



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *W. H. v Canada Employment Insurance Commission*, 2019 SST 1310

Tribunal File Number: GE-19-3210

BETWEEN:

W. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Glen Johnson

HEARD ON: October 16, 2019

DATE OF DECISION: October 18, 2019

DECISION

[1] The appeal is allowed in part.

[2] The Claimant received some earnings from his employer and he received some job expense reimbursement. The Commission properly allocated the earnings against his employment insurance (EI) benefits, but they incorrectly allocated his expense reimbursement against EI benefits.

OVERVIEW

[3] The Claimant applied for and collected employment insurance (EI) benefits for the weeks beginning August 30, 2015 to April 3, 2016 when he was off work as a substitute bus driver to rural areas. While collecting EI he reported monies received from his employment. However, the Commission decided that he did not accurately report his earnings which created an over-payment of benefits of \$885 due to an allocation of those earnings to EI benefits he collected.

[4] The Claimant agrees that his employer's report of earnings for the period August 30, 2015 to April 3, 2016 is accurate, but he says that there should be no over-payment. He says that the difference between the earnings that he reported and his employer's calculation may be due to his receipt of holiday pay and mileage allowance money he was paid and therefore this is not earnings from employment to be allocated against EI benefits that he collected.

[5] A payroll clerk at the Claimant's employer denies that he was paid mileage allowance since he was not required to use his own vehicle at work.

[6] I find that only half of the \$885 that the Claimant received from his employer are earnings from employment. The other half is mileage expense reimbursement and not earnings to be allocated against EI he collected.

ISSUE

[7] I have to decide:

1. Is the money that the Claimant received earnings?
2. If it is earnings, did the Commission allocate it correctly?

ANALYSIS

Did the Claimant receive earnings?

[8] Yes, the Claimant admits to receiving earnings from employment while collecting EI benefits from August 30, 2015 to April 3, 2016 and he agrees with the employer's calculation of the amount he received. He agrees that half of \$885 received from his employer is holiday pay, which I find are earnings to be allocated against EI collected. However, half of the monies received from his employer are mileage expense reimbursement and therefore not earnings to be allocated against EI collected.

[9] 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

[10] The Claimant is the party who has to prove that it is more likely than not that the money is not earnings.

[11] He says that the Commission should not allocate the monies received against EI benefits collected because the funds were paid as holiday pay and mileage allowance.

[12] However, I find that holiday pay is earnings from employment. I accept the Claimant's testimony that half of \$885 he received from his employer was holiday pay.

[13] I agree with the Claimant's testimony that he was paid a mileage allowance for use of his own vehicle at work.

[14] The Claimant says that his paystubs did not give very good detail as to how his pay was calculated and the paystubs are missing. He testified forcefully that he needed to drive his own

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*.

vehicle from his home to where he picked-up the bus to drive. He said that he travelled on average about 100 kms per shift using his own vehicle for work and he was paid \$.41 per km.

[15] A payroll clerk at the Claimant's employer denies that he was paid mileage allowance since he was not required to use his own vehicle at work. However, the Claimant disagrees. He testified that he does not know who the payroll clerk is and he is certain that he was paid mileage allowance for use of his own vehicle.

[16] I find that it is reasonable to conclude that he needed to use his own vehicle to get to where the buses were to drive them. It is reasonable to conclude that his employer would pay mileage expenses when an employee must use their own vehicle. I find that the employer has not provided details of the monies paid to the Claimant that the Commission is trying to allocate against his EI.

[17] The law says that earnings must be allocated, but I find that his own vehicle mileage allowance at work is not earnings⁴

Did the Commission allocate the earnings correctly?

[18] Yes: I find that the weeks of the Claimant's allocation of earnings from employment is for the weeks beginning August 30, 2015 to April 3, 2016 because that is the period over which he collected EI benefits and he reported earnings. However, I find that the amount of earnings to be allocated is half of \$885 that he received from his employer.

CONCLUSION

[19] The appeal is partly allowed. The Claimant received earnings from employment while collecting EI benefits which results in an over-payment of half of \$885. These earnings are allocated starting the week of August 30, 2015.

Glen Johnson
Member, General Division - Employment Insurance Section

⁴ Section 36 of the *Employment Insurance Regulations*.

HEARD ON:	October 16, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	W. H., Claimant