



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. H. v Canada Employment Insurance Commission*, 2019 SST 1612

Tribunal File Number: GE-19-2696

BETWEEN:

A. H.

Claimant

and

Canada Employment Insurance Commission

Commission

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Audrey Mitchell

HEARD ON: September 12, 2019

DATE OF DECISION: September 24, 2019

DECISION

[1] The appeal is dismissed. The money paid to the Claimant is earnings and the Commission correctly allocated the earnings to the weeks for which the earnings were payable.

OVERVIEW

[2] The Claimant teaches at a university on a contract basis. He collected employment insurance benefits during the 2017 summer non-teaching period. Based on information contained in a record of employment (ROE) the employer issued, the Commission conducted an investigation to determine whether the Claimant had earnings while he collected benefits. The Commission gave the Claimant an opportunity to explain the discrepancy between the information the employer gave the Commission and the amounts that he reported in his bi-weekly claims. The Claimant disputes that he had earnings while collecting benefits, arguing that the employer pro-rated his earnings for the month to weekly earnings for accounting purposes. The Commission decided that the money was earnings in the form of salary payable under the terms of a contract.

PRELIMINARY MATTERS

[3] The hearing was scheduled for September 6, 2019, but because Claimant was not available, in the interests of natural justice, the Tribunal granted the adjournment under section 11 of the *Social Security Tribunal Regulations*.

ISSUES

[4] Is the money that the Claimant received earnings?

[5] If it is earnings, did the Commission allocate it correctly?

ANALYSIS

Issue 1: Is the money that the Claimant received earnings?

[6] I find that the money the Claimant received from the employer is earnings.

[7] The law says that earnings are the entire income of a claimant arising out of any employment.¹ The law defines both “income” and “employment.” “Income” includes any income that a claimant did or will get from an employer or any other person, whether it is in the form of money or something else.² “Employment” includes any employment under any kind of contract of service or employment.³

[8] A claimant’s income is considered earnings if it is earned by labour or is given in return for work or if there is sufficient connection between the claimant’s employment and the sum of money received.⁴

[9] The Claimant’s employer issued an ROE that showed earnings for the month of September 2017. In response to a request for payroll information, the employer broke down the earnings that appeared on the ROE for September 2017, into weekly earnings, stating that the Claimant had earnings of \$201.34 for the week of August 27, 2017, and \$1,006.70 for the week of September 3, 2017.

[10] At the hearing, the Claimant testified that the university paid him monthly, roughly around the 25th of every month. He said that he had no reason to dispute the details on the ROE, and that he presumed the money paid in each month as identified on the ROE was correct. However, he argued that the employer completed the ROE and broke down the monthly wages by week for internal or employment insurance purposes.

[11] Putting aside for the moment the reason for which the employer broke down the monthly gross earnings to weekly earnings, I find based on the Claimant’s evidence, that the \$201.34 and \$1,006.70 form part of the total \$4,362.62 the employer paid him for September 2017. The Claimant submitted a copy of a teaching contract with the employer to teach two courses in the 2017 Fall Session, and the 2017/2018 Fall Session, respectively. I find, therefore, that the employer paid him for work done under contract of a service, and that there is sufficient connection between the Claimant’s employment and the money the Claimant received.

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

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

³ Subsection 35(1) of the *Employment Insurance Regulations*.

⁴ *Canada (Attorney General) v. Roch*, 2003 FCA 356).

[12] I find that the \$1,208.04 [\$201.34 + \$1,006.70] the employer paid the Claimant is earnings.

Issue 2: Did the Commission allocate the earnings correctly?

[13] I find that the Commission allocated the Claimant's earnings correctly.

[14] The law says that earnings have to be allocated.⁵ Earnings are allocated depending on the nature of the earnings. Earnings that are payable to a claimant under a contract of employment without the performance of services or payable by an employer in consideration of the claimant returning to or beginning work are allocated to the period for which they are payable.⁶

[15] The Claimant argued that although he accepted a contract with the university to start teaching in the 2017 Fall Semester, his earnings correspond to physical work, and if he did not work in a particular week, he did not have earnings in that week. He said that he did not perform any work from August 27, 2017 to September 9, 2017, but his first day of work was September 11, 2017, to teach a course for a period of 12 weeks in the 2017 Fall Semester.

[16] In a letter that the Claimant wrote to the Commission, he states that the earnings presumably correspond to work that he performed later in September 2017. He said that the start date, September 1, 2017, and the money identified on the ROE are for accounting purposes only, reiterating that he was not required to work and did not report to work until September 11, 2017. At the hearing, he also noted that the ROE shows the last day for which he was paid as December 31, 2017, but stated that this is New Year's Eve, and questioned who would be working on this date.

