



Citation: *EO v Canada Employment Insurance Commission*, 2021 SST 686

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: E. O.
Representative: G. O.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (0) dated August 26, 2021 (issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Questions and answers

Decision date: October 12, 2021

File number: GE-21-1588

Decision

- [1] The appeal is dismissed, but I am changing the original decision.
- [2] The \$6,250 the Claimant received in medical and dental benefits is earnings.
- [3] The Commission allocated these earnings starting with the wrong week. They are to be allocated starting the week of January 27, 2013.

Overview

- [4] This matter has been returned to me from the Appeal Division (AD).
- [5] The AD has said that I need to determine if the medical and dental payment of \$6,250 the Claimant received through a settlement with his former employer is earnings and, if so, how it should be allocated.
- [6] The Commission says the medical and dental benefit payment is earnings as it is a payment to compensate the Claimant for the loss of benefits related to his employment.¹
- [7] The Commission says the medical and dental benefit payment is a cash amount for a benefit and it must be allocated. The Claimant says the payment is money in lieu of the insurance-type non-pecuniary fringe benefit and the money means the fringe benefit is no longer a non-pecuniary fringe benefit and is a benefit, or advantage, arising out of employment.²
- [8] The Claimant says the medical and dental benefit is a private health service plan premium and is not a taxable earning.³

¹ GD04-5

² GD04-3 and 4

³ RGD02-2

[9] The Claimant argues non-taxable earnings are not an allocable earning for the purpose of EI. The Claimant says that the EI Earnings Chart does not include private health service plan premium as an earning for EI purposes⁴.

Issues

[10] 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?

[11] Yes, the \$6,250 that the Claimant received is earnings. Here are my reasons for deciding that the money is earnings.

[12] The law says that earnings are the entire income that you get from any employment.⁵ The law defines both “income” and “employment.”

[13] **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.⁶

[14] **Employment** is any work that you did or will do under any kind of service or work agreement.⁷

[15] The Claimant got \$6,250 from his employer in a settlement agreement. In that agreement the \$6,250 is listed as “medical and dental benefit for three months.”⁸

⁴ RGD02-2

⁵ See section 35(2) of the EI Regulations.

⁶ See section 35(1) of the EI Regulations.

⁷ See section 35(1) of the EI Regulations.

⁸ GD03-34

[16] The Commission says the medical and dental benefit payment is earnings, as it is a payment to compensate the Claimant for the loss of benefits related to his employment.⁹

[17] The Commission says the medical and dental benefit payment is a cash amount for a benefit and it must be allocated. The Claimant says the payment is money in lieu of the insurance-type non-pecuniary fringe benefit and the money means the fringe benefit is no longer a non-pecuniary fringe benefit and is a benefit arising out of employment.¹⁰

[18] The Claimant says the \$6,250 was three months worth of private health service plan premiums. He says it was not an amount deducted from his pay, it was an amount 100% paid by the employer.¹¹

[19] The Claimant says the private health service plan premium which would have been paid by his employer to plan provider is a non-taxable earning which makes it a non-earning for EI purposes.¹²

[20] The Claimant says he would collect receipts for certain health services not covered by his provincial healthcare and would submit those expenses and then get reimbursed from the private health service plan.¹³

[21] The Claimant submits that the EI Earnings Chart does not include private health service plan premiums as earnings for EI purposes¹⁴.

[22] The Claimant argues that the court has said that a settlement payment made in respect of an action for wrongful dismissal is income arising out of employment unless it

⁹ GD04-5

¹⁰ GD04-3 and 4

¹¹ RGD02-4

¹² RGD02-4

¹³ RGD02-5

¹⁴ RGD02-2

can be demonstrated that due to special circumstances some portion of it should be regarded as compensation for some other expense or loss.¹⁵

[23] The Claimant submits the \$6,250 was compensation for the loss of being able to use the private health service plan to purchase medical and dental services during the 3 month notice period that he lost out on due to his termination.¹⁶

[24] 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 he has to show that it is more likely than not that the money isn't earnings.

