lilian Klein

HEARD ON: June 27, 2019

DATE OF DECISION: August 16, 2019

DECISION

[1] I am dismissing the appeal. The Commission properly allocated the earnings that the Appellant (the Claimant) received from June 19, 2016, to October 29, 2016. These reasons explain why.

OVERVIEW

[2] The Claimant reported payments from her employer, a college, from June 19, 2016, to October 29, 2016. Her employer reported higher amounts. The Commission adjusted the total and found that these payments were all earnings. It allocated them to the weeks the employer reported that she earned them. It also imposed a penalty for knowingly making false statements about her earnings, but later removed it when reconsidering her case.

[3] The Claimant does not agree with the Commission's allocation since she believes some of the payments were for late or missing hours, or vacation pay due as far back as 2014.

PRELIMINARY MATTERS

[4] I heard the Claimant's appeal together with her other appeal (GE-19-2126) since some of her arguments apply to both sets of circumstances.

[5] The Claimant asked for more time to get clarification from her employer about her earnings. I set the deadline for post-hearing submission as July 8, 2019. I gave her an extension to July 22, 2019. I then allowed a further extension since asked for more time to go through "every single late payment hour" and match it with the discrepancies between her employer's records and her own recollections of what she earned.

[6] On July 25, 2019, the Claimant submitted additional documentation to cover both her appeals. I accepted this evidence as relevant.

ISSUES

[7] I have to decide two questions:

- a) Is the money the Claimant received earnings?

b) If it is earnings, did the Commission allocate these earnings correctly?

ANALYSIS

Did the Claimant receive earnings?

[8] Yes. I find that the payments the Claimant received from her employer are earnings. The law says that your entire income from any employment is earnings.¹ If you believe money your employer paid you was not earnings for work performed during a particular period, it is up to you to prove this.²

[9] The employer told the Commission that it paid the Claimant a total of \$15,161 from the week beginning June 19, 2016, to the week beginning October 23, 2016. She reported a total of \$13,070. The Commission found that these payments were earnings. It increased the total amount of her earnings to account for the differences between the evidence from the employer and the amounts she reported on her benefit claim reports.

[10] The Claimant is not disputing that she received these payments, or the amounts her employer paid her. She is not disputing that these payments were earnings. She explained that the differences were due to the way the college pays her, often in arrears. The Commission accepted her explanation that her reporting errors were honest mistakes and removed the penalty it originally imposed.

Did the Commission allocate the Claimant's earnings correctly?

[11] Yes. I find that the Commission allocated the Claimant's earnings correctly since the allocation follows the employer's records of the weeks she was paid and the amounts she received. She failed to prove that any of these payments were for work performed at an earlier date.

¹ Subsection 35(2) of the *Employment Insurance Regulations* (EI Regulations). The law defines both "income" and "employment" in s 35(1) of the EI Regulations). "Income" is any income that a claimant received or will receive from an employer or any other person, whether in money or something else. "Employment" is any employment under any kind of contract of service or employment.

² *Bourgeois v Attorney General of Canada*, 2004 FCA 117.

[12] The law says that earnings must be allocated.³ This allocation is important because when the Commission allocates earnings to weeks in a benefit period, it can reduce, or even eliminate, the benefits payable for those weeks.⁴ If you already received benefits, it can lead to an overpayment of benefits that you must repay.⁵

[13] Earnings are allocated under the law depending on the reason they were paid.⁶ The Commission allocates earnings to the week in which you earn them.⁷

[14] The Commission allocated the Claimant's earnings starting with the week of June 19, 2016, and ending with the week of October 23, 2016. The Claimant says she cannot be sure the Commission allocated her earnings correctly since her employer often paid her late. She believes some of her payments might also have been vacation pay, possibly dating back as far as 2014. She argues that the Commission was incorrect in allocating her earnings from June 19, 2016, to October 29, 2016, since she did not necessarily earn all the money during these weeks. However, she did not provide the specific amounts of earnings she said were from an earlier period.

[15] I find that the Claimant failed to meet her onus to prove she did not earn the amounts her employer reported for the weeks in question. She asked her employer to confirm that some of her earnings were late or missing payments for work performed on an earlier date, or vacation pay dating back to previous years. Her employer did not give her this confirmation.

[16] The Claimant gave me copies of email exchanges with her employer from 2018 and 2019, which show that she has had issues with payments for late or missing hours. However, none of the emails showed that her earnings from June 19, 2016, to October 29, 2016, were for late or missing hours, or retroactive vacation pay.

[17] On July 19, 2019, her college sent her an "earnings statement" from 2016 to 2018, and told her to match it against her pay stubs. She asked me for more time after the hearing to match "every single late payment hour" against this spreadsheet.

³ Section 36 of the EI Regulations.

⁴ S 35(2) of the EI Regulations.

⁵ S 44 and s 45 of the *Employment Insurance Act* (EI Act).

⁶ S 36 of the EI Regulations.

⁷ S. 36(4) of the EI Regulations.

[18] However, she did not do this. The 17-page statement covers a three-year period. It is not specific to the weeks of her allocation. She did not identify these weeks. The spreadsheet gives such details as her payroll number and job code, and whether her employer paid her as partial load faculty or part-time sessional faculty. She argues that this document “shows all of the payments that often come in late without my knowledge. This explains the discrepancies for all of my claims with EI.”

[19] I find that the spreadsheet does not provide evidence to support her argument that the earnings she received between June 19, 2016, and October 29, 2016, were for work she performed at an earlier date. The spreadsheet includes no specific weekly course or payment dates. Although it shows she received some payments for late or missing hours over a three-year period, there is no way to show from the undated entries that these payments are relevant to her allocation weeks in 2016. She did not provide any pay stubs or try to match the late payment hours recorded on the spreadsheet to these weeks.

[20] In the absence of this evidence, I find that the Commission’s allocation was correct.

CONCLUSION

[21] I find that the Commission correctly allocated the Claimant’s earnings. This means that her appeal is dismissed.

Lilian Klein

Member, General Division - Employment Insurance Section

HEARD ON:	June 27, 2019
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	L. K., Appellant