



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

[TRANSLATION]

Citation: *D. B. v Canada Employment Insurance Commission*, 2020 SST 581

Tribunal File Number: GE-20-367

BETWEEN:

**D. 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: February 26, 2020

DATE OF DECISION: March 14, 2020

## **DECISION**

[1] The appeal is dismissed with modifications.

## **OVERVIEW**

[2] The Appellant applied for Employment Insurance benefits effective June 24, 2018. Starting January 2018, he received a pension of \$1,073.53 per month from the Québec Pension Plan (QPP). Furthermore, starting July 2014, the Appellant received a pension from his employer as well as an Old Age Security pension.

[3] The Commission considered the amounts received since 2014 from his employer's retirement pension to be allocated as an exempt pension. Furthermore, it did not consider the amounts received as an Old Age Security pension to be earnings [translation] "because this is one of the exemptions under the *Employment Insurance Regulations*."

[4] However, the Commission determined that the amounts received from the QPP are earnings. Therefore, the Commission allocated the amounts to each of the weeks, which created an overpayment of \$1,440.

[5] The Appellant disagrees with the Commission's decision and is of the view that the Commission had a duty to properly inform him of the pension allocation because he had made inquiries about it. He states that the Commission did not provide him with adequate information and that, by not doing so, he did not have the opportunity to delay his pension application and is being penalized as a result.

## **PRELIMINARY MATTERS**

[6] The Tribunal notes that only the matter of the allocation of the Québec Pension Plan (QPP) pension is at issue in this appeal.

## **ISSUES**

[7] Does the QPP pension constitute earnings within the meaning of the *Employment Insurance Regulations* (Regulations)?

[8] If so, how should these earnings be allocated?

## ANALYSIS

### Issue 1: Does the QPP pension constitute earnings?

[9] Earnings for benefit purposes are [translation] “income arising from any employment, whether wages, benefits, or other remuneration,” and must be taken into account unless they fall within an exception.<sup>1</sup>

[10] In particular, the earnings refer to the entire income from any employment, including the amounts paid or payable to a claimant on a periodic basis or in a lump sum on account of or in lieu of a pension.<sup>2</sup> Case law also states that the entire income of a claimant arising out of any employment must be taken into consideration in calculating the amount to be deducted from benefits.<sup>3</sup>

[11] Furthermore, regarding a pension, a pension is defined as a retirement pension arising out of employment, among other things.<sup>4</sup>

[12] However, the same Regulations state that, despite the fact that a pension constitutes earnings, some situations lead to the finding that the pension may not constitute earnings.

[13] The Regulations state that, for those who are not self-employed persons, the portion of the income of a claimant that is derived from a pension does not constitute earnings when the number of hours of insurable employment required for the establishment of their benefit period was accumulated after the date on which those amounts became payable and during the period in respect of which they received those amounts.<sup>5</sup>

[14] In this case, the Tribunal notes for the Appellant’s understanding that the pension received from his employer since July 2014 is a so-called [translation] “exempt” pension because

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<sup>1</sup> As indicated in sections 35(2) and 35(7) of the *Employment Insurance Regulations* (Regulations).

<sup>2</sup> As indicated in section 35(2)(e) of the Regulations.

<sup>3</sup> *McLaughlin v Canada (Attorney General)*, 2009 FCA 365.

<sup>4</sup> As indicated in section 35(1)(a) of the Regulations.

<sup>5</sup> As indicated in section 35(7)(e) of the Regulations.

the Appellant has accumulated enough insurable hours of employment to establish a new claim for benefits since starting to receive the pension. Furthermore, the Commission confirms that the amounts received as Old Age Security are exempt by the Regulations.<sup>6</sup>

[15] Regarding the Québec Pension Plan pension, the Appellant confirms that he started receiving it in January 2018. He confirms receiving a monthly pension of \$1,073.53 per month.

[16] The Appellant continues to work for his employer. However, before starting to receive his QPP pension, the Appellant established two claims for Employment Insurance benefits. Those claims began on June 25, 2017, and June 24, 2018—that is, before he started receiving his QPP pension.

[17] For that reason, the Tribunal cannot find that, since he started receiving his QPP pension in January 2018, the Appellant has accumulated enough hours to establish a new claim for benefits. The two claims related to this appeal began even before the Appellant started receiving his QPP pension. Therefore, the Tribunal is of the view that the Appellant's QPP pension is not exempt because the Appellant had not accumulated enough insurable hours of employment after the date on which that pension became payable.<sup>7</sup>

[18] As a result, the Tribunal is of the view that the pension the Appellant receives from the QPP constitutes earnings.<sup>8</sup> The Appellant has not accumulated insurable hours of employment after the date on which he started receiving his pension. Therefore, the pension constitutes earning and cannot be exempt under section 35(7)(e). Those earnings must therefore be allocated.

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<sup>6</sup> Commission's submissions at GD4-4.

<sup>7</sup> The exemption under the Regulations is explained in section 35(7)(e)(ii) of the Regulations.

<sup>8</sup> As set out under the Regulations in section 35(2)(e).

