



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. V. v Canada Employment Insurance Commission*, 2020 SST 80

Tribunal File Number: GE-19-4227

BETWEEN:

L. V.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Charlotte McQuade

HEARD ON: January 7, 2020

DATE OF DECISION: January 7, 2020

DECISION

[1] The appeal is dismissed. The Canada Pension Plan (CPP) retirement pension that L. V. (the “Claimant”) received is earnings. The Canada Employment Insurance Commission (the “Commission”) allocated these earnings to the correct weeks.

OVERVIEW

[2] The Claimant turned 60 on December 8, 2018. He applied for and began receiving a Canada Pension Plan (CPP) retirement pension of \$739.00 per month from January 1, 2019. The Claimant was still working when his retirement pension began. After his employment ended on March 11, 2019, the Claimant applied for regular employment insurance benefits. His benefit period began on March 17, 2019. The Claimant did not realize he had to report his CPP retirement pension to the Commission so he did not do so. The Commission became aware of the retirement pension and decided that the pension was earnings. The law says that all earnings have to be allocated to a claim. The weeks to which the earnings are allocated depends on the reason why the earnings were received. Periodic pensions are allocated to the period for which they are paid or payable.¹ The Commission says the Claimant’s CPP retirement pension amounts to \$171.00 on a weekly basis so \$171.00 must be allocated (applied against the Claimant’s weekly benefits) from the week of March 17, 2019 to the end of his claim. Because the Commission did a retroactive allocation, this caused the Claimant to have an overpayment of \$2149.00.

[3] The Claimant says that when he filed his appeal, he thought he met an exception in the law that says pensions are not considered as earnings if a claimant has accumulated enough hours of insurable employment since the claimant started receiving their pension to qualify for a new claim for employment insurance benefits.² The Claimant agrees now that he does not qualify for the exception since he does not have enough insurable hours from January 1, 2019, when his pension was payable from, to qualify for benefits. He previously thought he might

¹ Subsection 36(14) of the *Employment Insurance Regulations*.

² Subparagraph 37(7)(e)(ii) of the *Employment Insurance Regulations*.

qualify if he had accumulated enough insurable hours to qualify for benefits since he turned sixty years of age on December 8, 2018.

[4] I find that the Claimant's CPP retirement pension is earnings. Canada Pension Plan retirement pensions are defined in the legislation as earnings.³ The Claimant does not meet the exception for his pension to be excluded from earnings as the Claimant has not accumulated enough hours of insurable employment since his pension was payable from January 1, 2019 to qualify for a new claim for benefits.⁴ I find the Commission properly allocated the CPP retirement pension earnings to the periods for which they were paid.⁵

ISSUES

[5] I have to decide:

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

ANALYSIS

Did the Claimant receive earnings?

[6] Yes. The CPP monthly retirement pension of \$739.00 that the Claimant received is earnings. My reasons for deciding this are explained below.

[7] Some monies are considered "earnings" for employment insurance purposes and those earnings must be allocated to a claim. Pension moneys arising out of employment are earnings for benefit purposes.⁶ The law defines a pension arising out of employment to include a Canada

³ Paragraph 35(2)(e) of the *Employment Insurance Regulations* provides that "earnings" include pension monies. A "pension" is defined to include a Canada Pension Plan retirement pension (Paragraph 35(1)(b) of the *Employment Insurance Regulations*).

⁴ Subparagraph 35(7)(e)(ii) of the *Employment Insurance Regulations*.

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

⁶ Paragraph 35(2)(e) of the *Employment Insurance Regulations*.

Pension Plan retirement pension.⁷ However, there is an exception. In certain prescribed circumstances, a pension can be excluded from earnings.

[8] In order for the Claimant's retirement pension to be excluded from earnings, three conditions must be met: (a) the Claimant must accumulate enough insurable hours of employment to qualify for benefits i.e. to establish a benefit period; (b) the insurable hours must be accumulated after the date on which the pension monies became payable; and (c) the Claimant must be receiving his pension during the entire period that he is accumulating the required insurable hours.⁸

[9] The Claimant testified that he turned 60 on December 8, 2018. He applied for a CPP early retirement pension and received a monthly retirement pension of \$739.00. The Commission's information from CPP is that the Claimant's pension was payable from January 1, 2019.⁹ The Claimant testified that he thought he actually got the payment sometime later in January but he agreed the pension was not payable prior to January 1, 2019. He said that CPP had not backdated his pension.

[10] The Commission decided this pension money was earnings under the law and also decided the Claimant had not met the test for exclusion of the pension from earnings because the Claimant had insufficient hours from the date the pension was payable to establish a new benefit period. The Commission says that the Claimant's Record of Employment (ROE) shows he had only had accumulated 442 hours insurable hours from January 1, 2019 (the date his pension was payable from) to March 11, 2019, the last day the Claimant worked before applying for benefits.¹⁰ The Commission says the Claimant required 560 hours to establish a new benefit period.

