



Citation: *KS v Canada Employment Insurance Commission*, 2021 SST 467

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

## Decision

<b>Appellant:</b>	K. S.
<b>Respondent:</b>	Canada Employment Insurance Commission
<hr/>	
<b>Decision under appeal:</b>	Canada Employment Insurance Commission reconsideration decision (418872) dated April 1, 2021 (issued by Service Canada)
<hr/>	
<b>Tribunal member:</b>	Charlotte McQuade
<b>Type of hearing:</b>	Videoconference
<b>Hearing date:</b>	May 17, 2021
<b>Hearing participants:</b>	Appellant
<b>Decision date:</b>	May 31, 2021
<b>File number:</b>	GE-21-694

## Decision

[1] The appeal is dismissed. K. S. (the “Claimant”) had unreported earnings for the weeks of September 3, 2017, November 5, 2017, March 11, 2018 and March 18, 2018. The Canada Employment Insurance Commission (the “Commission”) has properly allocated (in other words “assigned”) those earnings to the correct weeks. This means the Claimant has been overpaid by \$1153.00. The Tribunal cannot write off the Claimant’s overpayment.

## Overview

[2] The Claimant worked as a supply educational resource worker with a school board. To be paid employment insurance (EI) benefits, claimants complete online reports. The reports ask a series of questions. Based on the answers, the Commission decides a claimant’s entitlement to EI benefits. The Commission says the Claimant did not report all her wages for the weeks of September 3, 2017, November 5, 2017, March 11, 2018 and March 18, 2018. The Commission decided the unreported wages are “earnings” under the law because they arose from the Claimant’s employment.

[3] The law says that all earnings have to be allocated. What weeks the earnings are allocated to depends on why you received the earnings.<sup>1</sup> The Commission said the wages were to be allocated to the week the wages were earned. This allocation resulted in an overpayment of \$1,153.00.

[4] The Claimant does not dispute she received the wages the employer said she did or that they are earnings. She also does not dispute the Commission’s allocation of those earnings. However, she disputes the Commission’s overpayment calculation. She says that in March 2018, she was only paid one week of EI benefits, while she was off work on March break, so there should not be an overpayment for two weeks in March 2018. The Claimant also asks that the overpayment be written off or reduced. She says she is struggling financially and it would be difficult for her to pay back the overpayment. She says she underreported her earnings because her employer’s pay weeks do not

---

<sup>1</sup> Section 36 of the *Employment Insurance Regulations*.

coincide with the Commission's reporting weeks. As well, her pay is sometimes delayed so she ends up having to estimate her earnings when completing her claimant reports.

## **Matter I have to consider first**

### **Post hearing documentation**

[5] The Claimant said at her hearing that she was paid EI benefits for one of the weeks of March 11, 2018 and March 18, 2018. The Claimant requested until May 25, 2021 to look through her papers to see if she was paid for both those weeks. As this information was relevant to the calculation of the overpayment, I allowed the Claimant this time. I told her that I would also ask the Commission if they could provide records showing payment for those two weeks. I made this request of the Commission post-hearing.<sup>2</sup> The Commission provided payment records for the weeks of March 11, 2018 and March 18, 2018 on May 25, 2021.<sup>3</sup> This material was sent to the Claimant with an opportunity to reply by May 27, 2021. The Claimant had also sent in some information on May 25, 2021, as noted below. As of the date of this decision, the Claimant provided no response to the Commission's payment records and no further documentation from her own records.

### **Request for further time to seek out post-hearing documentation**

[6] The Claimant provided a document on May 25, 2021 attaching the Commission's initial decision letter of March 2, 2020. The Claimant says "during the Christmas break, I did not have any income as it was Christmas break and the attached document shows December. The second overpayment is for March break when I did not receive any payment until June and I forget at that time that I could receive some money at the end of the school year. I need to call payroll and find out how much I could be entitled to for one week in March break. I will still look for more documents to explain the overpayment."

---

<sup>2</sup> GD12.

<sup>3</sup> GD13.

[7] The Claimant appears to be requesting additional time to confirm her earnings with her employer for the weeks in March 2018. I am declining that request. I am not satisfied that providing more time to the Claimant to seek that information from her employer will result in any further relevant information, given the employer has already provided its payroll information to the Commission. Secondly, the Claimant has had ample time to contact the employer if she had any concerns with the employer's information. She was first provided with the employer's pay information on January 31, 2019 by the Commission as part of its Integrity investigation.<sup>4</sup> So, I won't allow any further time or accept any further post-hearing documentation.

