



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *DB v Canada Employment Insurance Commission*, 2020 SST 1113

Tribunal File Number: GE-20-1715

BETWEEN:

D. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Josée Langlois

HEARD ON: September 2, 2020

DATE OF DECISION: September 3, 2020

DECISION

[1] The appeal is dismissed.

[2] I find that the retiring allowance the Appellant received from the Québec Pension Plan must be allocated to his benefit periods.

OVERVIEW

[3] The Appellant filed two claims for benefits, on July 1, 2017, and July 3, 2018. Since January 31, 2018, the Appellant has been receiving a retiring allowance of \$1,073.53 per month from the Québec Pension Plan (QPP).

[4] On October 29, 2019, the Canada Employment Insurance Commission (Commission) informed the Appellant that he had failed to report \$248 per week in earnings from a QPP pension. The Commission said that it had allocated these earnings to his benefit period as of January 31, 2018.

[5] The Appellant disputed this decision and, on March 14, 2020, the Tribunal's General Division made a decision. The General Division found that an amount of \$247 had to be allocated from June 24, 2018, to October 27, 2018, and it found that no allocation was to be made after that date.

[6] The Commission disputed that decision and, on July 3, 2020, the Tribunal's Appeal Division allowed the appeal and asked the General Division to reconsider the Appellant's file.

[7] After the Appellant asked that the file be placed in abeyance indefinitely, a pre-hearing conference took place on August 20, 2020. The Appellant explained that he was waiting for a copy of his file requested from the Commission about his first claim for benefits in 2016. The Appellant explained that he wanted to argue at the hearing that he did not report his QPP pension because a Commission agent had allegedly told him not to. Since no penalty was imposed on the Appellant's file for failing to report it, it was agreed that he could argue that statement, already presented in the file, at the hearing.

[8] I have to determine whether the retiring allowance the Appellant received must be allocated to his benefit period.

ISSUE

[9] Were the earnings the Appellant received periodically from the QPP properly allocated to his benefits periods?

PRELIMINARY MATTER

[10] At the hearing, I joined the Appellant's two files, GE-20-1715 and GE-20-1716. A single decision will be made about these two claims because they raise common questions of law or fact and because no injustice is likely to be caused to any party.

ANALYSIS

Were the earnings the Appellant received periodically from the QPP properly allocated to his benefit period?

[11] The Appellant acknowledges that he receives a retiring allowance from the QPP and that he received the first monthly payment on January 31, 2018.¹ However, he argues that these earnings should not be allocated to his two benefit periods. The Appellant explains that he did not report this income because a Commission agent allegedly told him, when he first applied for benefits in 2016, that he did not need to.

[12] The Appellant has received the following amount since January 2018:²

- \$1,073.53 per month from Retraite Québec [Pension Quebec] (administers the QPP).

[13] The Commission says that this amount constitutes earnings because the retirement pension is based on employment income. It acknowledges that there were some errors at first in the application of the overpayment, but it submits that the monthly amount of \$1,073.53 must be

¹ Appellant's written statement at GD2-6.

² Indicated in the documents from the QPP that the Appellant sent to the Commission: RGD2-59 and RGD2-60.

allocated to the Appellant's two benefit periods as of January 1, 2018. It says that an amount of \$248 per week was properly allocated to the Appellant's benefit periods.

[14] Since January 2018, the Appellant has received a monthly amount equivalent to \$1,073.53 ($\$1,073.53 \times 12 \text{ months} = \$12,882.36 / 52 \text{ weeks} = \247.74 rounded to \$248 per week).

[15] The entire income of a claimant arising out of any employment must be taken into account when calculating the amount to be deducted from benefits.³

[16] Moneys payable to a claimant on a periodic basis as a retirement pension from a provincial pension plan constitute earnings under the *Employment Insurance Act*.⁴

[17] Moneys paid on a periodic basis like this must be allocated to the period for which they are paid or payable.⁵

[18] At the hearing, the Appellant explained that he was disputing the allocation for essentially two reasons. First, he had allegedly received incorrect information from a Commission agent. He explained that, when he first applied for benefits in 2016, a Commission agent had not given him adequate information. The Appellant had understood from the information he received that he did not have to report this retirement income. He also argued that the Commission tried to hide its error because it did not include the transcript of that interview in the documents it presented about this file.

[19] The Appellant also argued that the Commission had made errors in the application of the overpayment, which has made it hard for him to understand the file.⁶ The Commission acknowledged that errors were made in the application of the overpayment. It noted that, as of

³ Section 35(2) of the *Employment Insurance Regulations* (Regulations) and *McLaughlin v Attorney General of Canada*, 2009 FCA 365 (CanLII).