[17] At the hearing, the Claimant noted that the Commission's evidence reflects that he agreed that his contract with the university started on September 1, 2017. However, he testified that on further review of the actual contract, there is no start date on the contract and that this supports his argument that the allocation of the earnings to particular weeks is arbitrary and for accounting purposes.

⁵ Section 36 of the *Employment Insurance Regulations*.

⁶ Subsection 36(5) of the *Employment Insurance Regulations*.

[18] Having reviewed the Claimant's contract with the university, I note that the letter offering the contract is dated June 10, 2017 and that the Claimant accepted the offer on August 15, 2017, to teach two courses, one for the 2017 Fall Semester, and the other for the 2017/2018 Fall/Winter Semester. However, there are no start or end dates on the contract.

[19] An attachment to the letter notes that vacation pay is included in monthly salary payments, and suggests that the pay date is the 25th of the month. The Claimant testified that he thought the employer paid him around the 25th of each month.

[20] The employer issued an ROE that indicates that the first day the Claimant worked was September 1, 2017, and that the last day for which he was paid was December 31, 2017. It also indicates that the employer paid the Claimant monthly, and lists payments of \$4,362.56 in each of four pay periods, the last of which ended on December 31, 2017.

[21] As noted above, the employer gave the Commission a breakdown of the monthly earnings, stating that the Claimant had earnings of \$201.34 in the week of August 27, 2017 and \$1,006.70 in the week of September 3, 2017. The Commission allocated \$201.00 and \$1,007.00 (rounded) to each week, respectively.

[22] Although the Claimant's contract does not have specific start and end dates, and although I accept as fact that the Claimant's first day of physical work was September 11, 2017, I find that his employment under this contract began on September 1, 2017. In coming to this conclusion, I give a lot of weight to the employer's ROE and the payroll information the employer gave the Commission, both of which are consistent.

[23] When asked if the employer pays him for preparation time, the Claimant confirmed that they do, as well as for teaching and assessments. He added, however, that he had the Sunday and Monday to prepare and that he had taught this course before, so there was not much preparation beyond the day that followed the period in which he received employment insurance benefits.

[24] In spite of the Claimant's argument, I am not persuaded by his argument that the way the employer completed the ROE is for internal or employment insurance purposes. I find it reasonable that the university would include time in the teaching contract for preparation before the Claimant taught his first class in September 2017, as well as time for assessment after he

taught his last class in December 2017. As a result, even though he did not teach his first class until September 11, 2017, I find that the Claimant's contract with the university covered the period September 1, 2017 to December 31, 2017.

[25] Based on my finding above, because September 1, 2017 falls in the week beginning August 27, 2017, I find that the Claimant was payable \$201 (rounded) as identified by the employer in that week. I also find that the Claimant was payable \$1,007.00 (rounded) as identified by the employer for the week of September 3, 2017.

[26] The Claimant made an interesting submission at the hearing concerning how the Commission represents the legislation they apply in their documents and through Service Canada agents. He argued that the instructions the Commission gives in its documents are ambiguous at best and vague at worst. He made three distinct points in support of his argument. The first is that he should not be held responsible for inaccuracies in the Commission's documents. The second is that the Commission has breached their duty of care towards their clients, which has, in his case, led to discomfort, damages, and emotional stress. The third is that the Commission's agents should correctly and accurately represent the intent of legislation in their documents.

[27] While I agree with portions of the Claimant's argument, I note that it centres on reporting of earnings in bi-weekly claims and the confusion that results from the wording in the questions asked in the bi-weekly claims, as well as the advice given by Service Canada agents when claimants ask for information. I therefore do not find that his argument impacts whether he had earnings that should be allocated.

[28] In respect of the Claimant's argument, I do not have authority over the Commission, so cannot compel them to change their forms or questionnaires, nor can I address misleading information, or misrepresentations to use the Claimant's term, on the part of agents of the Commission. I can only suggest that the Commission consider the language used in the documents that give information to or are to be completed by claimants, and that they are careful about advice given to claimants.

[29] I find that the Commission allocated the Claimant's earnings correctly to the weeks for which the earnings were payable.

CONCLUSION

[30] The appeal is dismissed.

Audrey Mitchell

Member, General Division - Employment Insurance Section

HEARD ON:	September 12, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. H., Claimant