



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. H. v Canada Employment Insurance Commission*, 2019 SST 1437

Tribunal File Number: GE-19-3456

BETWEEN:

**S. H.**

Appellant (Claimant)

and

**Canada Employment Insurance Commission**

Respondent (Commission)

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Solange Losier

HEARD ON: October 30, 2019

DATE OF DECISION: November 12, 2019

## **DECISION**

[1] The appeal is dismissed. The Claimant received earnings and the Commission allocated the earnings to the correct weeks.

## **OVERVIEW**

[2] The Claimant received employment insurance benefits and worked for two employers. There were some weeks she did not declare all or some of her earnings to the Commission. There were also some weeks that she declared her earnings, but the amounts reported were not accurate because of the way her pay periods ran. The Commission decided that she had earnings and allocated them to her claim for benefits. This resulted in an overpayment. The Claimant submitted paystubs to the Commission and they made some adjustments, but it still resulted in an overpayment of benefits. The Claimant disagrees because she does not understand how the overpayment was calculated.

## **PRELIMINARY MATTERS**

[3] I made a request to the Commission to provide more details about the overpayment because the Claimant did not agree with the amount (GD5-1 to GD5-2).<sup>1</sup> The Commission responded by providing specific details about the overpayment calculation (GD6-1 to GD6-7). I gave the Claimant an opportunity to respond to this new information, but the Tribunal did not receive any responses by the date of this decision.

## **ISSUES**

[4] I have to decide:

- a) Is the money that the Claimant received earnings?
- b) Are the earnings accurate?
- c) Did the Commission allocate the earnings correctly?

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<sup>1</sup> Section 32 of the *Social Security Tribunal Regulations*

## ANALYSIS

[5] The law says that earnings are the entire income of a claimant arising out of any employment.<sup>2</sup> “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.<sup>3</sup> “Employment” includes any employment under any kind of contract of service or employment. The Claimant is the party who has to prove that it is more likely than not that the money is not earnings.<sup>4</sup>

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

[6] Yes, I accept that the Claimant received wages and termination pay from her employer. The Claimant agreed that the money she received for wages and termination pay was earnings.

### **Issue 2: Are the earnings accurate?**

[7] Yes, I find that it was more likely than not, that the earnings the Claimant received were accurately reported by both employers. These amounts are shown in a chart that was adjusted after the Commission looked at her paystubs (GD4-2 to GD4-4).

[8] At the hearing, the Claimant said that she was not sure if the amounts were accurate or inaccurate. For this reason, we reviewed the amounts reported by both employers from October 2, 2016 to the week of May 14, 2017 and matched them with up with the paystubs she submitted.

[9] After reviewing each of them, the Claimant agreed that most of the amounts reported her employers were correct. But there were a few amounts that she could not remember if they were correct because there were no paystubs for them. I gave the Claimant additional time to submit other paystubs if she found some. The deadline to do this was November 6, 2019, but nothing was submitted as of the date of this decision.

[10] I find it was more likely than not, that the amounts reported by both of her employers were accurate. There were no paystubs showing that the amounts were wrong and the majority of

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<sup>2</sup> [sic]

<sup>3</sup> [sic]

<sup>4</sup> *Bourgeois v. Canada (Attorney General)*, 2004 FCA 117.

the amounts reported by her employers were already accepted by the Claimant as accurate (GD3-29-GD3-30; GD3-94-GD3-95; GD4-1 to GD4-4).

**Issue 3: Did the Commission allocate the earnings correctly?**

[11] Yes, I find that the Commission allocated the earnings correctly. They allocated the wages to the weeks she worked starting from the week of October 2, 2017 to the week of May 14, 2017 (GD6-7). They allocated the termination pay to the week of November 6, 2016, which was the week she was laid off from her second employment.

[12] The law says that earnings have to be allocated.<sup>5</sup> Earnings are allocated depending on the nature of the earnings: why were the earnings paid?

[13] The parties agree that the earnings paid were wages for hours she worked and termination pay. There is a section in the law on allocation that applies to earnings that are paid or payable for wages.<sup>6</sup> This means that the earnings must be applied to weeks she worked. For the termination pay, it must be allocated with the week of lay-off or separation.<sup>7</sup>

*Overpayment*

[14] The Claimant's main concern was that the overpayment amount was not explained to her. She did not understand how it was calculated.

[15] The Commission says that the total net overpayment is \$1,351.00 (GD6-7). They said that her claim needed to be recalculated on at least three occasions (GD6-3; GD6-5; GD3-7). They have provided more information about the overpayment and how it was calculated on a

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<sup>5</sup> [sic]

<sup>6</sup> Subsection 36(4) of the *Employment Insurance Regulations* states that: Earnings that are payable to a claimant under a contract of employment for the performance of services shall be allocated to the period in which the services were performed.

<sup>7</sup> Subsection 36(9) of the *Employment Insurance Regulations* states all earnings paid or payable by reason of a lay-off or separation from employment shall, regardless of the nature of the earnings or the period in respect of which earnings are purported to be paid or payable be allocated to a number of weeks that begins with the week of lay-off or separation in such manner that the total earnings of the claimant from employment are in each consecutive week except the last, equal to the claimant's normal weekly earnings from that employment.

weekly basis (GD6-1 to GD6-7). There appears to be several weeks where the Claimant did not report any earnings from November 20, 2016 to the week of February 20, 2017 while she was collecting benefits and this where the overpayment began increasing (GD6-7).

[16] I do not have the authority to write-off the overpayment.<sup>8</sup> That authority is with the Commission and is appealable to the Federal Court of Canada.

**CONCLUSION**

[17] The appeal is dismissed.

Solange Losier

Member, General Division - Employment Insurance Section

HEARD ON:	October 30, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. H., Appellant

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<sup>8</sup> Section 56 of the *Employment Insurance Regulations*; Section 112 of the *Employment Insurance Act*.