



Citation: *TB v Canada Employment Insurance Commission*, 2021 SST 149

**Social Security Tribunal of Canada  
General Division – Employment Insurance Section**

## Decision

**Appellant:** T. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (334905) dated June 4, 2019  
(issued by Service Canada)

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**Tribunal member:** Amanda Pezzutto

**Type of hearing:** Teleconference  
**Hearing date:** March 30, 2021  
**Hearing participant:** Appellant  
**Decision date:** April 6, 2021  
**File number:** GE-21-381

## Decision

[1] T. B. is the Claimant. The Canada Employment Insurance Commission (Commission) made decisions about his Employment Insurance (EI) benefits. He is appealing these decisions to the Social Security Tribunal (Tribunal).

[2] I am allowing his appeal. I find that he only worked and had earnings in the week beginning May 24, 2015. He did not work and had no earnings in the week beginning May 31, 2015.

## Overview

[3] The Claimant was collecting employment insurance benefits in May 2015. He started a new job, but he only worked for a few days before he got sick. When he did his report cards, he only declared earnings from this job in one week. Several years later, the Commission reviewed his benefits. The Commission decided that the Claimant really had earnings in two weeks. The Commission adjusted the Claimant's earnings and asked him to repay benefits.

[4] The Claimant disagrees with the Commission. The Claimant says that he only worked and had earnings in one week. He says he did not work the following week.

[5] The Commission says the Record of Employment (ROE) is correct. The Commission says the Claimant worked and had earnings over two weeks. The Commission says the Claimant has to repay benefits.

## Issues

[6] The Claimant disagrees with the Commission's decisions about his benefits. He thinks the Commission should not go back so many years to look at benefits he already received. He also thinks the Commission made a mistake about the weeks he worked and received wages. To make a decision in this appeal, I am going to look at these two questions:

- Does the Commission have the authority to go back and look at the Claimant's benefits in 2015?
- Did the Claimant have work and earnings in both the week of May 24, 2015 and the week of May 31, 2015?

## Analysis

### Issue 1: Does the Commission have the authority to look at the Claimant's benefits in 2015?

[7] The Claimant says that the Commission should not be allowed to go all the way back to 2015 to review its decisions. The Commission disagrees. The Commission says it can go back to 2015 because the Claimant gave false information about his earnings.

[8] The Commission has the power to revisit any of its decisions about benefits. But the Commission has to follow the law about time limits when it reviews its decisions. Usually, the Commission has a maximum of three years to revisit its decisions.<sup>1</sup> If the Commission paid you benefits you were not really entitled to receive, the Commission can ask you to repay those benefits.<sup>2</sup>

[9] In some cases, the Commission can go back even further than three years. The Commission can revisit decisions it made as much as six years earlier if the Commission thinks that you made an incorrect statement.<sup>3</sup> This does not mean that the Commission has to prove that you were lying on purpose; it just means that the Commission has to have a reasonable reason for thinking that something you said about your benefits was wrong. This could include an honest mistake.

[10] The Claimant did report cards for the weeks of May 24 and May 31, 2015. On the May 24 report, he said that he had \$900 in earnings. On the May 31 report, he said he did not work at all because he was sick.

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<sup>1</sup> Subsection 52(1) of the *Employment Insurance Act*. Specifically, the law says the Commission has 36 months.

<sup>2</sup> Subsection 52(3) of the *Employment Insurance Act*.

<sup>3</sup> Subsection 53(5) of the *Employment insurance Act*. The law says that the Commission has 72 months in these cases.

[11] On the ROE, the employer said that the Claimant earned a total of \$817: \$714 in the week beginning May 24, 2015 and \$104 in the week beginning May 31, 2015.

[12] The employer's information on the ROE was different from the Claimant's information on the report cards. The employer said that the Claimant earned less than \$900 and spread the earnings over two weeks.

[13] The ROE is usually reliable. I think it was reasonable for the Commission to think that the Claimant had given them incorrect information about his work and earnings. This gave the Commission the power to go back more than three years to re-examine the Claimant's benefits. I do not think the Commission went beyond its authority when it extended its review period to look at the Claimant's benefits in 2015.

## **Issue 2: Did the Claimant have work and earnings in both the week of May 24, 2015 and May 31, 2015?**

[14] I believe the Claimant. I find that it is likely that he only worked and received earnings in the week beginning May 24, 2015.

