



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *C. B. v Canada Employment Insurance Commission*, 2020 SST 231

Tribunal File Number: GE-19-3733

BETWEEN:

**C. B.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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

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DECISION BY: Charline Bourque

HEARD ON: January 15, 2020

DATE OF DECISION: January 27, 2020

## **DECISION**

[1] The appeal is dismissed.

## **OVERVIEW**

[2] The Appellant was working for X when he was dismissed. The Appellant says he was dismissed after submitting a medical certificate placing him on a leave from work. The Appellant received Employment Insurance regular benefits for the period from May 28, 2017, to September 30, 2017, when he was on sick leave. Furthermore, he had received the maximum 15 weeks of Employment Insurance sickness benefits. The Commission therefore created an overpayment of \$2,144 for that period. The employer also paid him a sum of \$1,203.29 in vacation pay. The Commission therefore allocated that amount from the date of dismissal by the employer, which created an overpayment of \$900.

[3] The Appellant is asking that the overpayments be written off. He points to the numerous difficulties he had obtaining explanations about his file as well as the numerous calculations and changes the Commission made in his file.

## **PRELIMINARY MATTERS**

[4] The Appellant is asking the Commission to write off (cancel) the sums that he owes given the numerous changes that were made to his file. However, before addressing the issue of the write-off, I must consider the decisions made in this file that relate to the maximum number of weeks of sickness benefits and the allocation of earnings.

[5] I also note that the Appellant was heard in person at his request. A 90-minute hearing had originally been planned, and the hearing lasted more than 120 minutes. Nevertheless, the Appellant found he was pressed for time during the hearing, but he did not want to adjourn to continue by telephone or videoconference. Faced with this situation, I gave the Appellant time to submit in writing any additional comment after the hearing.

## ISSUES

[6] Is the Appellant entitled to sickness benefits during the period from April 29, 2018, to May 26, 2018?

[7] Does the \$1,203.29 in vacation pay from the employer constitute earnings under the *Employment Insurance Regulations* (Regulations)? If so, how should these earnings be allocated?

[8] Can the overpayment related to the decisions be written off?

## ANALYSIS

### **Issue 1: Is the Appellant entitled to sickness benefits during the period from April 29, 2018, to May 26, 2018?**

[9] The Appellant explained the numerous efforts he made after the Commission's initial decisions. He points to the numerous changes made to his file as well as the difficulties obtaining explanations and the back and forth between the Commission and the Canada Revenue Agency about the Commission's decisions. He questions the amount of time it took to make the decisions and explains the harmful effects of the situation, particularly on his health when he was battling with cancer and had lost his employment because of this illness. He finds that the Commission did not adequately fulfil its mandate to serve Canadians. He notes that no judge will accept the Commission's claim and finds that the Commission must accept its wrongdoings and assume the consequences, first by erasing his debt and reimbursing the sums he paid to it.

[10] Regarding the issue of the sickness benefits, the Appellant says that he did not know the laws and that the Commission therefore should not have paid him benefits if he had reached the maximum number of weeks and was not entitled to them.

[11] First, I note that the Appellant received 15 weeks of sickness benefits for the period from May 28, 2017, to September 30, 2017.

[12] The Appellant said he was [translation] "ready and available to work and capable of working every day, from Monday to Friday, during the period covered by this statement"

(GD3-32 to GD3-42). Nevertheless, he sent a medical certificate indicating that he was on medical leave for a period of eight weeks starting on April 30, 2018 (GD3-31).

[13] Therefore, the Appellant received Employment Insurance regular benefits during the period from April 29, 2018, to May 26, 2018, because he said he was available to work and capable of working during that period. Due to the medical certificate, the Appellant should not have received Employment Insurance regular benefits, but rather sickness benefits.

[14] The Act provides that the maximum number of weeks during which benefits may be paid over the course of a benefit period is 15 weeks, in the case of illness, injury, or quarantine.<sup>1</sup>

[15] Therefore, since the Appellant received the maximum number of weeks of sickness benefits, he could not receive Employment Insurance sickness benefits for the period from April 29, 2018, to May 26, 2018. The Commission therefore correctly created an overpayment equivalent to four weeks of benefits at \$526/week, for a total of \$2,144.

[16] The issue of writing off this overpayment will be addressed below.

[17] Regarding the fact that the Appellant said that the two-year timeframe to make a decision is not logical in such a situation, I must point out that the Act provides for a period of 36 months so that the Commission can reconsider a claim for benefits.<sup>2</sup>

**Issue 2: Does the \$1,203.29 in vacation pay from the employer constitute earnings under the *Employment Insurance Regulations*? If so, how should these earnings be allocated?**

[18] Income arising out of any employment, whether in respect of wages, benefits, or other remuneration, must be taken into account unless it falls within an exception.<sup>3</sup> The entire income of a claimant arising out of any employment is to be taken into account in calculating the amount to be deducted from benefits.<sup>4</sup>

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<sup>1</sup> *Employment Insurance Act* (EI Act), s 12(3)(c).

<sup>2</sup> EI Act, s 52(1).

<sup>3</sup> EI Act, ss 35(2) and 35(7).

<sup>4</sup> *McLaughlin v Canada (Attorney General)*, 2009 FCA 365.

