



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. T. v Canada Employment Insurance Commission*, 2020 SST 571

Tribunal File Number: GE-20-820

BETWEEN:

N. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

HEARD ON: April 2, 2020

DATE OF DECISION: April 3, 2020

DECISION

[1] The appeal is dismissed. I find the honorariums the Claimant received was earnings and there were allocated correctly.

OVERVIEW

[2] N. T. is the Claimant. She applied for employment insurance special benefits. While she was on claim, she notified the Commission that she received two honorariums. One for \$6,300.00 covering a period from July 1, 2019, to June 30, 2019. And one for \$250.00 covering the period from May 1, 2018, to April 30, 2018.

[3] The Commission determined that the money she received in the form of two honorariums were earnings. 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. The Commission allocated the earnings to the one-year period they were earned at a weekly rate.

[4] The Claimant disagrees that the money she received should be considered earnings because it does not meet the definition of employment. She argues that it was a volunteer position and there was no contact of employment and therefore should not be allocated. She appealed to *Social Security Tribunal* (Tribunal).

[5] The Claimant argues that the Commission gave her incorrect information. She says having to repay the money will be difficult. She is asking with the Covid 19 situation requesting the overpayment to be written off.

[6] I must decide whether the monies the Claimant received constituted earnings¹ and if so were the monies correctly allocated.²

¹ Section 35 of the *Employment Insurance Regulations*

² Section 36 of the *Employment Insurance Regulations*

ISSUES

[7] Is the money the Claimant received as honorariums considered earnings? If so.

[8] Were the monies allocated correctly?

[9] Do I have the authority to write off the overpayment?

ANALYSIS

Is the money the Claimant received as honorariums considered earnings?

[10] Yes, the honorariums in the amount of \$6,300.00 and \$250.00 the Claimant received are earnings. My reason for deciding this is explained below.

[11] The law³ says that the definition of employment means the tenure of an office as defined in subsection 2(1) of the Canada Pension Plan.⁴ Income means any pecuniary or non-pecuniary income that is or will be received by a claimant from an employer or any other person, including a trustee in bankruptcy.

[12] The Claimant's representative submitted that the money the Claimant received could not be considered earnings because her positions with the Canadian Federation of Students are volunteer. Therefore, they do not meet the definition of employment as outlined in section 35(1)(a)(b)(c) of the EI regulations.

[13] The representative submitted CUB 12121 and relied on the second last paragraph. The umpire stated, "The Board must look outside the four corners of the agreement in order to make a proper determination as to whether this money is in fact income or severance pay.

³ Section 35(1)(c) of the *Employment Regulations*

⁴ The relevant provision of the *Canada Pension Plan* reads as follows. "Office" and "officer."

"Office" means the position of an individual entitling him to a fixed or ascertainable stipend or remuneration and includes a judicial office, the office of a minister of the Crown, the office of a lieutenant governor, the office of a member of the Senate or House of Commons, a member of a legislative assembly or a member of a legislative or executive council and any other office the incumbent of which is elected by popular vote or is elected or appointed in a representative capacity, and also includes the position of a corporation director, and "officer" means a person holding such an office.

[14] I considered the CUB 12121; however, I do not find it relevant as this case refers to an agreement of severance and whether her money she received to provide consultation services be considered earnings. I note that in this case the umpire's decision was to return the file back to the Board for a rehearing and redetermination. I note that in CUB 12121A, the Board maintained its initial decision and it was upheld by the umpire.

[15] The representative submitted CUB 18988 and relied on paragraph six that one must look beyond the form to the true nature of the benefits received.

[16] I did consider the agreement between the Claimant and the Canadian Federation of Students. It is in fact an elected position that she received an honorarium (true nature of the benefits received) to perform the duties of her role and for the organization.

[17] The Claimant says that she is a university student and the positions she held were volunteer. She says that the money she received was to go towards her tuition and to help her with expenses while she was going to school.

[18] The Claimant confirmed to me that both the positions she was elected to them. She says people were invited to put their name forward and at the annual general meeting, voting took place. She said the position of Deputy Chairperson she elected in a vote and the position she held with the Manitoba chapter she was elected by acclamation.

