



Citation: *TA v Canada Employment Insurance Commission*, 2021 SST 263

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

Decision

Appellant: T. A.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (416068) dated February 12, 2021
(issued by Service Canada)

Tribunal member: Amanda Pezzutto

Type of hearing: Teleconference
Hearing date: May 10, 2021
Hearing participants: Appellant
Decision date: May 17, 2021
File number: GE-21-410

Decision

[1] T. A. is the Claimant. The Canada Employment Insurance Commission (Commission) made a decision about his entitlement to Employment Insurance (EI) benefits. He is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I am dismissing the Claimant's appeal. The Commission must deduct his wage loss insurance (WLI) benefits from his EI benefits dollar for dollar. He cannot use EI to "top up" his WLI benefits.

Overview

[3] The Claimant stopped working and applied for EI sickness benefits. He collected four weeks of benefits. The Commission learned that he was also receiving WLI benefits through his employer's insurance plan. The Commission decided that the WLI benefits were earnings and allocated them to the weeks he had already received EI benefits. The Commission deducted the WLI benefits dollar for dollar from the Claimant's EI benefits. This meant that the Commission asked the Claimant to repay all of the EI benefits he received.

[4] The Claimant disagrees with the Commission's decision to deduct the WLI from his EI benefits. He argues that his income dropped by more than 40% while he was on WLI benefits. He says that the EI benefits should top up his WLI benefits to bring his income to his usual level.

[5] The Commission says that it has to deduct WLI benefits dollar for dollar from the Claimant's EI benefits. The Commission says that the Claimant's weekly WLI benefits were more than his EI benefit rate and so he can't receive any EI benefits for the same weeks he had WLI benefits.

Issue

[6] I must decide whether the Claimant can collect EI benefits and WLI in the same weeks. In other words, can he use his EI benefits to top up his WLI benefits?

Analysis

[7] When you are collecting EI benefits, there are rules about how your income affects your EI benefits. Sometimes the law lets you keep some income before the Commission will start making deductions from your EI benefits. In other cases, the law says the Commission has to deduct your income dollar for dollar from your EI benefits.¹ It all depends on when you receive the income, what kind of money it is, and what kind of EI benefits you are collecting.

[8] There are specific rules if you are claiming EI sickness benefits. If you are claiming EI sickness benefits, and you are also collecting benefits from a WLI plan that your employer has registered with the Commission, the Commission will deduct the WLI benefits dollar for dollar from your EI benefits.² If your WLI benefit rate is higher than your EI benefit rate, then you won't be entitled to any EI benefits.

Issue 1: Can the Claimant use his EI benefits to top up his WLI benefits?

[9] I find that the Claimant cannot top up his WLI benefits with EI benefits. The Commission must deduct his WLI benefits dollar for dollar from his EI benefits.

[10] The Claimant argues that his income on WLI benefits was much lower than his usual weekly income. He says that his income decreased by more than 40%. He says that the Commission should top up his WLI benefits with EI benefits. He argues that he has worked and contributed to the EI fund for many years. He says that many people who have contributed less than he have collected generous emergency benefits during the pandemic.

[11] The Commission argues that it can't give the Claimant a top up. It says that it must deduct the WLI dollar for dollar from his EI benefits. The Commission says that the

¹ Section 19 of the *Employment Insurance Act* explains the general rules for deducting income from EI benefits.

² Subsection 21(3) of the *Employment Insurance Act*.

Claimant's EI benefit rate is lower than his weekly WLI benefit rate and so he isn't entitled to any EI benefits.

[12] The Claimant and the Commission agree about some of the basic facts. The Claimant could not work because he needed surgery. He applied for both EI sickness benefits and WLI benefits through his employer's benefit plan.

[13] The Commission says that the WLI plan was a "group" plan. In other words, the employer is funding the WLI plan. The Commission gave evidence showing that they have the plan registered in their system. The employer pays a reduced EI premium because it has registered this WLI plan with the Commission. The Claimant agrees that the WLI plan came from his employer. He isn't arguing that it was a private plan.

[14] The Commission and the Claimant agree that the Claimant was getting \$575 each week as WLI benefits. They also agree that his EI weekly benefit rate was \$573.

[15] There is no evidence contradicting this. I accept that the Claimant was collecting \$575 each week from his employer's WLI plan. I accept that this is a WLI plan that allows the employer to reduce their EI premiums. I accept that his EI benefit rate was \$573.

[16] I am sympathetic to the Claimant's argument. I don't know why his employer's WLI plan only covers about half of his income. I understand that it is difficult and frustrating for the Claimant to see such a big decrease in his income. But the Claimant can't use EI benefits to top up his WLI benefits.

[17] The law says that an employer's WLI plan is the first payer. This means that the Commission has to deduct WLI benefits dollar for dollar from EI sickness benefits. If there were any EI sickness benefits left over after deducting the WLI benefits, then the Claimant would be able to collect some EI benefits. But this isn't the case. The Claimant's weekly WLI rate is \$575. His weekly EI benefit rate is \$573. After deducting all of the WLI benefits from the EI benefits, there is nothing left over. So, the Claimant isn't entitled to any extra EI benefits during the weeks he collects WLI benefits.

[18] I don't have the power to change the law. I can't make exceptions in special circumstances. I can't look at the Claimant's past history of contributing to the EI fund. I can't look at what kinds of benefits other people are getting. I can only read the law, interpret its meaning, and apply it to this specific case.³

[19] The Commission must deduct the WLI benefits dollar for dollar from the Claimant's EI benefits. He cannot use EI benefits to top up his WLI benefits.

Conclusion

[20] I am dismissing the Claimant's appeal.

Amanda Pezzutto
Member, General Division – Employment Insurance Section

³ *Canada (Attorney General) v Knee*, 2011 FCA 301, at para. 9.