[8] The Claimant also says she is disputing she had earnings the week of December 23, 2018 as noted in the March 2, 2020 decision letter. However, this week is not in issue in this appeal. The Claimant was advised by the Commission on March 24, 2021, during the reconsideration process, that the notation of December 23, 2018 in the initial decision was a clerical error and the week should have been noted as the week of March 18, 2018.<sup>5</sup> The Commission advised of the same correction in its reconsideration decision.<sup>6</sup> I am satisfied this error did not result in prejudice to the Claimant in preparing or presenting her case. The Claimant has been aware since January 31, 2019 what weeks were in issue. On that date, the Claimant was sent the employer's earnings information by the Commission and asked for a response. That documentation correctly noted the week as March 18, 2018. The Claimant was also advised of the clerical error in the initial decision during the reconsideration process and in the reconsideration decision.

## Issues

[9] I must decide:

- Is the money the Claimant received earnings?

---

<sup>4</sup> GD3-21.

<sup>5</sup> GD3-35.

<sup>6</sup> GD3-37.

- If so, did the Commission correctly allocate those earnings?
- Is the overpayment correctly calculated?

## Analysis

### Is the money that the Claimant received earnings?

[10] Yes. Here are my reasons for deciding that the money is earnings.

[11] The law says that earnings are the entire income of a claimant arising out of any employment.<sup>7</sup>

[12] The law defines both “employment” and “income.”

[13] “Employment” includes any employment under any kind of contract of service or employment.<sup>8</sup>

[14] “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.<sup>9</sup>

[15] The Claimant reported earnings on her claimant reports as follows:

<u>Week</u>	<u>Reported Earnings</u>
September 3 to September 9, 2017	\$360.00 <sup>10</sup>
November 5 to November 11, 2017	\$245.00 <sup>11</sup>
March 11 to March 17, 2018	\$0.00 <sup>12</sup>

---

<sup>7</sup> Section 35(2) of the *Employment Insurance Regulations*.

<sup>8</sup> Section 35(1) of the *Employment Insurance Regulations*.

<sup>9</sup> Section 35(1) of the *Employment Insurance Regulations*.

<sup>10</sup> GD10-2.

<sup>11</sup> GD10-4.

<sup>12</sup> GD13-9.

March 18 to March 24, 2018                      \$0.00<sup>13</sup>

[16] The employer told the Commission that it paid the Claimant wages in the following amounts:<sup>14</sup>

[17] <u>Week</u>	<u>Earnings</u>
September 3 to September 9, 2017	\$508.02 (supply)
November 5 to November 11, 2017	\$248.37 (supply)
March 11 to March 17, 2018	\$1348.12 (contract)
March 18 to March 24, 2018	\$1348.12 (contract)

[18] The employer explained the Claimant was on a full-time contract from January 8, 2018 to June 29, 2018.<sup>15</sup>

[19] The Commission accepted the employer's information as to the payments made to the Claimant. The Commission decided that this money was wages. The Commission says the wages are earnings because they payments were made to compensate the Claimant for hours worked.

[20] 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 isn't earnings.

[21] The Claimant told the Commission that her earnings are not stable so sometimes she has to rely on predictions and this is what happened for the weeks of September 3, 2017 and November 5, 2017. The Claimant said in March 2018, she was on a short-term contract and she did not know she was going to be paid for March break. She says

---

<sup>13</sup> GD13-9.

<sup>14</sup> GD3-18.

<sup>15</sup> GD3-19.

she received that pay in June 2018 and was busy then so did not think at that time about what she had declared as earnings.<sup>16</sup>

[22] The Claimant testified that her employer's pay weeks do not coincide with the Commission's reporting weeks. She explained that often she receives her pay after she has worked, with some delay. The Claimant explained that means she has to estimate her earnings when completing her reports.

[23] The Claimant testified that she assumes the amounts the employer told the Commission she was paid for the weeks in question are correct. She says she worked the weeks of September and November 2017, but had to estimate her earnings when reporting. She says for the weeks of March 11 and March 18, 2018, one of those weeks was March break and the other she worked. She said she received pay for both those weeks in June 2018. However, the Claimant disputes that she received EI benefits for both the weeks of March 11 and March 18, 2018. She says she only would have claimed one week of EI benefits for March break.

[24] The Claimant testified that she does not dispute that the wages her employer says she was paid are earnings.

[25] I am satisfied the Claimant received the payments of wages her employer said she did. The Claimant said she assumed the employer's information was correct and she did not provide any documentation or testimony to suggest the employer's pay information is incorrect.

