



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *NL v Canada Employment Insurance Commission*, 2020 SST 960

Tribunal File Number: GE-20-1995

BETWEEN:

N. L.

Appellant (Claimant)

and

Canada Employment Insurance Commission

Respondent (Commission)

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: October 27, 2020

DATE OF DECISION: October 29, 2020

DECISION

[1] I am dismissing the appeal. The Claimant's group short-term and long-term disability benefits are earnings. These earnings are allocated to his Employment Insurance (EI) claims from November 17, 2019, to June 6, 2020, as set out below.

OVERVIEW

[2] The Claimant applied for sickness Employment Insurance (EI) benefits. The Claimant told the Commission that he received EI benefits for the same weeks he received short-term disability (STD) and long-term disability (LTD) benefits from his group wage-loss provider.

[3] The Commission initially decided that his STD and LTD benefits were not earnings so they continued to pay him EI benefits. Then they conducted a review and decided his STD and LTD benefits were earnings. The Commission allocated the Claimant's STD benefits at \$800.00 per week from November 17, 2019, to March 14, 2020. They allocated his LTD benefits at \$577.00 per week from March 16, 2020, to June 6, 2020. This retroactive allocation resulted in a \$5,600.00 overpayment of EI benefits.

[4] The Commission maintains their decision to allocate the Claimant's STD and LTD benefits. The Claimant disagrees with having to repay the overpayment of EI benefits. He says he notified the Commission he was receiving STD and LTD benefits and they told him they were not earnings.

ISSUES

[5] Are the Claimant's STD and LTD benefits earnings for the purpose of EI benefits?

[6] If so, how are the STD and LTD benefits to be allocated to his EI claims?

[7] Can I reverse, reduce, or write off the overpayment resulting from the retroactive allocation?

ANALYSIS

Earnings

[8] The entire income from employment is earnings.¹ All pecuniary or non-pecuniary income received by the Claimant from a group sickness or disability wage-loss indemnity plan is income.²

[9] I find that the Claimant's STD and LTD benefits are earnings for the purpose of EI benefits.³ This is because his STD and LTD benefits are a disability wage-loss indemnity provided through a group plan. The Claimant confirmed that the benefits referred to as his STD and LTD benefits are compensation for lost wages during the period he is sick or injured. He says he paid the premiums for these benefits through his employer's group plan.

[10] The Claimant states that the Commission told him that his STD and LTD benefits were not earnings because he paid the full premiums for this coverage. He submitted a letter from Canada Life which states, "Because you pay all of the premiums for your disability coverage, your payments are not taxable." This letter also states that this is a group plan provided under Merit Contractors Association Benefit Plan Trust.

[11] The law states that I cannot make my determination of earnings for the purpose of EI benefits, based on the *Income Tax Act*.⁴ Rather, I must make my determination based on the interpretation of sections 35 and 36 of the *Employment Insurance Regulations*.

[12] I find that the Claimant's STD and LTD benefits are a group sickness or disability wage-loss indemnity. For me to determine that his STD and LTD benefits are not a group plan, they must meet all six of the following conditions.⁵

- a) Is not related to a group of persons who are all employed by the same employer;
- b) is not financed in whole or in part by an employer;

¹ See section 35(2) of the *Employment Insurance Regulations (Regulations)*.

² See section 35(2)(c) of the *Regulations*.

³ See section 35 of the *Regulations*.

⁴ *Canada (Attorney General) v. Walford*, A-263-78.

⁵ See section 35(8) of the *Regulations*.

- c) is voluntarily purchased by the person participating in the plan;
- d) is completely portable;
- e) provides constant benefits while permitting deductions for income from other sources, where applicable; and
- f) has rates of premium that do not depend on the experience of a group referred to in paragraph (a).

[13] Upon review of these conditions, the Claimant confirmed that his STD and LTD benefits do not meet all six conditions. This is because his benefits are paid under a plan that is related to a group of persons who are all employed by the same employer. It is mandatory that he be a participant of the plan and this plan is not portable. Therefore, the Claimant's STD and LTD benefits are earnings because they are a disability wage-loss indemnity provided through a group plan. I will now consider the issue of allocation of these earnings.

Allocation

[14] The Commission applies earnings to EI claims and deducts them from the Claimant's benefits. This is called allocation. The reason for allocating earnings is to avoid double compensation.⁶

[15] Earnings are allocated depending on the nature of the earnings: why were the earnings paid? There are sections in the law outlining the allocation that applies to earnings that are paid or payable by a group wage-loss indemnity plan. Payments received under a group sickness or disability wage-loss indemnity plan shall be allocated to the weeks for which the payments are paid or payable.⁷

[16] As stated above, I have found that the Claimant's benefits referred as STD and LTD benefits are earnings. This is because he received them under his group disability wage-loss indemnity plan. This means they are to be allocated to the weeks for which they were paid.

⁶ *Canada (Attorney General) v Walford*, A-263-78.

⁷ See section 36(12)(b) of the *Regulations*.

[17] The Claimant agrees that he received \$800.00 per week for STD from November 17, 2019, to March 14, 2020. Then he received \$2,500.00 per month for LTD benefits from March 16, 2020, to June 6, 2020. I find that \$2,500.00 per month equals \$576.92 per week ($\$2,500.00 \times 12 \text{ months per year} \div 52 \text{ weeks per year} = \576.92 per week). I see no evidence to dispute this. So, the allocation of his STD benefits is \$800.00 per week from November 17, 2019, to March 14, 2020. His LTD benefits are to be allocated at \$576.92 per week from March 16, 2020, to June 6, 2020.

[18] It is unfortunate that the Commission did not allocate the Claimant's STD benefits when he first contacted them on January 15, 2020. This may have avoided such a large overpayment of EI benefits had they done so, especially if they had allocated his STD and LTD benefits.

Can I write off or reduce the overpayment?

[19] No. As explained during the hearing, I do not have the jurisdiction to decide on matters relating to a debt write off or reduction. That authority belongs to the Commission.⁸ That said it is my opinion that this is a case where the Commission should consider writing off the portion of the overpayment resulting from EI benefits paid from January 15, 2020, onward. This is because that portion of the overpayment arose entirely from the Commissions' errors.

[20] The Claimant testified that he upheld his duties and responsibilities to the Commission by informing them that he received STD and LTD benefits. He says he contacted the Commission three times between January 15, 2020, and March 5, 2020, to question whether these benefits were earnings. He argued that each time he called, the agent elevated his enquiry to higher-level agents who told him his STD and LTD benefits were not earnings because he paid the premiums.

[21] The Claimant asks that I write off the full overpayment or a portion thereof, as provided by section 20.5.2.1 of the Digest of Benefit Entitlement Principles. The Claimant stated that the government website and his application form both state that Service Canada has the responsibility to give him accurate information. He says their failure to do this resulted in the \$5,600.00 overpayment. The Claimant says that this situation was out of his control once he

⁸ See section 56 of the *Regulations*.

provided the Commission with the required information on January 15, 2020. He states that this is the agents' job so they should have known whether his STD and LTD benefits were earnings. He questioned their decision three times even though this is not his job and it was his first time collecting sickness EI benefits. Although I do not have the authority to write off the overpayment, it is my opinion that this is a case where the Commission should consider writing off a portion of it.

CONCLUSION

[22] The appeal is dismissed. The Claimant's STD and LTD benefits are earnings to be allocated to his EI claims.

Linda Bell

Member, General Division - Employment Insurance Section

HEARD ON:	October 27, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	N. L., Appellant (Claimant)