



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *U. P. v Canada Employment Insurance Commission*, 2020 SST 118

Tribunal File Number: GE-19-4420

BETWEEN:

U. P.

Appellant
(Claimant)

and

Canada Employment Insurance Commission

Respondent
(Commission)

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Gerry McCarthy

HEARD ON: January 23, 2020

DATE OF DECISION: January 23, 2020

DECISION

[1] The appeal is dismissed. The Claimant received earnings and the Commission allocated these earnings correctly.

OVERVIEW

[2] The Claimant received income from X while she was on a claim for regular Employment Insurance (EI) benefits between February 2015 and January 2016. The Commission decided that the income was earnings in the form of wages. The law says that all earnings have to be allocated. The weeks to which the earnings are allocated depends on the reason why the earnings were received.

[3] The Commission allocated the earnings to the weeks in which the services were performed by the Claimant. This allocation resulted in an overpayment of \$755.00. The Claimant does not dispute that her wages were earnings and allocated correctly. Instead, the Claimant has requested that the Tribunal waive the overpayment or allow her to re-pay the monies on a monthly basis. I find the income the Claimant received as wages were earnings and that the Commission allocated these earnings correctly. I will address the Claimant's request to waive her overpayment in the last part of the decision.

ISSUE

[4] I have to decide:

1. Are the wages the Claimant received earnings?
2. If it is earnings, did the Commission allocate it correctly?

ANALYSIS

Were the wages the Claimant received earnings?

[5] Yes, the wages the Claimant received were earnings. My reasons for deciding this are explained below.

[6] 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 Earnings are the entire income of a claimant arising out of any employment.

[7] I find the wages paid to the Claimant by the employer were earnings, because the payments were made to compensate the Claimant for work performed. I realize the Claimant did report some of the wages she received from the employer. However, the Commission explained in the Appeal file where the overpayments occurred starting with the week of April 12, 2015 (GD3-48) The Commission’s calculation included the weeks the Claimant was underpaid.

[8] In summary, the weeks the Claimant was overpaid totalled \$1,091.00. The underpayment of \$336.00 was then subtracted from the overpaid amount and the overpayment worked out to be \$755.00. The Commission provided a chart in GD3-48 for clarification.

Did the Commission allocate the earnings correctly?

[9] Yes, the Commission allocated the earnings correctly. 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?

[10] The Claimant’s earnings were wages. The Claimant’s employer paid these wages to compensate the Claimant for work performed. There is a section in the law on allocation that applies to earnings that are paid or payable for this reason.⁵

[11] I find the Commission correctly allocated the Claimant’s earnings to the following weeks: April 12, 2015, to April 25, 2015, September 6, 2015, to September 12, 2015, and from October

¹ Subsection 35(2) of the *Employment Insurance Regulations*.

² Subsection 35(1) of the *Employment Insurance Regulations*.

³ Subsection 35(2) of the *Employment Insurance Regulations*.

⁴ Section 36 of the *Employment Insurance Regulations*.

⁵ Subsection 36(4) of the *Employment Insurance Regulations*.

25, 2015 to October 31, 2015. As cited above, the allocation of the Claimant's earnings created an overpayment of \$755.00.

The Claimant's request to have her Overpayment waived

[12] In her Notice of Appeal, the Claimant requested the Tribunal waive her overpayment. I realize the Claimant wrote that she did not have the income to pay this amount. I sympathize with the Claimant on this matter. However, I do not have any authority to waive or write-off an overpayment as explained by the Federal Court of Appeal (*Villeneuve v. Attorney General of Canada*, 2005 FCA 440).

[13] During the hearing, the Claimant further asked if she could arrange to repay some of her overpayment on a monthly basis. I explained to the Claimant that I had no authority to make such an arrangement. I further mentioned to the Claimant that she would have to approach the Canada Revenue Agency (CRA) about the possibility of any re-payment plan.

CONCLUSION

[14] The appeal is dismissed.

Gerry McCarthy

Member, General Division - Employment Insurance Section

HEARD ON:	January 23, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	U. P., Appellant