



Citation: *KH v Canada Employment Insurance Commission*, 2021 SST 492

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

Decision

Appellant: K. H.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (425776) dated June 9, 2021
(issued by Service Canada)

Tribunal member: Solange Losier
Type of hearing: Videoconference
Hearing date: July 30, 2021
Hearing participant: Appellant
Decision date: July 30, 2021
File number: GE-21-1129

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. This means that I agree with the Commission.

Overview

[2] The Claimant applied EI sickness benefits and then got approval to receive short-term disability benefits from her employer during the same period. She received both EI sickness benefits and short-term disability benefits for the same weeks. This resulted in an overpayment.

[3] The Commission decided that the money is “earnings” under the law because it is considered a “wage-loss indemnity plan”.

[4] The Claimant disagrees with the Commission and makes two arguments. First, she says that the EI sickness benefits were paid to her in error because she told the Commission that she was approved for short-term disability from her employer. Second, she should not have to pay back the taxes deducted as she only received the net amount.

Issues

[5] 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?

Analysis

Is the money that the Claimant received earnings?

[6] Yes, the Claimant received is earnings. Here are my reasons for deciding that the money is earnings.

[7] The law says that earnings are the entire income that you get from any employment.¹ The law defines both “income” and “employment.”

[8] **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.²

[9] **Employment** is any work that you did or will do under any kind of service or work agreement.³

[10] The Claimant’s former employer gave the Claimant \$736.00 (gross) per week. The Commission decided that this money was a wage loss indemnity plan payment. In other words, the Claimant was paid “short-term disability benefits”. So, it said that the money is earnings under the law.

[11] The Claimant does not agree. She says the money is not earnings because she did not work for them, but instead they were paid to her as a benefit.

[12] The Claimant also says that EI sickness benefits were paid to her in error by the Commission because she told them that she was approved for short-term disability benefits from her employment and they failed to stop the payments.

[13] Lastly, the Claimant submits that she should not have to pay back the taxes deducted as she did not receive the gross amount, but only the net amount. For example, she states that she only received \$634.07 per week in short-term disability in her bank account, and not \$736.00 per week.

[14] 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.

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

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

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

[15] Earnings includes income arising from employment. The Claimant's short-term disability benefit was income arising from her employment. The law says they are earnings and they must be allocated.⁴

[16] I find that the Claimant received earnings in the form of short-term disability benefits in the amount of \$736.00 (gross) per week for the period from March 14, 2021 until May 1, 2021. The chart in the file identifies the weeks she received short-term disability benefits and EI sickness benefits (GD3-16).⁵ I found no exceptions in law applicable.⁶

[17] I acknowledge that the Claimant did tell the Commission about her circumstances, but that the stop payment on EI sickness benefits did not occur in a timely manner. While this is unfortunate, the Claimant was not entitled to EI sickness benefits during the same period. The Commission correctly issued a notice of debt for the overpayment. The Claimant is liable to repay an amount paid by the Commission and as she noted most of it has been paid already.⁷

[18] I was not persuaded by the Claimant's argument that only the net amounts of the payments should matter because that is what was deposited to her bank account. I disagree because the law says that earnings are the entire income that you get from any employment. The Commission's argument was more persuasive because they submit that they are required to remit the taxes on behalf of the Claimant to Canada Revenue Agency as required by the *Income Tax Act*.

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.⁸

⁴ See subsection 35(2)(c)(i) of the *Employment Insurance Regulations*.

⁵ The Claimant received EI sickness benefits during this period from March 14, 2021 to May 1, 2021.

⁶ See subsection 35(7) of the *Employment Insurance Regulations*.

⁷ See section 43 of the *Employment Insurance Act*.

⁸ See section 36 of the *Employment Insurance Regulations*.

[20] This employer is part of “premium reduction program” it means that the entire amount payable to the Claimant must be deducted from the EI sickness benefits for the same weeks.⁹

[21] According to the law, short-term disability payments or wage loss indemnity plan payments must be allocated to the weeks which the payments are paid or payable.¹⁰ This means that the payments have to be allocated for the period from March 14, 2021 until May 1, 2021.

[22] I find that the Commission correctly allocated the short-term disability payments because they were applied to the weeks that the payments were paid or payable.

[23] I acknowledge that the Claimant has experienced some difficulties over the last few months. She does not have the money to repay the remaining overpayment. However, I do not have the authority to waive an overpayment. Only the Commission has the authority to write off the overpayment amount.

Conclusion

[24] The appeal is dismissed.

Solange Losier
Member, General Division – Employment Insurance Section

⁹ See subsections 19(2)(b) of the *EI Act*, ss.21(3) of the *EI Act* and ss.22(5) of the *EI Act*.

¹⁰ See subsection 36(12)(b) of the *EI Regulations*.