



Citation: *NV v Canada Employment Insurance Commission*, 2021 SST 881

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

## Decision

**Appellant:** N. V.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (430161) dated August 4, 2021 (issued by Service Canada)

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**Tribunal member:** Raelene R. Thomas

**Type of hearing:** Videoconference

**Hearing date:** September 17, 2021

**Hearing participant:** Appellant

**Decision date:** September 27, 2021

**File number:** GE-21-1436

## Decision

[1] The appeal is dismissed.

[2] The Claimant is receiving a pension that is considered to be earnings and must be allocated to (deducted from) her Employment Insurance (EI) benefits.

## Overview

[3] The Claimant stopped working on February 14, 2020, and started to receive payments from a pension plan. The Canada Employment Insurance Commission (Commission) decided that the Claimant's pension was earnings and should be allocated to her EI benefits beginning on February 16, 2020. Because the Claimant's pension was greater than her EI benefits, she would receive no EI benefits.

[4] The Claimant disagrees with the Commission. She says she made contributions to receive the money. She says the money she is receiving is similar to a Registered Retirement Savings Plan (RRSP) or a guaranteed life withdrawal benefit (GLWB). The Claimant says the money should not be considered as earnings and should not be allocated to her EI benefits.

## Issue

I have to decide the following two issues:

[5] Is the money that the Claimant received earnings?

[6] If the money is earnings, did the Commission allocate the earnings correctly?

## Analysis

### **Is the money that the Claimant is receiving earnings?**

[7] Yes, the money the Claiming is receiving is earnings because it is a pension and her pension arose from her employment. 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.<sup>1</sup> 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.<sup>2</sup>

[10] **Employment** is any work that you did or will do under any kind of service or work agreement.<sup>3</sup>

[11] The law defines a pension as a “retirement pension” arising out of employment, or out of service in any armed forces or in a police service, or under the Canada Pension Plan, or a provincial pension plan.<sup>4</sup>

[12] The Commission says the money the Claimant is receiving is a pension. It says that pensions arising out of any employment are earnings for benefit purposes. The Commission says that earnings includes pensions paid or payable under the Canada Pension Plan or a provincial pension plan. The Commission says that pensions are allocated for the period for which they are paid or payable regardless of the method of payment or when the payment is ultimately made. The manner of allocating the pension moneys depends on whether a pension is paid on a periodic basis, or in a lump sum.

[13] The Commission notes that pensions are not considered as earnings if a claimant has accumulated enough hours of insurable employment since they started receiving their pension benefits to re-qualify for a new claim for EI benefits.

[14] The Commission says the Claimant started receiving \$6,000 in monthly pension moneys effective February 15, 2020. The pension increased effective January 1, 2021 to a monthly amount of \$6,045.29.

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<sup>1</sup> See section 35(2) of the Employment Insurance Regulations (EI Regulations). This is how I refer to the law that applies to this appeal.

<sup>2</sup> See section 35(1) of the EI Regulations.

<sup>3</sup> See section 35(1) of the EI Regulations.

<sup>4</sup> See section 35(1) of the EI Regulations

[15] The Claimant says that she was required to contribute to the pension plan while she was employed. Her contributions stopped when she had 35 years of service. She said that her contributions were similar to those made to an RRSP or a GLWB. The Claimant noted that for the Canada Emergency Response Benefit (CERB) pensions are not considered income. The Claimant submits that because she funded her pension it should not be deducted from her EI benefits.

[16] A pension is broadly defined as an annual, monthly or other periodic amount to which an employee is, or will be, entitled upon retirement.

[17] I do not agree that the money the Claimant is receiving is similar to an RRSP or a GLWB. The Claimant and her employer contributed the pension plan. Unlike an RRSP, she did not exercise control over the investments made by the pension plan. Unlike an RRSP, she was not able to withdraw money from the pension plan prior to stopping work. Unlike a GLWB, the Claimant has not purchased an investment annuity that will provide a set income regardless of how long she lives or how well the underlying investments perform.