[19] The purpose of the Employment Insurance regime is to compensate claimants who suffer a loss of income as a result of unemployment. That is why income arising out of any employment must be deducted from otherwise payable benefits. The allocation of the earnings a claimant received while they were receiving benefits aims to prevent compensation from being paid twice.<sup>5</sup>

[20] The Appellant notes the numerous changes to his file and the stress of receiving a severe letter referring to fraudulent acts and a very serious violation. He adds that this letter led to consequent health problems, a shock, and that he experienced harassment from the Commission and the Canada Revenue Agency following this situation.

[21] Based on the Record of Employment, the Appellant received \$1,203.29 in vacation pay after the termination of his employment due to dismissal (GD3-29).

[22] The Appellant confirmed that he had received this amount, but he notes that it was only paid to him in August. He explains that, even though his employer sent him a letter of dismissal dated May 29, 2017, the same day he submitted his medical certificate confirming sick leave, this letter was not sent to him until August, and he did not receive the vacation pay until that time. Nevertheless, the Commission allocated that amount starting from the date of termination of employment even though he did not even know he would receive that amount.

[23] Income arising out of any employment, whether in respect of wages, benefits, or other remuneration, must be taken into account unless it falls within an exception<sup>6</sup>. The entire income of a claimant arising out of any employment is to be taken into account in calculating the amount to be deducted from benefits.<sup>7</sup>

[24] Based on the evidence and the parties' submissions, I find that the vacation pay received from the employer constitutes earnings within the meaning of section 35(2) of the Regulations because that amount arises out of the Appellant's employment and was paid because of his

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<sup>5</sup> *Canada (Attorney General) v Walford*, A-263-78.

<sup>6</sup> EI Act, ss 35(2) and 35(7).

<sup>7</sup> *McLaughlin v Canada (Attorney General)*, 2009 FCA 365.

dismissal. Furthermore, these earnings do not meet the criteria for exceptions set out in section 35(7) of the Regulations.

[25] I must therefore determine how these earnings should be allocated under the *Employment Insurance Regulations*.

[26] Sums which are determined to be earnings under section 35 of the Regulations must be allocated under the provisions of section 36 of the same regulations.<sup>8</sup>

[27] Earnings received by a claimant due to their lay-off or separation from their employment, regardless of the period when they were paid or became payable, are allocated to a number of weeks that begins with the week of the lay-off or separation from employment, based on the claimant's normal weekly earnings from that employment.<sup>9</sup>

[28] As a result, as the \$1,203.29 in vacation pay was paid because of the Appellant's dismissal, it must be allocated, based on the normal weekly earnings, to a number of weeks that begins with the week of the lay-off.<sup>10</sup>

[29] Finally, the evidence shows that the employer terminated the Appellant's employment on May 29, 2017 (GD3-29). As a result, I am of the view that the allocation of earnings must begin on May 28, 2017, the Sunday of the week the dismissal occurred.

[30] The Commission explains the allocation in the table presented on page GD11-2. The overpayment in dispute and related to the allocation of earnings is indeed \$900.

**Issue 3: Can the overpayment related to the decision be written off?**

[31] The Appellant's main request in this file is that the Commission write off (cancel) the overpayment even though the repayment has been made. The Appellant finds that his health has been seriously impacted, and the difficulties and numerous changes of calculations made by the Commission demonstrate a certain negligence in the way his case has been handled. The

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<sup>8</sup> *Boone et al v Canada (Attorney General)*, 2002 FCA 257.

<sup>9</sup> Regulations, s 36(9).

<sup>10</sup> Regulations, s 36(9).

Appellant finds that this Tribunal is able to order the Commission to write off the overpayment resulting from these decisions.

[32] However, despite my understanding of the difficulties the Appellant experienced and my own difficulty understanding the numerous changes and calculations made by the Commission, I am of the view that this Tribunal does not have the jurisdiction to decide on the issue of the write-off.

[33] First, when a person is dissatisfied with a **reconsideration decision** of the Commission, they may appeal that decision to the Social Security Tribunal [my emphasis].<sup>11</sup>

[34] However, decisions of the Commission made under the *Employment Insurance Regulations* about the writing off of any penalty owing, amount payable, or interest accrued on any penalty owing or amount payable is not subject to review.<sup>12</sup>

[35] Although the Appellant did not ask the Commission to make a decision about the write-off—a request that he can make—this Tribunal does not have the jurisdiction to make a decision about the issue of the write-off. The Act provides that write-offs cannot be part of a reconsideration, and this Tribunal’s jurisdiction is limited to appeals filed in connection with a reconsideration decision.

[36] If the Appellant wishes, he must apply to the Federal Court if he obtains a decision about the write-off that is unfavourable to him because it has jurisdiction to hear this issue.

[37] Nevertheless, I would like to point out how difficult it was for the Appellant to understand, despite numerous phone calls, the exact situation of his file. I can only observe the numerous changes made in the calculations and the difficulties he had understanding the reasons for those changes. I cannot ignore the impact of this situation on the Appellant’s health.

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<sup>11</sup> EI Act, s 113.

<sup>12</sup> EI Act, s 112.1.

[38] Nevertheless, my role is to apply the Act, and I cannot modify it only to please a dissatisfied Appellant. The Act establishes specific criteria, and I cannot ignore it.<sup>13</sup>

**CONCLUSION**

[39] The appeal is dismissed.

Charline Bourque  
Member, General Division – Employment Insurance Section

HEARD ON:	January 15, 2020
METHOD OF PROCEEDING :	In person
APPEARANCE :	C. B., Appellant

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<sup>13</sup> *Granger v Canada Employment and Immigration Commission*, A-684-85.