



Citation: *OR v Canada Employment Insurance Commission*, 2021 SST 371

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: O. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (424733) dated June 2, 2021
(issued by Service Canada)

Tribunal member: Solange Losier

Type of hearing: Videoconference

Hearing date: July 9, 2021

Hearing participant: Appellant

Decision date: July 12, 2021

File number: GE-21-1032

Decision

[1] The appeal is dismissed. The Claimant received earnings and the Canada Employment Insurance Commission (Commission) allocated (in other words, assigned) those earnings to the right weeks.

Overview

[2] The Claimant got a total of \$5,060.77 from her former employer. The Commission decided that the money was “earnings” under the law because it included severance pay, vacation pay and pay-in-lieu of notice.

[3] The law says that all earnings have to be allocated to certain weeks. What weeks earnings are allocated to depends on why you received the earnings.¹

[4] The Commission allocated the earnings starting the week of June 24, 2018 at an amount of \$854.00 per week. This is the beginning of the week that the Commission said that the Claimant was laid off from her employment. They said that she was laid off and that is the reason she received the earnings.

[5] The Claimant disagrees with the Commission. She says that the employer made a mistake by paying her in June 2018 because she was still receiving employment insurance maternity benefits.

Issues

[6] I have to decide the following two issues:

- a) Is the money that the Claimant received earnings?
- b) If the money is earnings, did the Commission allocate the earnings correctly?

¹ See section 36 of the *Employment Insurance Regulations* (EI Regulations).

Analysis

Is the money that the Claimant received earnings?

[7] Yes, I find the \$5,066.77 that the Claimant received is earnings. Here are my reasons for deciding that the money is earnings.

[8] The law says that earnings are the entire income that you get from any employment.² The law defines both “income” and “employment.”

[9] **Income** can be anything that you got or will get from an employer or any other person. It doesn't have to be money, but it often is.³

[10] **Employment** is any work that you did or will do under any kind of service or work agreement.⁴

[11] The Claimant has to prove that the money is **not** earnings. The Claimant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that the money is not earnings.

Agreed facts

[12] The parties agree that the Claimant's lay off from her employment was triggered when she signed the termination agreement on June 8, 2018. They also agree that the lay off was effective on June 30, 2018. This is consistent with the termination letter in the file (GD3-19 to GD3-20).

[13] The parties agree that the Claimant's former employer gave the Claimant \$5,066.71 (gross amount). This is consistent with the record of employment in the file, the statements from the Commission and employer and other related documentation (GD3-11; GD3-12 to GD3-14; GD3-16; GD3-17 to GD3-18; GD3-44 to GD3-45).

² See section 35(2) of the EI Regulations.

³ See section 35(1) of the EI Regulations.

⁴ See section 35(1) of the EI Regulations.

[14] The parties agree that the money received represented severance pay, vacation pay and pay-in-lieu of notice and in the following amounts:

Severance pay	\$2, 480.77
Vacation pay	\$99.23
Pay-in-lieu of notice	\$2,480.77
Total:	\$5,066.71

The parties disagree that the money received was earnings

[15] The Claimant does not agree that the money she was paid are earnings, specifically the severance payment of \$2,480.77. Her reasons include the following:

- a) The employer paid her \$5,066.71 as a gross amount, but she only received around \$3,000.00 net
- b) This amount was compensation, not earnings because she was laid off from her position
- c) She did not earn or work for this money because she was at home caring her children while on maternity leave
- d) The employer paid her at the incorrect date because she was collecting maternity benefits
- e) She used the money to support herself until she secured other employment, instead of applying for regular benefits
- f) The government should not be chasing her to collect the overpayment because they allowed many other claimants to collect "CERB" benefits, even those who did so fraudulently

[16] I find that the severance payment of \$2,480.77, the vacation payment of \$99.23 and the pay-in-lieu of notice of \$2,480.77 is earnings because it is income arising out of employment. Case law says that severance pay is earnings.⁵

[17] This money was paid because the Claimant voluntarily signed a termination agreement with the employer (GD3-19 to GD3-20). She agreed to the terms offered by the employer, including the date of termination, which was effective for June 30, 2018. She was laid off because the business was restructuring.

[18] I was not persuaded by the Claimant's statement that there should be an exception in her case. There are exceptions in law, but none were applicable.⁶ It is clear that these payments were for severance pay, vacation pay and pay-in-lieu of notice because she was laid off from her employment. There was no evidence that it was compensation for any other reason. Therefore, I find that the Claimant had earnings of \$5,066.71.

Did the Commission allocate the earnings correctly?

[19] The law says that earnings have to be allocated to certain weeks. What weeks earnings are allocated to depend on why you received the earnings.⁷

[20] The Claimant's earnings are severance pay, vacation pay and pay-in-lieu of notice. She was laid off from her job because of company restructuring. This is consistent with the termination letter in the file.

[21] The law says that the earnings you get for being laid off from your job have to be allocated starting the week you were laid off from your job. It doesn't matter when you actually receive those earnings. The earnings have to be allocated starting the week your lay-off starts, even if you didn't get those earnings at that time.⁸

⁵ See *Blais v Canada (Attorney General)*, 2011 FCA 320.

⁶ See section 35(7) of the EI Regulations.

⁷ See section 36 of the EI Regulations.

⁸ See section 36(9) of the EI Regulations.

[22] As noted above, the parties agree that the Claimant was laid off from her job on June 30, 2018. The beginning of that week started June 24, 2018.

[23] I find that the Commission correctly allocated the Claimant's earnings to the beginning of the week of her lay-off. The amount of money to be allocated starting that week is \$854.00. This is because \$854.00 is the Claimant's normal weekly earnings.

[24] This means that starting the week of June 24, 2018, \$854.00 is allocated to each week. The remaining amount of \$791.00 is allocated to the last week of July 29, 2018. However, I note that her maternity benefits ended on July 21, 2018, so the remaining amount was not applicable.

Conclusion

[25] The appeal is dismissed. The Claimant received earnings and those earnings were correctly allocated by the Commission.

Solange Losier
Member, General Division – Employment Insurance Section