## **Issue 2: How should these earnings be allocated?**

[19] Amounts that constitute earnings under section 35 of the Regulations must be allocated under section 36 of the Regulations.<sup>9</sup> Pension-related amounts that are paid or payable to a claimant on a periodic basis are allocated to the period for which they are paid or payable.<sup>10</sup>

[20] The Appellant confirms receiving a pension of \$1,073.53 per month from the QPP since January 2018.<sup>11</sup>

[21] The Commission confirms that the overpayment caused by the allocation of the QPP to the June 25, 2017, and June 24, 2018, claims is \$1,460.<sup>12</sup> At the Tribunal's request, the Commission provided an explanatory overpayment table.<sup>13</sup> The Tribunal notes that the Commission allocated an amount of \$248 per week starting from the week of December 31, 2017, until the week of March 11, 2018.<sup>14</sup> Then, the Commission allocated \$248 for the weeks of June 24, 2018, to September 30, 2018. It then allocated the amount of \$387 starting from December 9, 2018.

[22] The Tribunal disagrees with the allocation of earnings made. First, the Tribunal notes that the Commission confirmed [translation] "that only the application of the QPP will remain."<sup>15</sup> More specifically, in its reconsideration decision, the Commission stated that: [translation] "The information given in the October 29 letter was accurate but had not been applied as such. The allocation of the amounts received partly from the Québec Pension Plan has been revised and now reflects what is written in that letter."<sup>16</sup> Furthermore, in its submissions to the Tribunal, the Commission confirmed that it has [translation] "correctly allocated these earnings (GD3-39), as set out in the decision letter dated October 29, 2019."<sup>17</sup>

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<sup>9</sup> *Boone et al v Canada (Attorney General)*, 2002 FCA 257.

<sup>10</sup> As indicated in section 36(14) of the Regulations.

<sup>11</sup> Retraite Québec [Pension Québec] document confirming the amounts the Appellant received for the Québec Pension Plan (GD3-27).

<sup>12</sup> Additional submission from the Commission (GD6-1).

<sup>13</sup> Additional submission from the Commission (GD6-2/3).

<sup>14</sup> These weeks are connected with the claim for benefits that was established on June 25, 2017.

<sup>15</sup> As indicated by the Commission in its summary of a conversation with the Appellant (GD3-35).

<sup>16</sup> Reconsideration decision (GD3-37).

<sup>17</sup> The Commission is referring to the initial decision that it made on this file (GD3-29).

[23] However, the Tribunal notes that the initial decision from October 29, 2019, is an allocation of the earnings of \$248 per week for the weeks between June 24, 2018, and December 30, 2018. Therefore, the Tribunal is of the view that the Commission did not make any decision regarding the weeks of benefits for the period from December 31, 2017, to March 11, 2018. That claim is not at issue in this appeal, and the Commission may not allocate the earnings as it has done. Moreover, the Commission makes no mention of it in its file, except in its overpayment calculation, which was made at the Tribunal's request. Therefore, the Tribunal is of the view that no allocation of earnings can be made for that period.

[24] Furthermore, regarding the period from June 24, 2018, to October 27, 2018, the Tribunal is of the view that the earnings that should be allocated for the amounts received from the QPP are \$247 per week.

[25] This amount has been calculated as follows:  $\$1,073.53$  per month  $\times$  12 months  $\div$  365 days =  $\$35.29$   $\times$  7 days, which is therefore \$247 per week. Therefore, the Tribunal is of the view that the Commission must make this correction.

[26] The Tribunal reminds the Commission that it provided no calculation to explain the amounts that it allocated. Furthermore, as indicated, the Tribunal clarifies that the amount to be allocated is \$247 for the weeks of December 9, 2018, to September 30, 2018. The Commission notes that the allocation of earnings is to end on October 27, 2018.<sup>18</sup>

[27] The Commission has provided no document, explanation, or calculation to show that the amount of earnings received is different. It made no mention of an allocation of \$387 in its initial decision or in its reconsideration decision. Furthermore, the Tribunal notes that, in addition to this, only the weeks of December 9 and 30 were the subject of an initial and reconsideration decision. Therefore, the Commission may not make new allocations without first making a decision on them, even if only by amending its decision on reconsideration, which is currently not the case.

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<sup>18</sup> As indicated in GD3-39.

[28] As a result, the Tribunal is of the view that the allocation of earnings for the amounts received as a Québec Pension Plan pension is \$247 per week, for the weeks of June 24, 2018, to October 27, 2018, as indicated in the Commission's initial decision. No allocation is to be made after October 28, 2018.

[29] The Tribunal understands that the Appellant feels dissatisfied with the information he received from the Commission. He says that he is being penalized because he was not able to delay his application to receive his pension. However, the Tribunal's role is to apply the Act, and the Tribunal cannot amend it simply to please a claimant who feels dissatisfied. The Act establishes specific criteria that a claimant must meet to be eligible for benefits.

### **CONCLUSION**

[30] The appeal is dismissed with modifications.

Charline Bourque  
Member, General Division – Employment Insurance Section

HEARD ON:	February 26, 2020
METHOD OF PROCEEDING:	In person
APPEARANCE:	D. B., Appellant