



Citation: *MS v Canada Employment Insurance Commission*, 2021 SST 216

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

Decision

Appellant: M. S.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (406836) dated February 23, 2021
(issued by Service Canada)

Tribunal member: Paul Dusome
Type of hearing: Teleconference
Hearing date: April 13, 2021
Hearing participant: Appellant
Decision date: April 15, 2021
File number: GE-21-427

DECISION

[1] The appeal is dismissed. The Claimant did not fully report the earnings he did receive. The Commission allocated the earnings received to the correct weeks.

OVERVIEW

[2] The Claimant applied for employment insurance (EI) when his employer reduced his hours from full-time to part-time. He received EI benefits for the weeks from September 8, 2019, to May 23, 2020. For most of that period, he reported 20 hours of work per week, and his earnings as \$17.00 per week. That figure was his hourly rate, not his actual weekly earnings of \$340.00. The Commission continued to pay the Claimant EI benefits based on the reported \$17.00 per week earnings. On August 16, 2020, the Claimant applied for EI benefits after his job ended. On August 26, 2020, the Claimant reported his correct \$340.00 per week earnings for 2019 and early 2020. He explained that he thought the Commission would calculate his weekly earnings by multiplying the 20 hours by the \$17.00 hourly rate, to arrive at the correct weekly earnings of \$340.00. The Commission verbally notified the Claimant that he had underreported his earnings, and that an overpayment would result. The overpayment was \$5,474.00.

ISSUE

[3] I have to decide:

- a) Did the Claimant report his earnings correctly or incorrectly?
- b) If he did report his earnings incorrectly, did the Commission allocate the earnings correctly?
- c) The Claimant's other reasons why he should succeed in this appeal.

ANALYSIS

Did the Claimant report his earnings correctly or incorrectly?

[4] The Claimant did underreport his earnings in all but two of the weeks over the time he received EI benefits. My reasons for deciding this are explained below.

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

[6] The Claimant was paid hourly wages by his employer. The Commission decided this money was earnings under the law. The Claimant does not dispute that the wages are earnings. He does dispute that he incorrectly reported those earnings.

[7] The Claimant is the party who has to prove that it is more likely than not that he correctly reported his earnings.

[8] I find that the Claimant did incorrectly report his earnings for all but two weeks from September 2019 to August 2020.

[9] The Claimant testified that he did report \$17.00 as his weekly earnings in most of the reports. He confirmed that he did report his weekly earnings at \$320.00 in the week of September 8, 2019, and at \$340.00 in the weeks of September 29 and October 6, 2019. He confirmed that the \$320.00 figure for September 8th should have been \$340.00. That was an error on his part. For all other weeks, he reported \$17.00.

[10] The Claimant gave evidence on why he reported \$17.00 as weekly earnings on most of his reports. He thought that the Commission would do the calculation of multiplying the 20 hours worked times the \$17.00 per hour, to arrive at his weekly earnings of \$340.00. In support of that assumption, he pointed out that he had reported 20 hours per week and \$17.00 per hour in his application. He also reported those figures in a prior related appeal to the Tribunal on whether he had suffered an

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

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

³ Subsection 35(1) of the *Employment Insurance Regulations*.

interruption of earnings. He thought that was the correct way to deal with earnings. He was worried that if he reported \$340.00, the Commission would multiply that by 20 hours, to arrive at a weekly earnings of \$6,800.00. He assumed that the Commission would not accept \$17.00 as his entire earnings because that worked out to 85 cents per hour over 20 hours. He thought that someone at the Commission would monitor his reporting, so that if he made a mistake, someone would contact him about the mistake. Since no one from the Commission contacted him to say that he was reporting incorrectly, he thought that he was reporting correctly.

[11] I do not accept the Claimant's evidence about why he reported \$17.00 as weekly earnings on most of his reports. The evidence is based on the above assumptions the Claimant made, but took no steps to verify. In his testimony, he confirmed that he did not contact the Commission, or others, to ask about his assumptions. He did not ask about the correct way to report earnings. He did not ask about whether the Commission would calculate his weekly earnings by multiplying 20 hours by \$17.00. He did not ask whether the Commission would contact him if he made mistakes on his reports. A claimant has an obligation to take reasonable steps to learn what his rights and obligations are in the EI program. The Claimant failed to meet that obligation.

[12] The Claimant's evidence also has inconsistencies that undercut his explanation of how he reported his earnings. His explanation was that by reporting 20 hours and \$17.00, the Commission would arrive at the correct weekly earnings of \$340.00. Part of his rationale in testimony for doing that was that if he reported the \$340.00 earnings, the Commission would multiply that by 20 hours, to arrive at weekly earnings of \$6,800.00. The difficulty for the Claimant is this. He had reported earnings of \$320.00 and \$340.00 on three weeks early in his claim. It is difficult to accept that if the Commission was doing the calculation, it would not have contacted the Claimant at that time. Earnings of \$6,800.00 per week come to \$353,600.00 annually. Those figures are out of line for the Claimant's occupation of property administrator. On the Claimant's assumption, the Commission would have contacted the Claimant to verify the earnings. It did not. In addition, if the Claimant truly thought that the Commission was going to calculate his

earnings by multiplying \$320.00 or \$340.00 by 20 hours, he would have contacted the Commission to correct the error. He did not. In response to my question about whether he called the Commission about this \$6,800.00 calculation, he avoided the question by referring to using the \$17.00 figure in his application for EI benefits, and his prior appeal to the Tribunal. He did not answer the question. His reference to the \$17.00 figure from his application for EI benefits and from documents he gave the Tribunal in the previous appeal does not help him. Those figures are from him, they are not from independent sources. Even if those figures were confirmed by independent sources, the Claimant's assumption that the Commission would multiply the hours times the earnings was not confirmed.