[11] The Claimant is the party who has to prove that it is more likely than not that the money is not earnings. The Claimant says when he filed his appeal, he thought he met the exception for his CPP retirement pension to be excluded from earnings. He thought this because he has accumulated enough insurable hours to qualify for benefits since he turned sixty years of age on December 8, 2018. He says that he had accumulated 638 hours of insurable employment since

⁷ Subsection 35(1) definition of "pension" in the *Employment Insurance Regulations*.

⁸ Subparagraph 35(7)(e)(ii) of the *Employment Insurance Regulations*.

⁹ GD3-123.

¹⁰ GD4-3.

December 8, 2018, which exceeded the 560 hours needed to establish a claim. The Claimant now agrees, considering the wording of the exception in the law that requires the insurable hours to be accumulated after the pension was payable, that he does not meet the test for exclusion of his pension from earnings.

[12] I find the Claimant does not meet the test for exclusion of his retirement pension from earnings. The Claimant applied for benefits on March 22, 2019. His benefit period began on March 17, 2019. The Claimant testified he resided in X, British Columbia during this week, which is the EI economic region of Northern British Columbia.¹¹ The rate of unemployment for this region in the week the claim was established, the week of March 17, 2019, was 9.4 %.¹² Based on that unemployment rate, the minimum requirement for the Claimant to qualify to receive employment insurance regular benefits is 560 hours.¹³

[13] The Claimant testified that he had no other work from January 1, 2019 to his application for benefits on March 22, 2019. He also confirmed that he did not dispute the hours of insurable employment noted on the ROE by his employer.¹⁴ The Claimant says when adding up the hours from January 1, 2019, he counted that he had 455 hours, but he agrees that he still is short of the required 560 hours. I have reviewed the ROE. I agree with the Commission that the Claimant only accumulated 442 hours of insurable employment after January 1, 2019, before his claim for benefits began on March 17, 2019.

[14] The Claimant's monthly pension would not constitute earnings if, after the pension was payable on January 1, 2019 and while he continued to receive his pension, he accumulated the required insurable hours to qualify for benefits.¹⁵ However, even though after January 1, 2019, the Claimant continued to receive his pension, he did not accumulate the required 560 insurable hours to establish a new claim, having only 442 hours. I appreciate the Claimant had additional hours between December 8, 2018 when he turned sixty and January 1, 2019. However, the law says that the hours to be considered are those that are accumulated after the date the pension moneys became payable (January 1, 2019) and during the period he received those monies. As

¹¹ GD3-126.

¹² GD3-129.

¹³ Subsection 7(2) of the *Employment Insurance Act*.

¹⁴ GD3-124.

¹⁵ Subparagraph 35(7)(e)(ii) of the *Employment Insurance Regulations*.

such, I find the Claimant does not meet the test for exclusion of the pension from earnings. I find that the Claimant's monthly CPP retirement pension is earnings.¹⁶

Did the Commission allocate the earnings correctly?

[15] The law says that earnings have to be allocated.¹⁷ Earnings are allocated depending on the nature of the earnings: why were the earnings paid?

[16] The Claimant received a monthly CPP retirement pension earnings of \$739.00 payable from January 1, 2019. The pension is paid on a periodic (monthly) basis.

[17] The law says that pension earnings paid or payable on a periodic basis shall be allocated to the period for which they are paid or payable.¹⁸

[18] The Commission calculated the weekly rate to be allocated as follows: $\$739.00 \times 12 \text{ months} \div 52 \text{ weeks} = \170.54 (\$171.00 rounded to the nearest dollar).

[19] The Commission allocated \$171.00 per week to the Claimant's benefit period starting the week of March 17, 2019 throughout the period of his claim.

[20] Since the Claimant's CPP retirement pension was paid on a monthly (periodic) basis, it is to be allocated to the period for which it was paid. I find the Commission has correctly allocated \$171.00 per week from March 17, 2019 throughout the period of the claim.

CONCLUSION

[21] The appeal is dismissed. The Claimant received \$739.00 per month in CPP retirement earnings from January 1, 2019. These earnings are to be allocated in the amount of 171.00 per week, starting the week of March 17, 2019 throughout the period of his claim.

¹⁶ Paragraph 35(2)(e) of the *Employment Insurance Regulations*.

¹⁷ Section 36 of the *Employment Insurance Regulations*.

¹⁸ Subsection 36(14) of the *Employment Insurance Regulations*.

Charlotte McQuade
Member, General Division - Employment Insurance Section

HEARD ON:	January 7, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	L. V., Appellant for the Added party