



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. O. v Canada Employment Insurance Commission*, 2019 SST 1010

Tribunal File Number: GE-19-2458

BETWEEN:

J. O.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Glen Johnson

HEARD ON: September 18, 2019

DATE OF DECISION: September 18, 2019

DECISION

- [1] The appeal is dismissed.
- [2] The Tribunal finds that the Appellant's earnings from employment are properly allocated and are applied against his claim for regular employment insurance (EI) benefits, resulting in an overpayment.

OVERVIEW

- [3] The Appellant applied for regular EI benefits after becoming separated from his employment as a X driver and declared to the Respondent earnings arising from employment while collecting EI benefits.
- [4] The Respondent obtained earnings information from the Appellant's employer which differed from the earnings declared by the Appellant, which resulted in the calculation of an overpayment of EI benefits and the service of a Notice of Debt on the Appellant.
- [5] The Appellant claims that he does not agree with how the employer calculated the earnings paid to him and said that he has declared his earnings accurately when appropriate deductions for such things as speeding tickets, parking fees, insurance fees and medical expenses are made from the reported earnings.
- [6] The Respondent determined that the most reliable earnings information was provided by the employer and an overpayment is properly calculated due to allocation of his earnings from employment for the period July 9, 2017 to December 23, 2017.

ISSUES

- [7] Issue 1: Did the Appellant receive earnings arising from employment?
- [8] Issue 2: If so, did the Respondent properly allocate the earnings to the Appellant's EI claim and result in an overpayment of benefits?

ANALYSIS

- [9] Amounts payable to a claimant by an employer for wages, benefits or other remuneration (including severance pay and vacation pay), are considered in determining whether there has been an interruption in earnings so as to qualify for EI benefits (subsection 35(2)(a) of the *Employment Insurance Regulations (EI Regulations)*).
- [10] Funds which constitute earnings must be allocated to the period in which the services were performed (subsection 36(4), *EI Regulations*).

Issue 1: Did the Appellant receive earnings arising from employment?

- [11] The Tribunal finds that the Appellant did receive earnings that arose from his employment while collecting EI benefits.

- [12] The Appellant admits that he received earnings from employment for the weeks beginning July 9, 2017 to December 23, 2017, but he disagrees with the amount of earnings reported by his employer for this period.

Issue 2: If so, did the Respondent properly allocate the earnings to his EI claim and result in an overpayment of benefits?

- [13] The Tribunal finds that the earnings were properly allocated to his EI benefit claim resulting in an overpayment of EI benefits for \$924.

[14] Based upon earnings reported by the Appellant's employer for the period from July 9, 2017 to December 23, 2017, the Respondent determined that the earnings are properly allocated to this period of time. The Appellant agrees that he received EI benefits for the same period of time, but he said that he thought that he declared his earnings properly.

[15] The Appellant testified that he was confused with the EI process and rules and he made an "*honest mistake*" when reporting his earnings from employment.

[16] As a result of the discrepancy between the earnings information provided to the Respondent by the employer and that declared by the Appellant in his online EI claim reports the Respondent determined that there is an overpayment of \$924 and the Respondent served a Notice of Debt upon the Appellant.

[17] The Tribunal finds that the Notice of Debt was properly issued to the Appellant for the overpayment of EI benefits due to the allocation of earnings from employment against EI benefits collected

[18] In support of the Appellant's claim that he declared the correct earnings for the period from July 9, 2017 to December 23, 2017, he has provided a copy of a speeding ticket dated August 2, 2017 in the amount of \$285.

[19] However, the Tribunal finds that the Appellant has failed to provide documents which support that the speeding ticket was deducted from his earnings from employment and in any event, the amount is still earnings despite the personal use to which the earnings are put. The Appellant confirmed in testimony that the amounts deducted from his earnings from employment for speeding ticket fines and other expenses were his own responsibility and would logically be paid from his earnings.

[20] The Appellant has not provided information sufficiently reliable to the Tribunal to support a different calculation of earnings from his employment for the period from July 9, 2017 to December 23, 2017 to render the employer's calculation of earnings less

reliable. The employer has provided a day by day precise calculation of his earnings during this period (GD3-38), which the Tribunal finds more reliable than the Appellant's reporting of earnings.

[21] The Appellant has not provided the Tribunal with pay stubs or other information showing detailed earnings information for each pay period. He said that he was receiving pay stubs at the time of declaring earnings to the Respondent in 2017, but he no longer has them.

[22] The Tribunal finds that the Appellant has not provided information to support that the employer's declaration of his earnings from July 9, 2017 to December 23, 2017 are inaccurate and the Respondent has accurately allocated those earnings against EI benefits collected by the Appellant.

CONCLUSION

[23] The appeal is dismissed.

Glen Johnson
Member, General Division - Employment Insurance Section

HEARD ON:	August 28, 2019
METHOD OF PROCEEDING:	Telephone
PARTY IN ATTENDANCE:	J. O., Appellant