



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *MC v Canada Employment Insurance Commission*, 2020 SST 1194

Tribunal File Number: GE-20-2315

BETWEEN:

M. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Josée Langlois

HEARD ON: December 21, 2020

DATE OF DECISION: December 21, 2020

DECISION

[1] The appeal is dismissed.

[2] I find that the \$4,273.91 the Appellant received as earnings at the time of his separation from employment was correctly allocated to his benefit period.

OVERVIEW

[3] The Appellant applied for benefits on April 6, 2019. On September 29, 2020, the Canada Employment Insurance Commission (Commission) gave a decision indicating that an amount of \$4,343.95 had been allocated to the Appellant's benefit period from June 2, 2019, to June 29, 2019.

[4] The Appellant then disputed the allocation of that amount, indicating that he had accumulated his vacation in 2018.

[5] After the employer corrected the Record of Employment, the Commission issued a reconsideration decision. It informed the Appellant that an amount of \$4,273.91, received as severance pay, had been allocated to his benefit period from June 2, 2019, to June 29, 2019.

[6] The Appellant does not dispute receiving this amount as vacation pay. However, he objects to the portion of his vacation in 2018 being allocated along with his vacation pay in 2019.

[7] I have to determine whether the amount of \$4,273.91 the Appellant received was correctly allocated to his benefit period.

ISSUE

[8] Was the amount of \$4,273.91 correctly allocated to the Appellant's benefit period?

ANALYSIS

Was the amount of \$4,273.91 the Appellant received correctly allocated to his benefit period?

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

[10] The amounts paid by an employer because of a separation from employment have to be allocated to a claimant's benefit period.²

[11] A supervisor at the employer told the Commission that the Appellant had resigned on June 7, 2019. For that reason, the vacation pay he had accumulated was paid to him.

[12] The Commission says that it is not the date, but the reason for the payment that determines the period to which it must be allocated. It argues that, in the Appellant's case, that amount was paid because of his separation from employment and that it allocated the amount as of June 2, 2019.

[13] The Appellant provided a detailed explanation about how the employer calculates and pays employees vacation pay.³

[14] He explains that he received vacation pay equivalent to 3.125 hours for every 37.5 hours worked, which amounts to 150 hours of vacation pay for each four-week period of work.

[15] He argues that the employer applied this accumulation of hours of vacation the following summer and that the hours of vacation paid during the summer of 2019 were accumulated in 2018.

¹ This principle is explained in *McLaughlin v Attorney General of Canada*, 2009 FCA 365 (CanLII); and section 35(2) of the *Employment Insurance Regulations* (Regulations).

² Section 36(9) of the Regulations.

³ GD2-9.

[16] For that reason, he says that part of the amount he received as vacation pay when he stopped working should not be allocated to his benefit period because it was accumulated in 2018.

[17] He argues that the allocation of this amount does not make sense because a colleague who took vacation two months before they stopped working was not penalized in the same way.

[18] The amount the Appellant received at the time of his separation from employment constitutes earnings, and it has to be allocated to his benefit period.⁴ The amounts paid by an employer because of a separation from employment have to be allocated under section 36(9) of the Regulations.

[19] Specifically, the amounts received as vacation pay were paid to the Appellant because of his final separation from employment.⁵

[20] Even though these amounts were accumulated earlier, they were paid when the Appellant stopped working. As a result, these amounts have to be allocated to a number of weeks that start with the week of final separation from employment—that is, June 2, 2019—because the Appellant stopped working on June 7, 2019.

[21] This allocation is done in such a manner that the earnings from that employment are, in each consecutive week except the last, equal to the Appellant's normal weekly earnings from that employment.⁶

[22] I understand the Appellant's disappointment because the allocation of this amount to his benefit period from June 2, 2019, to June 29, 2019, resulted in an overpayment of benefits to repay. However, the amount that he received was paid to him because he stopped working, and the Commission correctly allocated it to his benefit period from June 2, 2019, to June 29, 2019.

⁴ This principle is explained in the following decisions: *Boone et al v Attorney General of Canada*, 2002 FCA 257 (CanLII); and *Attorney General of Canada v Cantin*, 2008 FCA 192.

⁵ GD3-13 and GD3-14.

⁶ Section 36(9) of the Regulations.

[23] As mentioned at the hearing, it is possible to make a payment arrangement with the Commission so you do not have to repay the total amount owed in full.

[24] I find that the amount of \$4,273.91 paid to the Appellant as vacation pay has to be allocated to his benefit period as of June 2, 2019, that is, as of the beginning of the week of his separation from employment.

CONCLUSION

[25] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section

HEARD ON:	December 21, 2020
METHOD OF PROCEEDING:	Videoconference
APPEARANCE:	M. C., Appellant