[25] In looking at the Claimant's submitted EI Earnings Chart¹⁷ I agree it does not show private health service plan premiums as earnings; however, I find that is not definitive the \$6,250 is not earnings.

[26] I find the EI Earnings Chart is not an exhaustive list meant to specify every possible thing that can be considered as earnings. I find it is merely a list compiled by the Commission that tries to provide information to assist people in determining common items that may be earnings.

[27] I further find, that while the private health service plan premium may not have been a taxable benefit, that does not mean the \$6,250 is not earnings. The *Employment Insurance Act* and its associated regulations does not say that earnings are determined solely on whether an item is taxable or not.

[28] I find the Claimant has not proven that the \$6,250 should be regarded as compensation for some other expense or loss rather than income arising out of employment.¹⁸

[29] I find the \$6,250 is income arising from the Claimant's employment. It is because the Claimant was working for his employer, who offered this health plan benefit to its

¹⁵ GD16-9 quoting *Canada (Attorney General) v Radigan*, 2001 CanLII 22152 (FCA)

¹⁶ GD16-9

¹⁷ GD16-29 to 59

¹⁸ *Canada (Attorney General) v Radigan*, 2001 CanLII 22152 (FCA)

employee, the Claimant, that he received the \$6,250, in his settlement. I find this shows a sufficient connection between the Claimant's employment and the \$6,250 he received.¹⁹

[30] I find the amount is earnings as the amount of \$6,250, is a benefit paid to the Claimant by his employer. As the Claimant said, he did not have to pay any amount out of pocket for the private health service plan as it was 100% paid by his employer.²⁰ Therefore, it was not a reimbursement and he was not being paid back for a job related expense as he said his employer covered 100% of the cost of the private health service plan.

[31] I find, that as the Claimant was separated from his employment, the employer paid out the \$6,250 to the Claimant, instead of that money going towards the private health plan premium.

Did the Commission allocate the earnings correctly?

[32] I find the Commission did not allocate the earnings correctly as they started the allocation in the wrong week.

[33] 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.²¹

[34] The Claimant's earnings are \$6,250 in medical and dental benefits. The Claimant's employer gave the Claimant those earnings because the Claimant was separated from his employment.

[35] I find it is because the Claimant was separated from his employment that he got the \$6,250. I find if he had not been separated from his employment he would not have gotten that money as his employer would use it for the private health plan.

¹⁹ *Canada (Attorney General) v Roch*, 2003 FCA 356

²⁰ RGD02-4

²¹ See section 36 of the EI Regulations.

[36] The law says that the earnings you get for being separated from your job have to be allocated starting the week you were separated from your job. It doesn't matter when you actually receive those earnings. The earnings have to be allocated starting the week your separation starts, even if you didn't get those earnings at that time.²²

[37] The Commission says they started the allocation the week of February 3, 2013, pursuant to the law.²³

[38] According to the law money paid because of a separation from employment is to be allocated to the week in which the separation occurred.²⁴ I find that the Claimant was separated from his job the week of January 27, 2013. I find this as the Claimant says his last day of work was January 29, 2013,²⁵ his Record of Employment²⁶ says that is his last day of work, and I do not see sufficient evidence to prove otherwise.

[39] For the purposes of EI, a week begins on Sunday.²⁷ The Sunday of the week in which January 29, 2013, falls is January 27, 2013, so the allocation should start in this week, not on February 3, 2013.

Conclusion

[40] The appeal is dismissed, but I am changing the original decision.

[41] The \$6,250 the Claimant received in medical and dental benefits is earnings.

[42] The Commission allocated these earnings starting with the wrong week. They are to be allocated starting the week of January 27, 2013.

Gary Conrad

Member, General Division – Employment Insurance Section

²² See section 36(9) of the EI Regulations.

²³ Subsection 36(9) of the EI Regulations.

²⁴ Subsection 36(9) of the EI Regulations.

²⁵ GD03-24

²⁶ GD03-15

²⁷ Subsection 2(1) of the *Employment Insurance Act*