



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *SC v Canada Employment Insurance Commission*, 2020 SST 1116

Tribunal File Number: GE-20-2082

BETWEEN:

S. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Josée Langlois

HEARD ON: November 10, 2020

DATE OF DECISION: November 11, 2020

DECISION

[1] The appeal is dismissed. I find that the Appellant's earnings were correctly allocated to her benefit period.

OVERVIEW

[2] The Appellant made two claims for benefits, on June 28, 2016, and July 7, 2017. On February 11, 2020, and February 27, 2020, the Canada Employment Insurance Commission (Commission) gave a decision indicating to the Appellant that it had adjusted the earnings she received for the weeks included between August 28, 2016, and October 23, 2016, and between August 20, 2017, and October 15, 2017. The Commission then determined that the Appellant had knowingly made false or misleading statements. It imposed a penalty and a notice of violation for each claim.

[3] During the reconsideration of these decisions, the Appellant explained that her wages had been adjusted. The Commission issued a reconsideration decision in each file and informed the Appellant that it had not changed its decisions on the allocation of earnings but had removed the penalties and the notices of violation that were issued.

[4] The Appellant disputes the allocation of her adjusted wages to her benefit periods. She submits that she did not receive the amounts in the periods to which they were allocated.

[5] I must determine whether the earnings the Appellant received were correctly allocated to her benefit periods.

ISSUE

[6] Were the amounts the Appellant received as wages correctly allocated to her benefit periods?

ANALYSIS

Were the amounts the Appellant received as wages correctly allocated to her benefit periods?

[7] The entire income of a claimant arising out of their employment must be taken into account in calculating the amount to be deducted from their benefits.¹

[8] Amounts received as wages are earnings and must be allocated to claimants' benefit periods.²

[9] The Commission adjusted the earnings the Appellant received for the weeks included between August 28, 2016, and October 23, 2016, and between August 20, 2017, and October 15, 2017.³ Adjusting the Appellant's wages over her benefit periods resulted in two overpayments to be repaid: \$938 for the claim for benefits made in 2016 and \$1,173 for the claim for benefits made in 2017.

[10] The Appellant does not dispute having received the earnings that the employer reported. She even sent the Commission a document showing the payments her employer had made. She explained that she had started her contract as a substitute at the beginning of the school year. When she signed a contract in the fall, her wages were adjusted. She received an amount as retroactive pay when her employment status was changed.

[11] According to the Appellant, she reported her wages to the Commission in good faith and did not intend to commit fraud.

[12] I agree with the Appellant on this point, and I understand that, when she reported the wages she had received to the Commission, she could not have anticipated that her wages would be adjusted. The Commission's file also shows that the Appellant was cooperative and provided evidence of the payments of her adjusted wages. I am satisfied that the Appellant did not intend

¹ Section 35(2) of the *Employment Insurance Regulations* (Regulations) and *McLaughlin v Attorney General of Canada*, 2009 FCA 365 (CanLII).

² *Boone et al v Attorney General of Canada*, 2002 FCA 257 (CanLII); *Attorney General of Canada v Cantin*, 2008 FCA 192.

³ GD3-74 and GD3A-23.

to commit fraud. As I explained at the hearing, the penalties and the notices of violation that were initially imposed were removed during the reconsideration of the Commission's decisions. What the Appellant currently owes is an amount she was overpaid in benefits. After her earnings were adjusted, the Appellant was no longer entitled to receive this portion of benefits, which resulted in an overpayment that she has to repay.

[13] The Appellant argues that her wages were adjusted later, when she was no longer receiving benefits. She submits that, since she was not on benefits at the time, she does not have to repay that amount.

[14] However, as the Commission points out, section 36(4) of the *Employment Insurance Regulations* states that earnings that are payable to a claimant under a contract of employment are to be allocated to the period in which the services were performed. This means that, even though the employer paid the wages to the Appellant later, they will not be allocated to her benefit period at that time; rather, they will be allocated to the period when the services were performed for those wages.

[15] Even though the Appellant was unable to report that amount in advance, the earnings she received must be adjusted so that they can be properly allocated to her benefit periods.

[16] The Commission adjusted the Appellant's earnings when it was informed of the retroactive amounts she had received from the employer as wages. The Commission allocated the amounts received to the following weeks: August 28, 2016; September 4, 2016; September 11, 2016; September 18, 2016; September 25, 2016; October 2, 2016; October 9, 2016; October 16, 2016; and October 23, 2016. It also allocated the adjusted wages to the following weeks: August 20, 2017; August 27, 2017; September 3, 2017; September 17, 2017; September 24, 2017; and October 15, 2017.⁴

[17] The Commission correctly allocated the wages the Appellant received. The Appellant could not have anticipated that her wages would be adjusted, and, when she reported her wages,

⁴ GD3-23 to GD3-25, GD3A-17, and GD3-A-18.

she did it correctly. However, these wages were adjusted, and the allocation of her wages must also be adjusted over her benefit periods to match the actual amounts she ultimately received as wages.

CONCLUSION

[18] I find that the earnings the Appellant received as wages should be allocated to both of her benefit periods.

[19] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section

HEARD ON:	November 10, 2020
METHOD OF PROCEEDING:	Videoconference
APPEARANCE:	S. C., Appellant