



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *KJ v Canada Employment Insurance Commission*, 2021 SST 33

Tribunal File Number: GE-20-2392

BETWEEN:

K. J.

Appellant (Claimant)

and

Canada Employment Insurance Commission

Respondent (Commission)

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: January 18, 2021

DATE OF DECISION: January 19, 2021

DECISION

[1] I am dismissing the appeal. The Claimant received earnings and the Commission allocated (in other words, assigned) these earnings correctly. I do not have the authority to erase or write-off any portion of the overpayment resulting from the allocation.

OVERVIEW

[2] The Claimant worked and received wages during the same week he received payment for Employment Insurance (EI) parental benefits. The Commission decided that his wages were earnings. They allocated the wages to the week in which the Claimant worked. This allocation resulted in a \$235.00 overpayment of benefits. After reconsideration, the Commission maintained the allocation.

[3] The Claimant appealed to the Social Security Tribunal stating that he disagrees with having to repay the \$235.00 overpayment. The Commission states the Claimant is not entitled to all of the benefits he received for the week in which he worked so he is required to repay the overpayment.

ISSUE

[4] Did the Claimant receive wages for work performed during the week of October 18, 2020? If so, are these wages earnings?

[5] If the wages are earnings, how much are allocated?

[6] Can I write off or reduce the amount of the overpayment?

ANALYSIS

The parties do not dispute that the money paid to the Claimant is earnings.

[7] The law says that earnings are the entire income of a claimant arising out of any employment.¹ The law defines both “income” and “employment.” “Income” includes any income that a claimant did or will get from an employer or any other person, whether it is in the

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

form of money or something else.² “Employment” includes any employment under any kind of contract of service or employment.³

[8] The Claimant does not dispute that he received \$470.00 for work he performed during the week of October 18, 2020. He states he was paid \$470.00 for working a 10-hour day on Sunday of this week. He agrees that these wages are earnings. I see no evidence to dispute this. So I find as fact that the Claimant received the gross earnings of \$470.00 for work performed during the week of October 18, 2020.

Allocation of Earnings

[9] The law says that earnings have to be allocated.⁴ Earnings are allocated depending on the nature of the earnings: why were the earnings paid? There are sections in the law that applies to earnings that are paid or payable to a Claimant as wages for worked performed.⁵ The law says that earnings paid or payable under a contract of employment for the performance of services are to be allocated to the period in which the services were performed.⁶

[10] The *Employment Insurance Act (Act)* states that if you work after you have served your waiting period (if one is required), then you can keep 50 cents of your EI parental benefits for every dollar you earn, up to 90% of the weekly insurable earnings used to calculate your EI benefit rate. This 90% amount is called the earnings threshold. If you earn any money above this threshold, it will be deducted dollar for dollar from your benefits.⁷

[11] The Commission says that the Claimant’s earnings are to be allocated to the week of October 18, 2020, because this is the week he worked. The Claimant does not dispute this. Rather, he disputes that he has to repay \$235.00 of the benefits he received.

[12] The Claimant states he does not understand how the Commission determined that he had an overpayment of \$235.00. He argues that he only worked one day out of a 7-day week. So he

² See subsection 35(1) of the *Regulations*.

³ See subsection 35(1) of the *Regulations*.

⁴ See section 36 of the *Regulations*.

⁵ See subsection 36(4) of the *Regulations*.

⁶ See subsection 36(4) of the *Regulations*.

⁷ See subsection 19(2) of the *Act*.

calculates his overpayment to be \$73.00. He says he divided his net benefit rate of \$514.00 by 7 days and multiplied it by the number of days he worked ($\$514.00 \div 7 \times 1 = \73.43). I disagree with the Claimant's calculation. As stated above, the law says the allocation of earnings is based on a calculation of his earnings threshold and his gross earnings. The calculation is not based on the number of days worked or his net benefit rate. The law sets out the specific calculation that must be used when allocating earnings, as set out above. This calculation is not discretionary.

[13] The Commission states that the Claimant's "earnings threshold", as described above, is \$573.00.⁸ This means that 50 cents of every dollar the Claimant earns prior to deductions (50% of the gross earnings) up to \$573.00 is to be deducted from his gross weekly benefit rate.

