



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *EV v Canada Employment Insurance Commission*, 2019 SST 1715

Tribunal File Number: GE-19-3111

BETWEEN:

E. V.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: October 10, 2019

DATE OF DECISION: October 11, 2019

DECISION

[1] I am dismissing the appeal. The Claimant had earnings and the Commission correctly allocated those earnings. The Commission acted late, but its late actions do not remove the Claimant's requirement to repay the excess amount of benefits that were paid to him.

OVERVIEW

[2] The Claimant applied for EI benefits. He reported on his application form that he was receiving monthly CPP payments. The Commission did not allocate his CPP payments to his EI claim. The Commission realized this mistake after the Claimant's benefits ended and allocated the earnings to the Claimant's EI benefits all at once. The Commission determined the Claimant had been overpaid benefits and issued him a notice of this debt.

[3] I must decide whether the Claimant's CPP payments are earnings and, if so, how they should be allocated. The Commission says the retirement pension from CPP constitutes earnings and must be allocated starting from when he began receiving it. The Claimant says that he should not have to repay this money because the overpayment was a result of the Commission's error.

ISSUES

[4] I have to decide if the Claimant's CPP payments should be allocated to his EI benefits. To do this, I first have to address whether the CPP money the Claimant received is earnings. If it is earnings, I must determine whether the Commission allocated these earnings correctly.

[5] If the Claimant's CPP payments are benefits and were allocated correctly, I must address whether the Claimant is liable to repay the overpayment of benefits if it was the result of the Commission's error.

ANALYSIS

[6] When a claimant receives any income (monies) from other sources while also receiving EI benefits, I must determine whether the monies received are defined as earnings within the

meaning of the *Employment Insurance Act*.¹ If I find the monies are earnings, I must then determine whether the monies should be allocated, that is deducted, from the Claimant's EI benefits.² The Claimant is the party who has to prove that it is more likely than not that the money is not earnings.

There is no dispute that the Claimant's CPP payments are earnings

[7] I accept that the Claimant's CPP payments are earnings. The money was paid to him on a monthly basis on account of a pension.³ The Claimant does not dispute that the payments are earnings. I see no evidence to contradict this.

The Commission allocated the earnings correctly

[8] The law says that earnings have to be allocated.⁴ Earnings are allocated depending on the nature of the earnings: why were the earnings paid?

[9] The Claimant's earnings are periodic payments from a retirement pension arising out of employment under the Canada Pension Plan. The law says these types of earnings are allocated to the week in which they are paid or payable.⁵

[10] In the Claimant's case, he began receiving CPP payments in February 2018. He renewed his claim for EI benefits on April 1, 2018. The Commission allocated his CPP payments to each week that he received EI benefits, starting April 1, 2018. As the Claimant's CPP payments were paid on a periodic basis, the Commission correctly allocated these payments to each week of the Claimant's benefit payments.

¹ The *Employment Insurance Regulations* provide direction as to what monies are considered earnings in section 35.

² How earnings are applied to the benefit period is determined by section 36 of the *Employment Insurance Regulations*

³ Pension payments are considered earnings according to section 35(2)(e) of the *Employment Insurance Regulations* which states that earnings are the entire income a claimant arising out of any employment, including: moneys paid or payable to a claimant on a periodic basis or in a lump sum on account of or in lieu of a pension

⁴ Section 36 of the *Employment Insurance Regulations*.

⁵ Subsection 36(14) of the *Employment Insurance Regulations*.

The Claimant is liable to repay the overpayment

[11] The Claimant reported his monthly pension payments on his application for benefits on March 28, 2018. The Commission failed to allocate these earnings immediately. As a result, the Claimant received EI benefits from April 1 to July 8, 2018, without the pension earnings deducted from his benefits. The Commission did not allocate these pension payments to the Claimant's benefits until August 14, 2018. At that time, it issued him a notice of debt because it said he was overpaid benefits since April 1, 2018.

[12] The Commission admits that it made a mistake by not allocating the Claimant's earnings at the time he reported them. The Claimant says the Commission should not be able to penalize him for its own mistake. He reported his CPP payments on his application for benefits. He even had his application form reviewed by Service Canada staff, who verified that he had done nothing wrong. He says the Commission's decision is not fair and he should not have to repay any money that was caused by an administrative error on the Commission's part.

[13] I understand the Claimant's argument that he provided the correct information to the Commission and that the overpayment is caused by the Commission's failure to process the allocation of his earnings until months later. I recognize that the Claimant acted honestly and diligently by reporting his monthly CPP payment amount when he applied for benefits. However, the law says that a claimant is liable to repay an amount he received from the Commission to which he was not entitled, including if he was paid more benefits than he should have received.⁶ There is no exemption or exclusion from this requirement provided for in the legislation. This means, if a person is paid more EI benefits than they are entitled to receive, they must repay the excess amount, even if it was not their fault that they received it.

[14] In this case, the evidence supports that the Claimant was paid benefits in excess of what he should have received. As such, he is required to repay the overpayment of benefits, regardless of whether the overpayment is the result of the Commission's error.

[15] I agree that it is unfortunate that the Commission did not process the allocation of the Claimant's earnings until months after the Claimant received benefits for which he was not

⁶ The liability to return an overpayment is listed at section 44 of the *Employment Insurance Act*

entitled; however, I am bound by the clear legislative provisions concerning the Claimant's allocation of earnings and his requirement to repay any overpayment resulting from the allocation of his earnings.⁷

[16] I am also unable to waive the Claimant's obligation to repay the overpayment⁸ or to order the Commission to write-off the Claimant's overpayment.⁹ The law says that the Commission may write-off a debt if certain conditions are met.¹⁰ In other words, the decision to write-off an overpayment lies solely within the discretion of the Commission and I do not have the jurisdiction to make or interfere with this decision.

[17] The Claimant said that he had made an effort to pursue a write-off of this overpayment from the Commission but has encountered substantial difficulty contacting the correct department. Because the matter of writing-off a debt is outside of my jurisdiction, I am unable to address this matter for the Claimant.

CONCLUSION

[18] I am dismissing the appeal. The Claimant received earnings and these earnings must be allocated to his claim for benefits. He was paid benefits for which he was not entitled and is liable to repay those benefits.

Catherine Shaw

Member, General Division - Employment Insurance Section

HEARD ON:	October 10, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	E. V., Appellant

⁷ *Canada (Attorney General) v. Knee*, 2011 FCA 301 at para 9

⁸ This principle is stated in *Canada (Attorney General) v. Buors*, 2002 FCA 372

⁹ *Canada (Attorney General) v. Woods*, 2002 FCA 91

¹⁰ Section 56 of the *Employment Insurance Regulations*