[18] The Claimant provided a copy of her annual statement for the [province] Public Service Pension Plan. It shows that her contributions to December 31, 2015 were \$206,193.06, contributions during 2016 were \$18,035.26 and the interest earned during 2016 was \$2,367.32. The Claimant testified that her employer matched her contributions to the plan dollar for dollar. The annual statement says that as of December 31, 2016 the Claimant is entitled to a lifetime monthly pension of \$6,167 upon retirement or termination of employment. The Claimant said that to receive the pension she had to stop working. The statement indicates the Claimant was eligible to retire. This evidence tells me that the money the Claimant is receiving from the [province] Public Service Pension Plan is a pension.

[19] For income to be considered earnings, the income must be earned by labour or given in return for work or there is a "sufficient connection" between the Claimant's

employment and the sum received.<sup>5</sup> In my opinion, there is a sufficient connection between the work done by the Claimant in her employment and the pension arising from that employment for her pension to be treated as earnings.<sup>6</sup>

[20] The Claimant is receiving the pension because she worked for an employer covered by the [province] Public Service Pension Plan. She and her employer made contributions to the pension plan while she was employed. She is receiving the pension because she stopped working. As a result, I find that the pension is being paid to her because of her employment and as such the pensions is earnings.

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

[21] Yes, the Commission did allocate the earnings correctly. My reasons for deciding this follow.

[22] The law says that earnings have to be allocated to certain weeks. The weeks to which earnings are allocated depends on why you received the earnings.<sup>7</sup>

[23] The law says that money received from a pension that are paid or payable to a claimant on a periodic basis shall be allocated to the period for which they are paid or payable.<sup>8</sup> This means that a monthly pension must be allocated to the month in which the pension is paid.

[24] The Commission has allocated the Claimant's pension at the rate of \$1,385 per week from February 16, 2020 to January 2, 2021.<sup>9</sup> This is correct because the claimant was receiving a monthly pension of \$6,000. The \$6,000 a month multiplied by 12 months and divided by 52 weeks equals \$1,365 a week.<sup>10</sup>

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<sup>5</sup> *Canada (Attorney General) v. Roch*, 2003 FCA 356. This is how I refer to decisions of the courts that apply to the circumstances of this appeal.

<sup>6</sup> *Cote v. Attorney General of Canada*, A-178-86

<sup>7</sup> See section 36 of the EI Regulations.

<sup>8</sup> See section 36(14) of the EI Regulations

<sup>9</sup> Allocations can only be made in whole dollars, so amounts less than 50 cents are rounded down and amounts equal to or greater than 50 cents are rounded up. See section 36(20) of the EI Regulations.

<sup>10</sup>  $\$6,000 \times 12 = \$72,000$ .  $\$72,000 \div 52 = \$1,384.61$ .  $\$1,384.61$  rounds up to  $\$1,365$ .

[25] The Commission has allocated the Claimant's pension at the rate of \$1,395 per week from January 3, 2021. This is correct because the claimant was receiving a monthly pension of \$6,045.29 from that date forward. The \$6,045.29 a month multiplied by 12 months and divided by 52 weeks equals \$1,395 a week.<sup>11</sup>

[26] In both of these periods, the Claimant's earnings are greater than her EI benefits. This means that the Claimant cannot be paid any EI benefits.

## **Conclusion**

[27] I recognize that although the Claimant lost her employment through no fault of her own she is not able to receive any EI benefits because of the amount of pension she is receiving. But, as tempting as it may be in such cases (and this may well be one), I am not permitted to re-write the law or to interpret it in a manner that is contrary to its plain meaning.<sup>12</sup> I must follow the law and render decisions based on the relevant legislation and precedents set by the courts.

[28] The appeal is dismissed.

Raelene R. Thomas  
Member, General Division – Employment Insurance Section

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<sup>11</sup>  $\$6,045.29 \times 12 = \$72,543.48$ .  $\$72,543.48 \div 52 = \$1,395.07$ .  $\$1,395.07$  rounds down to  $\$1,395$ .

<sup>12</sup> *Canada (Attorney General) v. Knee*, 2011 FCA 301.