[19] The Claimant confirmed to me that she received the payment by cheques made out directly to her. The money was identified as honorariums. She did not have any evidence to support that the money was provided as a reimbursement for specific expenses.

[20] The Commission says that the payments received by the Canadian Federation of Students (\$6,300.00) and the Canadian Federation of Students Manitoba (\$250.00) constitute earnings. They say section 35(1) of the regulations define "employment" includes any employment under any kind contract of service or employment.

[21] As per subsection 35(1)(c) of the regulations, employment means the tenure of an office as defined in subsection 2(1) of the *Canada Pension Plan*.

[22] I find that both of the Claimant's positions with the Canadian Federation of Student's are within the definition in subsection 2(1) of the Canada Pension Plan. The Claimant, by her own admission, confirmed that was she appointed under a voting process at the annual general meetings. She also confirmed that the money she received was labelled as an honorarium given directly to her to use, as she wanted to. Therefore, an honorarium paid to a person who is "elected by popular vote or is elected or appointed in a representative capacity," is earnings.⁵ In addition, it relates to a service performed. Because it is earnings, it must be allocated⁶ to when those services are performed.⁷

Were the monies allocated correctly?

[23] Yes, I find the Commission correctly allocated the earnings. 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.⁸

[24] The Claimant confirmed that the honorarium of \$6,300.00 was for the period of her appointment from July 1, 2018, to June 30, 2019. She confirmed that the honorarium of \$250.00 was for the period of May 1, 2018, to April 30, 2018.

[25] The Commission says that they allocated the monies to the one-year periods in which they were earned. The Commission determined the weekly rate to be \$121.00 (\$6,300.00 divided by 52 = \$121.00 per week) and \$5.00 (\$250.00 divided by 52 = \$5.00 per week).

[26] The Claimant established a claim for special benefits from November 25, 2018, to November 16, 2019.

[27] The Commission allocated the rate of \$121.00 to the week starting November 25, 2018, to the week of June 23, 2019, with the remaining amount of \$17.00 to the week of June 30, 2019. The Commission allocated the rate of \$5.00 to week starting November 25, 2018, to the week of April 21, 2019, with the remaining amount of \$3.00 to week of April 28, 2019.

⁵ Section 35(1)(c) of the *Employment Insurance Regulations*

⁶ Subsection 36(4) of the *Employment Insurance Regulations*

⁷ *Doblej v. Canada (AG)*, 2004 FCA 19

⁸ Subsection 36(4) of the *Employment Insurance Regulations*

Do I have the authority to write off the overpayment?

[28] No, I have no authority under the Act and its regulations to grant a write-off or to agree to an arrangement, since this authority rests solely with the Commission.⁹

[29] The Claimant says that she was honest and upfront with the Commission and reported when she received the honorarium. She says she was initially told that this money would not affect her EI payments. However, after being referred to subsequent agents it was determined that they did. She says this overpayment has created her financial hardship. She has requested that due to the fact, she is a student and now with the Covid 19 situation it will be even more difficult to repay.

[30] I considered the Claimant's statements that she feels the Commission did not provide her with the correct information. However, it is well established that bad advice or no advice from a Commission agent does not change the law, which must be applied notwithstanding any wrong advice.¹⁰

[31] I sympathize with the Claimant's situation; however, the Courts reaffirmed the principle whereby adjudicators are permitted to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.¹¹

CONCLUSION

[32] I conclude that the monies the Claimant received constitute earnings pursuant to section 35(1), specifically 35(1)(c) of the regulations. I find that the Commission was correct when allocating the monies in accordance to section 36(4) of the regulations.

[33] The appeal is dismissed.

Teresa Jaenen

Member, General Division - Employment Insurance Section

⁹ *Canada (Attorney General) v. Villeneuve*, 2005 FCA 440

¹⁰ *Granger* (A-684-85)

¹¹ *Canada (AG) v. Knee*, 2011 FCA 301

HEARD ON:	April 2, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	N. T., Appellant Mariam Gagi, Representative for the Appellant