



Citation: *KM v Canada Employment Insurance Commission*, 2022 SST 421

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

## **Decision**

**Appellant:** K. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (416432) dated February 16, 2021 (issued by Service Canada)

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**Tribunal member:** Nathalie Léger

**Type of hearing:** Teleconference

**Hearing date:** April 1, 2022

**Hearing participant:** Appellant

**Decision date:** April 2, 2022

**File number:** GE-21-403

## 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 got \$3300 from his former employer. The Commission decided that the money is “earnings” under the law because it is payments for four weeks of work that the Claimant himself declared<sup>1</sup>.

[3] The law says that all earnings have to be allocated to certain weeks. What weeks earnings are allocated to depends on why you received the earnings.<sup>2</sup>

[4] The Commission allocated the earnings starting the week of January 7, 2018 at an amount of \$449 per week. This is the week that the Commission said that the Claimant was started to work for the Employer while receiving employment insurance.

[5] The Claimant disagrees with the Commission. The Claimant says that he didn't get paid by cheque, only by gift cards and that no deductions were made by the employer. He also says it was not a real job, but a try-out. He finally says he has no money to pay that sum back and should be allowed to get employment insurance like everyone else.

[6] The Claimant also says that the Commission does not make specific claims about the way the money was allocated, although there is some discrepancies between the start date given by his employer and the one he gave the Commission.

## Issues

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

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<sup>1</sup> See GD3-15

<sup>2</sup> See section 36 of the *Employment Insurance Regulations* (EI Regulations).

- 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?

[8] Yes, the \$3300 that the Claimant received is earnings. Here are my reasons for deciding that the money is earnings.

[9] The law says that earnings are the entire income that you get from any employment.<sup>3</sup> The law defines both “income” and “employment.”

[10] **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>4</sup>

[11] **Employment** is any work that you did or will do under any kind of service or work agreement.<sup>5</sup>

[12] The Claimant's former employer gave the Claimant \$3300 for the 4 weeks the Claimant worked for them. The Commission decided that this money was earnings because it clearly was money earned for work done during employment. So, it said that the money is earnings under the law.

[13] The Claimant doesn't agree. He does not really dispute the fact that those moneys are earnings under the law. What he is saying is that they were not paid by cheque for the most part, but by gift cards. He recognizes that one cheque was emitted, but claims that since deductions were not made by the employer, it is not legit and therefore should not be taken into account.

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<sup>3</sup> See section 35(2) of the EI Regulations.

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

<sup>5</sup> See section 35(1) of the EI Regulations.

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

[15] I find that the money paid is earnings. No one disputes the fact that this money was paid in consideration of work done (in other words wages) during the course of employment. Although the Claimant claims he was paid by gift cards, he was not able to provide copies of those gift cards. Furthermore, the manner in which earnings are paid is not relevant under the Act. It is also the Claimant himself who declared this money as earnings. The employer confirmed the employment relationship and the amounts paid to the Claimant when he finally issued a Record of Employment (ROE)<sup>6</sup> for the Claimant.

[16] Therefore, I find the money received for the 4 weeks of work is considered earnings under the Act.

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

[17] 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>7</sup>

[18] The Claimant's earnings are wages for work done. The Claimant's employer gave the Claimant those earnings because the Claimant accomplished work for him.

[19] The law says that the earnings you get for working have to be allocated for the weeks where you did the work. It doesn't matter when you actually receive those earnings. The earnings have to be allocated for all the weeks worked<sup>8</sup>.

[20] I find that the Claimant worked from January 8, 2018 to February 3, 2018. This is what the Claimant has always mentioned<sup>9</sup> and that is what is indicated in the ROE<sup>10</sup>.

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<sup>6</sup> See GD3-36

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

<sup>8</sup> See section 36(4) of the EI Regulations.

<sup>9</sup> See GD3-20. The same dates were given at the hearing.

<sup>10</sup> See GD3-36

[21] The amount of money to be allocated starting that week is \$449. The parties don't dispute this amount, and I accept it as fact. This means that \$449 is allocated to each of the 4 weeks worked for that employer, starting on the week of January 7, 2018.

## **Conclusion**

[22] The appeal is dismissed.

[23] The Claimant received \$3300 in earnings. These earnings are allocated starting the week of January 7, 2018 at \$449 per week.

Nathalie Léger  
Member, General Division – Employment Insurance Section