



Citation: *KN v Canada Employment Insurance Commission*, 2021 SST 450

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

## Decision

**Appellant:** K. N.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (419558) dated April 7, 2021 (issued by Service Canada)

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**Tribunal member:** Katherine Wallocha

**Type of hearing:** Teleconference

**Hearing date:** May 27, 2021

**Hearing participants:** Appellant

**Decision date:** May 28, 2021

**File number:** GE-21-743

## **DECISION**

[1] The appeal is dismissed. The Worker's Compensation Board (WCB) payments received by the Claimant (K. N.) are considered earnings. The Canada Employment Insurance Commission (Commission) correctly allocated those earnings. This means the Claimant received employment insurance (EI) benefits he wasn't entitled to receive, and it must be repaid.

## **OVERVIEW**

[2] The Claimant worked as an oil and gas field operator. He was injured on the job on January 17, 2020. He has been receiving wage replacement payments from WCB since that date.

[3] The Claimant was laid off from his employment on June 30, 2020. He applied for Canada Emergency Response Benefit (CERB) on July 2, 2020. CERB ended on October 3, 2020, and his claim was automatically transferred to EI benefits starting October 4, 2020.

[4] On March 9, 2021, the Commission decided that the Claimant's WCB payments were considered earnings. This affected his EI benefits going back to October 4, 2020, causing an overpayment.

[5] The Claimant disagrees. He says he called the Commission numerous times and was told his WCB payments weren't considered earnings and he qualified for EI benefits. He feels he did his due diligence to inform the Commission about his WCB payments. He should not have to pay back any EI benefits he has received and he should be entitled to continue receive EI benefits.

## **WHAT I MUST DECIDE**

[6] I have to decide two issues:

1. Is the money the Claimant received from WCB considered earnings?

2. If it is earnings, did the Commission allocate the earnings correctly?

## **REASONS FOR MY DECISION**

[7] When a claimant for EI benefits receives an amount of money, it has to be decided whether that money is “earnings” under the law<sup>1</sup>. If the money is determined to be earnings, then the earnings need to be allocated to certain weeks<sup>2</sup>.

[8] Claimants have to prove<sup>3</sup> that the payments they received aren’t earnings<sup>4</sup>.

### **Is the Money the Claimant received from WCB considered earnings?**

[9] Yes, the Claimant received wage loss replacement payments from WCB and these payments are considered earnings.

[10] The law says that earnings are the entire income of a claimant arising out of any employment, including “workers' compensation payments received or to be received by a claimant, other than a lump sum or pension paid in full and final settlement of a claim made for workers' compensation payments.”<sup>5</sup>

[11] The law defines “income” as anything you got or will get from an employer or any other person. It doesn’t have to be money but it often is<sup>6</sup>.

[12] The courts said that to be considered earnings, there must be “sufficient connection” between the employment and the money received<sup>7</sup>.

[13] The Commission says the Claimant received money from WCB and this money was paid to the Claimant as a wage-replacement benefit and as a reemployment benefit. This money constitutes earnings because the payments are made to compensate the Claimant for temporary loss of income due to a workplace injury.

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<sup>1</sup> See section 35 of the *Employment Insurance Regulations* (Regulations).

<sup>2</sup> See section 36 of the Regulations.

<sup>3</sup> The Claimant must prove this on a balance of probabilities which means more likely than not.

<sup>4</sup> See the Federal Court of Appeal (FCA) decision *Bourgeois v Canada (Attorney General)*, 2004 FCA 117.

<sup>5</sup> See paragraph 35(2)(b) of the Regulations.

<sup>6</sup> See subsection 35(1) of the Regulations.

<sup>7</sup> See the FCA decision *Canada (Attorney General) v Roch*, 2003 FCA 356.

[14] The Claimant doesn't think WCB should be considered earnings. He was told by several Commission agents that WCB won't affect his EI benefits.

[15] While I recognize the Claimant's argument that he doesn't think that his WCB payments should be considered earnings, the law specifically says that WCB payments are earnings.

[16] I also recognize that the Claimant was given misleading information by the Commission. I have no reason to doubt his statements and testimony that he spoke to several Commission agents before he applied, and again when his claim for CERB was switched to EI benefits. He was repeatedly told his WCB payments would not affect his EI benefits.

[17] But the courts have found that Commission agents have no power to amend the law, so any interpretation they make of the law doesn't, by itself, have the force of law. The courts also said that any commitment the Commission's agents might make to act in a way other than written in the law is absolutely void<sup>8</sup>. The courts provide direction that I am required to follow. It is unfortunate the Claimant received incorrect information from Commission agents, but I can't refuse to apply the law.

[18] There is sufficient connection between the Claimant's employment and the money he is receiving from WCB for the following reasons:

- the Claimant was injured at work;
- he filed a claim for WCB because of that injury;
- WCB provided him with wage loss replacement payments;
- he is unable to return to his previous occupation, so WCB provided him with a reemployment benefit;
- he provided evidence to show that he found a job but it pays less, so WCB will continue to pay him a wage top up benefit.

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<sup>8</sup> This is explained in the FCA decision *Granger v. Employment and Immigration Commission*, A-684-85.

[19] The money the Claimant received from WCB is considered earnings under the law because it is directly related to his employment. This means these earnings must be allocated.

**Did the Commission allocate the earnings correctly?**

[20] Yes, the Commission correctly allocated the Claimant's earnings because they were allocated to the weeks in which they were paid.

[21] The law says that earnings have to be allocated to certain weeks. What weeks earnings are allocated to depends on why you received the earnings<sup>9</sup>.

[22] The Claimant's earnings are wage replacement payments, reemployment benefits or wage top up payments. WCB is paying him this money because he was injured on the job.

[23] The law says that WCB payments, other than a lump sum or pension paid in full and final settlement of a WCB claim, shall be allocated to the weeks when the payments are paid or payable<sup>10</sup>.

[24] The Commission correctly allocated the Claimant's WCB payments to the weeks in which they were paid. The Commission started the allocation on October 4, 2020, when the Claimant's CERB claim was terminated and an EI claim was automatically started. The Claimant is getting a high enough payment from WCB that he wasn't entitled to receive EI benefits.

**Does the Claimant have to repay the benefits he has already received?**

[25] Yes, the Claimant must repay the benefits he was paid.

[26] The Claimant argued that he informed the Commission on his application that he was receiving WCB payments. He also informed the Commission each time he had a

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<sup>9</sup> See section 36 of the EI Regulations.

<sup>10</sup> See paragraph 36(12)(d) of the Regulations.

conversation with a Commission agent. He has been honest and truthful and should not have to pay back any benefits from EI.

[27] I agree with the Claimant. He has been forthright and honest, reporting his WCB payments from the beginning. He did his due diligence, he declared his earnings and was approved EI benefits by the authorizing agency.

[28] But this doesn't change the fact that he received EI benefits that he wasn't entitled to receive. The law says that a claimant is required to repay any benefits received if the claimant wasn't entitled to receive them<sup>11</sup>.

[29] Further, a decision by the Commission about the writing off or cancelling of a debt isn't subject to review<sup>12</sup>. This means only the Commission can decide to write off or cancel a debt. And if you want to appeal that decision, you need to appeal it to the Federal Court.

## **CONCLUSION**

[30] The appeal is dismissed.

*K. Wallocha*

Member, General Division - Employment Insurance Section

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<sup>11</sup> See section 43 of the *Employment Insurance Act* (EI Act).

<sup>12</sup> See section 112.1 of the EI Act.