



Citation: *AA v Canada Employment Insurance Commission*, 2021 SST 901

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

Decision

Appellant:	A. A.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (438120) dated October 28, 2021 (issued by Service Canada)
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Tribunal member:	Nathalie Léger
Type of hearing:	Teleconference
Hearing date:	December 13, 2021
Hearing participants:	Appellant Appellant's husband
Decision date:	17 décembre 2021
File number:	GE-21-2317

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.

Overview

[2] The Claimant started to receive pension earnings from both the Quebec Pension Plan (QPP) and the Old Age Security (OAS) on July 28, 2021. The amount received is 733.34\$ per month. The Commission decided that pension benefits received from a provincial plan are considered “earnings” under the law because they are considered benefits resulting from employment. This meant that 169\$ would be allocated for each week for which employment insurance (EI) benefits would be paid.

[3] The Commission also explained to the Claimant that this would not be true if she was to establish a new claim for benefits, because then, section 35(7)e)ii) of the Employment Insurance Regulations (Regulations) would apply.

[4] The Claimant disagrees with the Commission. The Claimant says that it is unfair to allocate her pension benefits because she has worked all her life to receive those and they are not, in her opinion, earnings. She also claims that since she made her claim after she started receiving her pension, section 35(7)e)ii) of the Regulations should apply to her situation.

Issues

[5] I have to decide the following two issues:

- a) Is the money that the Claimant received earnings?
- b) Does section 35(7)e)ii) of the Regulations apply to the Claimant for her current claim?

Analysis

Is the money that the Claimant received earnings?

[6] Yes, pension benefits received by the Claimant are earnings.

[7] The law says that earnings are the entire income that you get from any employment.¹ Pension benefits are considered earnings under the law.

[8] **Pension** means a retirement pension. It can arise either from employment of out of service in any armed forces or in a police force, from the Canada Pension Plan or under a provincial pension plan².

[9] The Claimant doesn't dispute that the amount received from QPP and OAS are considered as retirement pension under the Regulations. She also does not dispute that section 35(2)e) of the Regulations must apply, which mean that those pension benefits are earnings to be deduced from benefits payable under section 19 of the Act.

[10] Her main argument is that it is unfair to deduce those amounts when she has worked all of her life as a teacher and she is still working as a teacher, part-time, to help alleviate the shortage in schools. She also argues that since she made her claim for benefits after she started to receive her pension income, the exception that was explained to her should apply³.

[11] I find that the money received is earnings that must be deduced from EI benefits as provided for by section 19 of the Employment Insurance Act. The Claimant does not dispute this fact but wants me to take into account her long commitment to the public school system to apply the law differently⁴. Unfortunately, I cannot do that. The law does not allow me to render a decision in equity. When the text of the law is clear, as it is here, I must apply it.

¹ See section 35(2) of the EI Regulations.

² See section 35(1) of the EI Regulations.

³ See the last paragraph of GD3-20

⁴ *Wegener c. Canada (Attorney General)*, 2011 CF 137; *Pannu c Canada (Procureur général)*, 2004 CAF 90.

Did the Commission allocate the earnings correctly?

[12] The law says that earnings have to be allocated to certain weeks. What week's earnings are allocated to depend, for pension benefits, on when those benefits became payable⁵. The general rule, as stated above, is that pension benefits are considered earnings that must be allocated on the weeks they are received. But the Regulations provide an exception to that rule.

[13] The Regulations say that pension benefits will not be considered earnings if the hours of insurable employment required for the establishment of a benefit period were accumulated *after* the date on which the pension benefits became payable. For the exception to apply, the pension benefits must also have been received during this same period.

[14] In the present situation, the Claimant accumulated the hours of insurable employment used to establish her claim during the 2020-2021 school year. Those hours were therefore accumulated *before* the pension benefits became payable on July 28, 2021. Only the hours accumulated during the *current* school year, when she will be both accumulating insurable hours of employment and receiving her pension, will allow the Claimant to take advantage of this exception when she establishes a new benefit period.

Conclusion

[15] The appeal is dismissed.

[16] The Claimant is receiving pension benefits and they are correctly allocated by the Commission.

Nathalie Léger
Member, General Division – Employment Insurance Section

⁵ See section 35(7)e)ii) of the EI Regulations