[26] I find that the Claimant worked and was paid wages in the weeks of September 3, 2017 and November 5, 2017 in the amounts the employer said she was paid. I find the Claimant was paid the wages the employer said she was paid for the weeks of March 11, 2018 and March 18, 2018. These payments were made to her pursuant to a contract for work from January 8, 2018 to June 29, 2018. These payments are earnings.

---

<sup>16</sup> GD3-23.

Wages are considered to be earnings as they are income arising directly from employment.<sup>17</sup>

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

[27] Yes. The Commission has correctly allocated the earnings.

[28] 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.<sup>18</sup>

[29] The Claimant's earnings are wages. She received wages for working the weeks of September 3, 2017 and November 5, 2017. She received the wages for the weeks of March 11, 2018 and March 18, 2018 for working on a contract from January 8, 2018 to June 29, 2018.<sup>19</sup>

[30] Where services are performed, the law requires that wages be allocated to the period in which the services were performed.<sup>20</sup> Where earnings are payable to a claimant under a contract of employment without the performance of services, they are allocated to the period for which they are payable.<sup>21</sup>

[31] The Commission says it allocated the Claimant's wages to the periods in which the services were performed. The Commission allocated \$508.00 to the week of September 3, 2017, \$248.00 to the week of November 5, 2017, \$1348.00 to the week of March 11, 2018 and \$1348.00 to the week of March 18, 2018.

[32] The Claimant does not dispute the Commission's allocation of the earnings.

[33] I find that the Commission has properly allocated the Claimant's wages for the weeks of September 3 and November 5, 2017 to those weeks as she worked those weeks.<sup>22</sup>

---

<sup>17</sup> Paragraph 35(2)(a) of the *Employment Insurance Regulations*.

<sup>18</sup> Section 36 of the *Employment Insurance Regulations*.

<sup>19</sup> GD3-19.

<sup>20</sup> Subsection 36(4) of the *Employment Insurance Regulations*.

<sup>21</sup> Subsection 36(5) of the *Employment Insurance Regulations*.

<sup>22</sup> Subsection 36(4) of the *Employment Insurance Regulations*.



[34] The Claimant says she had either the week of March 11, 2018 or March 18, 2018 off work for March break. I accept that was the case. However, under her contract, she was paid for both weeks. The Claimant testified she received pay for both those weeks in June 2018. Whether the Claimant worked and was paid wages for those two weeks or whether she only worked one of those weeks and was paid wages for the other week under the terms of the contract, the earnings are still allocated to the same weeks. This is because earnings payable under a contract of employment without the performance of services are allocated to the period for which they are payable.<sup>23</sup>

[35] I find the Commission has allocated the Claimant's earnings to the proper weeks.

### **Is the overpayment correctly calculated?**

[36] Yes. The overpayment of \$1153.00 is correct.

[37] The Commission has provided its overpayment calculation.<sup>24</sup>

[38] The overpayment calculation provides for an allocation of the corrected earnings to the weeks of September 3, 2017, November 3, 2017, March 11, 2018 and March 18, 2018. After applying earnings deductions to the adjusted payments, the result is an overpayment of benefits of \$1153.00. I have reviewed that calculation and find it to be correct.

[39] The Claimant's only objection to the overpayment calculation is that she says she was not paid EI benefits for both the weeks of March 11, 2018 and March 18, 2018. She says she only had one week off work in March 2018 for March break so she would not have claimed EI benefits for two weeks. She says that the overpayment calculation should not, therefore, include an overpayment for both those weeks.

[40] The Commission provided copies of warrants showing the Claimant was paid a gross amount of \$539.00 for the week of March 11, 2018 and a gross amount of \$539.00 for the week of March 18, 2018 on April 2, 2018. The Commission's

---

<sup>23</sup> Subsection 36(5) of the *Employment Insurance Regulations*.

<sup>24</sup> GD5-2.

documentation was sent to the Claimant with an opportunity to reply. She provided no response. I am satisfied the Claimant was paid EI benefits in the gross amounts of \$539.00 for both the weeks of March 11, 2018 and March 18, 2018. The Commission therefore correctly considered both those payments in determining the total overpayment amount.

[41] The Claimant testified that she is struggling financially and it would be difficult for her to pay back the overpayment. The Tribunal has no jurisdiction to consider writing off or waiving or reducing the overpayment.<sup>25</sup> The Claimant would have to make any request for write off from the Commission. While I appreciate the difficulty the Claimant is in, I cannot step outside the law, no matter how compelling the circumstances.

## **Conclusion**

[42] The appeal is dismissed.

Charlotte McQuade  
Member, General Division – Employment Insurance Section

---

<sup>25</sup> Section 112.1 and 113 of the *Employment Insurance Act*.