⁴ This principle is explained in sections 35(1)(c) and 35(2)(e) of the Regulations and in the following decision: *Boone et al. v Attorney General of Canada*, 2002 FCA 257.

⁵ Section 36(14) of the Regulations.

⁶ The calculation chart the Commission presented at GD6-2 was modified. Two new updated calculation charts were presented at RGD2-77 and RGD2-81.

December 9, 2018, it had not applied the \$248 that has to be allocated to the Appellant's benefit period.⁷

[20] The Appellant argues that the Act is complex and that he did not receive an adequate response to each of his questions about these errors. In that regard, the Commission prepared a new calculation chart showing that the amount of \$248 was allocated to some weeks of benefits as of January 1, 2018. The Tribunal Registry emailed this document to the Appellant on July 31, 2020, and again on August 20, 2020, as requested by the Appellant at the pre-hearing conference. The Appellant indicated at the hearing that he had received this document. The Appellant can consult this chart for each of his benefit periods at pages RGD2-77 and RGD2-81. The Commission also provides detailed explanations about this allocation that the Appellant can read at pages RGD2-79 and RGD2-80 if he feels the need.

[21] The second reason the Appellant disputes the allocation of earnings is that he would not have asked to receive his retiring allowance from the QPP in January 2018 if he had known that he would be penalized. He explained that he had saved for many years to receive this pension and that he is now being penalized because this amount is deducted from his Employment Insurance benefits.

[22] I understand the Appellant's disappointment because this situation resulted in an overpayment of benefits to repay. The Appellant feels [translation] "cheated" by this situation. When he filed each of his claims, the Appellant answered "no" to the question "Are you receiving a pension or will you be receiving a pension in the next 52 weeks?" As I explained at the hearing, no penalty was imposed because the Appellant failed to report his QPP pension.

[23] However, the Commission retroactively allocated the earnings received, which resulted in an overpayment of benefits that the Appellant has to repay. I understand that this situation has a significant impact on the Appellant's budget. In this regard, he can contact the Commission to reach a payment agreement so that he does not have to repay this amount in full immediately.

⁷ RGD3-5.

[24] Because there is no penalty on file, it is not so much the reasons this income was not reported at the right time that have to be assessed, but rather whether these amounts have to be allocated to the Appellant's two benefit periods.

[25] Finally, the Appellant noted that pension income does not always have to be allocated. A pension does not constitute earnings under the Act when a claimant has accumulated enough insurable hours of employment since they started receiving their pension to be able to establish a new benefit period.⁸

[26] The facts show that the Appellant worked for X from March 15, 2018, to June 22, 2018. He accumulated 529 insurable hours of employment from January 1, 2018, to June 24, 2018. The Appellant needed 700 insurable hours of employment to establish a new benefit period.⁹ As the Commission argues, the Appellant did not have enough insurable hours of employment to consider the pension amount he receives as earnings.

[27] The Commission allocated an amount of \$248 the weeks starting: December 31, 2017; January 7, 2018; March 4, 2018; and March 11, 2018, for the benefit period starting June 27, 2017.¹⁰ It also allocated an amount of \$248 the weeks starting: June 24, 2018; July 1, 2018; July 8, 2018; July 15, 2018; July 22, 2018; July 29, 2018; August 5, 2018; August 12, 2018; August 19, 2018; August 26, 2018; September 30, 2018; December 9, 2018; and December 30, 2018, for the benefit period starting June 24, 2018.

[28] The Commission calculated a weekly benefit rate equivalent to \$245 per week (\$444.90 Appellant's weekly insurable earnings x 55% = \$245 benefit rate). The Commission provided the Appellant with the detailed explanation of this calculation on May 4, 2020. The Appellant can consult this letter at page RGD2-83.

[29] The interview transcripts from the Commission show that an agent took the time to explain to the Appellant in detail that the QPP pension amount he received has to be applied to

⁸ Section 35(2)(e)(ii) of the Regulations.

⁹ RGD2-87, RGD2-88, and RGD3-8.

¹⁰ RGD2-61.

his benefit periods. And the information the Commission sent to the Appellant and the Tribunal is clear and detailed concerning the calculations and allocation of the Appellant's earnings.

[30] Although the outcome is disappointing for the Appellant, the pension amount received from the QPP constitutes earnings, and these earnings must be allocated to his benefit periods as of January 1, 2018. The file shows that the Commission properly calculated an amount of \$248 to allocate to each week of benefits mentioned.

CONCLUSION

[31] The \$248 in earnings the Appellant received as a retiring allowance from the QPP must be allocated to his two benefit periods.

[32] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section

HEARD ON:	September 2, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	D. B.