[13] The question about earnings on the weekly reports is straightforward: "Provide the total amount of earnings before deductions (including tips or commissions) that you did or will receive from all employers for the first week of this report." The Claimant testified that he used the same earnings figure from his application and his SST documents in the prior appeal. That was the hourly rate of \$17.00. When I pointed out that the application specifically asked for "your hourly rate or annual salary (before deductions)", he stated that he saw the difference now, it was his mistake and not intentional. Where it is clear that the claimant incorrectly answered the simple questions in the report, he must explain why he gave those incorrect answers.⁴ The Claimant's explanation that he assumed that the Commission would calculate the weekly earnings is insufficient. It is also inconsistent with his reporting the \$320.00 and \$340.00 gross earnings for three weeks. The explanation is also insufficient because the Claimant took no steps to find out the correct way to report his earnings.

[14] Based on these considerations, I do not accept the Claimant's explanation for reporting earnings of \$17.00 per week for all but three weeks of the period from September 2019 to August 2020. Therefore, the Claimant did incorrectly report his earnings for most of that period.

⁴ *Nangle v Canada (Attorney General)*, 2003 FCA 210.

Did the Commission allocate the earnings correctly?

[15] The law says that earnings have to be allocated.⁵ Earnings are allocated depending on the nature of the earnings: why were the earnings paid? There is a section in the law on allocation that applies to earnings that are paid or payable for the provision of services under an employment contract.⁶ Those earnings are allocated to the period in which the services were provided.

[16] The earnings here were regular wages paid for hours worked during a biweekly pay period. Neither the Claimant nor the Commission disputes this. The earnings must therefore be allocated to each week in which they were earned.⁷ The Commission has done this, as shown in its "Payments" table in its Representations (GD03-14). The Commission's allocation decision is therefore correct.

The Claimant's other reasons why he should succeed in this appeal

[17] The Claimant advanced a number of other reasons in support of this appeal. I will deal with them in turn.

[18] The Claimant says, accurately, that the Commission took one year to inform him of the problem with his reports of earnings. He says that therefore there should be no debt that he has to pay. The law is clear. If a person has received a benefit to which he is not entitled, he is liable to repay that amount.⁸ There is no exception (I will deal with the possibility of cancellation of the debt below). The Claimant has received more in benefits than he was entitled to receive, because he underreported his earnings. The underreporting reduced the deduction from EI benefits for each week he reported \$17.00 earnings. That increased the amount of benefits he received for each of those weeks. This can be seen from the Commission's "Payments" chart at GD03-15, by comparing the "Gross" and "Earn (1)" columns for the rows at the bottom of that page. When the Claimant reported earnings of \$340.00, his EI benefit was \$333.00.

⁵ Section 36 of the *Employment Insurance Regulations*.

⁶ Subsection 36(4) of the *Employment Insurance Regulations*.

⁷ Subsection 36(4) of the *Employment Insurance Regulations*.

⁸ Sections 43 and 44 of the *Employment Insurance Act*.

When he reported earnings of \$17.00, his EI benefit was \$494.00. He was not entitled to the larger benefit, so must repay the overpayment.

[19] The Claimant says that no one called him, and therefore the underreporting of earnings was not his fault. The requirement to repay benefits noted above does not require any fault on the part of a claimant. The mistake can be totally innocent. The claimant must still repay the benefits he was not entitled to receive.

[20] The Claimant says further that he had no intention to mislead the Commission, and that there was no deliberate misrepresentation by him. That would be relevant if the Commission had imposed a sanction on him. The sanction could be a warning, a money penalty, or a notice of violation that increased the number of hours of insurable employment needed to qualify for benefits.⁹ The Commission has imposed no sanction on the Claimant. Lack of intention or deliberate misrepresentation is not relevant to this appeal.

[21] The Tribunal has no authority to deal with the Claimant's assertion that he cannot pay. The Canada Revenue Agency collects overpayments of EI benefits. The Claimant can apply to that agency for a payment arrangement to pay over time.

[22] The Tribunal has no jurisdiction to reduce or cancel an overpayment that is owing to the Commission. Only the Commission can make such a decision¹⁰. In the language of the legislation, reducing or eliminating money owing to the Commission is referred to as a "write-off". The Tribunal's jurisdiction to review decisions made by the Commission is limited to decisions that have been reconsidered by the Commission¹¹. There is no right to have a reconsideration of a decision by the Commission respecting a write-off of a debt¹². Without a reconsideration of a write-off decision, there is no right to appeal to the Tribunal on that issue, and no authority in the Tribunal to decide on that issue.

⁹ Sections 41.1, 38 and 7.1 of the *Employment Insurance Act*.

¹⁰ *M.L. v Canada Employment Insurance Commission*, 2016 SSTADEI 476.

¹¹ *Employment Insurance Act*, section 113.

¹² *Employment Insurance Act*, section 112.1.

CONCLUSION

[23] The appeal is dismissed. The Claimant did underreport his earnings. The corrected earnings were properly allocated. The other matters raised by the Claimant do not change this result.

Paul Dusome
Member, General Division – Employment Insurance Section