[15] The Claimant and the Commission agree that the Claimant only worked for the employer for a short while. They agree that he worked and received wages. They agree that the wages are earnings, and they agree that the Commission must apply the earnings to the weeks the Claimant actually worked. They disagree about when the Claimant actually worked.

[16] The Commission relies on the ROE. The Commission says that the Claimant worked and received earnings over two weeks. The Commission wants to allocate \$714 to the week of May 24, 2015, and \$104 to the week of May 31, 2015.

[17] The Claimant disagrees with the Commission. He says he only worked and received earnings in the week beginning May 24, 2015.

[18] When there are different explanations of what happened, I have to decide which version is most likely. I have to consider all of the evidence and make a decision on the

balance of probabilities.<sup>4</sup> I have to ask myself: is it more likely that not that the Claimant only worked and received earnings in one week?

[19] The Commission's only evidence is the ROE. The ROE says that the Claimant worked from May 28 to June 1, 2015. The ROE says that the employer paid the Claimant weekly: \$713.60 in the week starting May 28, 2015 and \$103.80 in the week starting May 31, 2015. The Claimant worked 14 hours in this job and earned \$817.40

[20] The Commission did not talk to the employer. The Commission only relies on the ROE.

[21] The Claimant did report cards in 2015. In the week starting May 24, he reported 20 hours of work and \$900 of earnings. In the week starting May 31, he said he did not work at all because he was sick for five days.

[22] At the hearing, the Claimant was very sure about the dates he worked. He said it was a camp job. He flew in on Wednesday, May 27. He attended a full day of orientation on Thursday, May 28. He attended some of the orientation on Friday, May 29. He was too sick to keep working, and so the employer sent him home. He flew home on Saturday, May 31. He has not worked since because of his condition. The Claimant said that the employer did not pay him for travel time. They only paid him for the time he was at camp, attending the orientation.

[23] The Claimant also told the Commission the same things about the days he worked. At the hearing, he said he tried to get more information from the employer but they were not helpful. The person in payroll who did his ROE did not work there anymore.

[24] The employer sent the Claimant a copy of a paystub. The paystub is only for the week of May 24, 2015. It says that the Claimant worked 12 hours and earned \$713.60.

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<sup>4</sup> The Federal Court of Appeal says that the standard of proof is the balance of probabilities for employment insurance matters in its decision *Canada (Attorney General) v. Corner*, A-18-93.

The Commission says that this means the employer paid him \$103.80 for two hours in the week starting May 31, 2015.

[25] The Claimant thinks his employer must have made a mistake. At the hearing, he said that they might have realized they still owed him money and paid him in the second week. However, he says that he did not do any work in the week starting May 31, 2015, because he was already home.

[26] I think the Claimant's explanation for why there are two pay periods on the ROE is convincing, especially because he is so certain about the days he worked. Even though the Claimant had a plausible explanation, the Commission did not ask the employer for more information. There are no time sheets showing that the Claimant really worked in the week starting May 31, 2015. The Commission did not ask the employer if they paid the money for something other than wages. The Commission is only relying on the ROE. Even though ROEs are reliable, they are not always perfect. Sometimes employers make mistakes.

[27] When I weigh the ROE against the Claimant's statements and his report cards, I find that the Claimant is more reliable. I believe him. I think that he only worked in the week starting May 24, 2015. I do not think he actually performed any work or services in the week starting May 31, 2015.

[28] When you work and receive wages, the wages are earnings. The Commission has to allocate earnings paid as wages to the week you actually performed the work.<sup>5</sup> This means that the Commission has to allocate all of the Claimant's earnings to the week he actually worked: May 24, 2015.

[29] There is different information about how much the Claimant earned. At the hearing, the Claimant said he reported \$900 of earnings on his report card because he was not sure how much he would get for vacation pay. He estimated his earnings because the employer had not paid him yet. The ROE and his T4 say that his total

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<sup>5</sup> Subsection 36(4) of the *Employment Insurance Regulations*.

earnings from this job were actually \$817.40. I think it is likely that the Claimant really earned \$817.40 from his work, not \$900.

[30] I find that the Claimant only worked and earned wages in the week beginning May 24, 2015. This means that all of the earnings – \$817.40 – from his work should be allocated to the week of May 24, 2015. I find that the Claimant did not work in the week of May 31, 2015 and so he does not have any earnings in this week.

## **Conclusion**

[31] I am allowing the Claimant's appeal. I find that he only worked and had earnings in the week of May 24, 2015. He did not work and had no earnings in the week of May 31, 2015.

Amanda Pezzutto  
Member, General Division – Employment Insurance Section