[14] The Claimant agrees that he earned \$470.00 for the week of October 18, 2020. I accept that his earnings for this week were less than his earnings threshold of \$573.00. The Claimant does not dispute this. So this means 50% of his gross earnings are allocated (applied) to his gross benefit rate for the week he worked.

[15] The Commission states that the Claimant's gross benefit rate is \$573.00.⁹ So, when they allocate 50% of his earnings ($\$470.00 \times 50\% = \235.00) to the week of October 18, 2020, he is only entitled to receive \$338.00 of benefits ($\$573.00 - \$235.00 = \338.00). I agree that the Commission's documentary evidence supports this calculation, namely the claimant's benefit rate and his earnings threshold. As set out above, the law states that 50 % of the gross earnings, up to the earnings threshold, are to be deducted from his weekly parental benefits.

[16] The Commission completed the allocation retroactively, after they paid the Claimant the gross amount of \$573.00, for the week of October 18, 2020. The Commission says that the Claimant was over paid by \$235.00 because he is only entitled to \$338.00 ($\573.00 gross weekly rate - $\$338.00$ he is entitled to receive = $\$235.00$ overpayment). I find that the Commission completed the allocation correctly. This means the Claimant received \$235.00 of parental benefits for which he is not entitled.

⁸ See GD4-3.

⁹ See GD3-22.

[17] I recognize that the delay caused by the increased wait times on the telephone, contributed to the Claimant being overpaid benefits. I am very sympathetic to the Claimant's situation. However, I am bound by the clear legislative provisions concerning his liability to repay the overpayment amount. He received \$235.00 of EI parental benefits in excess of the amount he is entitled to receive. This means he is required to repay the excess amount, which in this case is \$235.00.¹⁰

[18] I commend the Claimant for his suggestion that the Commission ought to update their programs, service account, and website allowing claimants to click a button or link to report that they have returned to work. This would be especially beneficial for those claimants who are not required to complete biweekly reports (claims). I agree that the Commission ought to develop more accessible and clearer processes so that claimants can contact them within reasonable timeframes.

Do I have the authority to reduce or write-off the overpayment?

[19] No, I do not have the authority to reduce or write off the overpayment. I do not have the jurisdiction to decide on matters relating to debt reduction or write off. It is the Commission who holds the authority to reduce or write-off an overpayment.¹¹

[20] The Claimant requests that the overpayment be erased or reduced to \$73.00. He says that he asked the Commission to remove or reduce the overpayment but they refused. I agree with the Commission that the law states that their decision regarding writing off an amount owed can't be appealed to the Social Security Tribunal.¹² This means that I cannot determine matters relating to a request for a write-off or reduction of an overpayment.

[21] The Federal Court of Canada has the jurisdiction to hear an appeal relating to a write-off issue.¹³ This means that if the Claimant wishes to pursue an appeal regarding his request to write off the overpayment, he needs to do so through the Federal Court of Canada.

¹⁰ Section 43(b) of the *Act* states that a claimant is required to repay benefits that he is not entitled to receive.

¹¹ See section 56 of the *Regulations*.

¹² See section 112.1 of the *Act*.

¹³ *Steel v Canada (Attorney General)*, 2011 FCA 153; *Bernatchez v Canada (Attorney General)*, 2013 FC 111.

[22] Although the Claimant may perceive this as an unjust result, my decision is not based on fairness. Rather, my decision is based on the facts before me and the application of the law. There are no exceptions and no room for discretion. I cannot interpret or rewrite the law in a manner that is contrary to its plain meaning, even in the interest of compassion.¹⁴

CONCLUSION

[23] The appeal is dismissed. The Claimant's earnings were allocated to his claims correctly. This means he is liable to repay the \$235.00 overpayment that resulted from the allocation.

Linda Bell

Member, General Division - Employment Insurance Section

HEARD ON:	January 18, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	K. J., Appellant (Claimant)

¹⁴ *Canada (Attorney General) v Knee*, 2011 FCA 301