



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *AI v Canada Employment Insurance Commission*, 2020 SST 972

Tribunal File Number: GE-20-597

BETWEEN:

**A. I.**

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: Glen Johnson

HEARD ON: July 22, 2020

DATE OF DECISION: July 22, 2020

## **DECISION**

[1] The appeal is dismissed. This means that the Commission correctly allocated the Claimant's earnings from employment against employment insurance (EI) benefits received during the weeks starting March 13, 2016 to May 15, 2016, resulting in an overpayment of benefits.

## **OVERVIEW**

[2] The Claimant applied for and received sickness EI benefits in 2016. She declared some earnings from employment during the weeks starting March 13, 2016 to May 15, 2016 while collecting EI benefits.

[3] In 2019, the Commission investigated her EI claim. She says that the Commission is outside the 36 month period that they are allowed to review her EI claim and it is unfair to her to make her look for earnings information from so long ago.

[4] She claims that she did not work, but she received money from her employer for the weeks starting March 13, 2016 to May 15, 2016; however, she paid someone else to perform the work that she could not do herself.

[5] The Commission decided that the Claimant falsely declared her earnings from employment for the weeks starting March 13, 2016 to May 15, 2016, but they found that she did not knowingly do so.

[6] The law says that all earnings from employment have to be allocated against EI benefits collected. The Commission decided that the allocation of earnings against EI benefits that she collected results in an overpayment of benefits of \$3221.

[7] I find that the Commission investigated the Claimant's claim within a 72 month period allowed by the law and they correctly allocated the money that the Claimant received from her employer as earnings against EI benefits collected.

## ISSUE

[8] I have to decide:

1. Can the Commission review the Claimant's EI claim or are they outside the time limit to do so?
2. Is the money that the Claimant received earnings?
3. If it is earnings, did the Commission allocate it correctly?

## ANALYSIS

**Can the Commission review the Claimant's EI claim or are they outside the time limit to do so?**

[9] The Commission can review the Claimant's EI claim made in 2016. They are not restricted to a review going back only 36 months as suggested by the Claimant.

[10] The law says that the Commission can reconsider a claim within 72 months where they are of the opinion that a claimant has been a false or misleading statement or representation (subsection 52(5), *Employment Insurance Act*). The Commission reviewed her claim in 2019, well within the 72-month time limit.

**Did the Claimant receive earnings?**

[11] I find that the Claimant received earnings from employment during the weeks she received EI benefits starting March 13, 2016 to May 15, 2016.

[12] I find that the Commission correctly allocated the Claimant's earnings from employment for the weeks starting March 13, 2016 to May 15, 2016. The Claimant falsely declared earnings for this period, resulting in an overpayment of benefits of \$3221.

[13] The law says that earnings are the entire income of a claimant arising out of any employment.<sup>1</sup> The law defines both "*income*" and "*employment*." "*Income*" includes any

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<sup>1</sup> Subsection 35(2) of the *Employment Insurance Regulations*.

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.<sup>2</sup> “*Employment*” includes any employment under any kind of contract of service or employment.<sup>3</sup> The law also says that severance pay is earnings.<sup>4</sup>

[14] The Claimant is the party who has to prove that it is more likely than not that the money is not earnings.

[15] She claims that she did not work, but she received money from her employer for the weeks starting March 13, 2016 to May 15, 2016; however, she says that she paid someone else to perform the work that she could not do herself, but she has not supplied any supporting information.

[16] I find that the Claimant has not shown that there is an error in the earnings reported by her employer and she received earnings from employment during the weeks starting March 13, 2016 to May 15, 2016.

[17] Her claim that she did not work during the weeks that she collected EI benefits or that she paid someone else to do the work that she was unable to do is not supported by the information on file, including a bank statement showing payroll deposits to her account and payroll records from her employer (RGD2). The bank records do not show payment to others for work they allegedly performed for the Claimant.

[18] The law says that earnings have to be allocated.<sup>5</sup> Earnings are allocated depending on the nature of the earnings: why were the earnings paid?

**Did the Commission allocate the earnings correctly?**

[19] I find that the Claimant’s earnings from employment for the weeks starting March 13, 2016 to May 15, 2016 were correctly allocated against EI benefits that she collected.

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<sup>2</sup> Subsection 35(1) of the *Employment Insurance Regulations*.

<sup>3</sup> Subsection 35(1) of the *Employment Insurance Regulations*.

<sup>4</sup> *Blais v Canada (Attorney General)*, 2011 FCA 320.

<sup>5</sup> Section 36 of the *Employment Insurance Regulations*.

[20] The Claimant says that it is unfair to her to make her look for earnings information from so long ago; however, I find that the Commission allocated these earnings to the correct weeks and I do not have the authority to depart from the plain meaning of the employment insurance legislation.

**CONCLUSION**

[21] The appeal is dismissed. This means that the Claimant's earnings from employment were correctly allocated against EI benefits that she collected, which results in an overpayment of \$3221.

Glen Johnson  
Member, General Division - Employment Insurance Section

HEARD ON:	July 22, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	A. I., Claimant  Sylvia Thompson, Interpreter (Tagalog)