



Citation: *KR v Canada Employment Insurance Commission*, 2022 SST 423

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

Decision

Appellant: K. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (439725) dated December 23, 2021 (issued by Service Canada)

Tribunal member: Amanda Pezzutto

Type of hearing: Teleconference

Hearing date: March 23, 2022

Hearing participant: Appellant

Decision date: March 31, 2022

File number: GE-22-346

Decision

[1] K. R. is the Claimant. The Canada Employment Insurance Commission (Commission) made decisions about his income while he was collecting Employment Insurance (EI) benefits. The Claimant is appealing the Commission's decisions to the Social Security Tribunal (Tribunal).

[2] I am dismissing the Claimant's appeal. I choose to rely on the most recent letter from the workers' compensation board about his income. This is because I find it likely that this letter provides the most accurate and up-to-date information about his weekly workers' compensation benefits. So, I agree with the Commission's calculations about his earnings.

Overview

[3] The Claimant applied for EI benefits. At the same time, he was expecting workers' compensation payments. As he collected EI benefits, he gave the Commission information about his workers' compensation payments. The Commission adjusted his EI benefits based on the information the Claimant gave them.

[4] Because the amount of his workers' compensation benefits kept changing, the amount of EI he was entitled to receive each week also changed. Eventually, the Commission decided that it had paid too much in EI benefits to the Claimant. The Commission asked him to repay benefits.

[5] The Claimant agrees that his workers' compensation benefits are earnings. But he says the Commission has incorrect information about how much he received in workers' compensation benefits. He says he always declared his income, so he shouldn't have an overpayment.

[6] The Commission says it is relying on a letter from the workers' compensation board to calculate his weekly earnings. The Commission says it paid too much in EI benefits because it didn't use the most recent figures from the workers' compensation board when it calculated his entitlement.

Matter I have to consider first

I will accept the documents sent in after the hearing

[7] I started to hold a hearing with the Claimant on March 8, 2022. During this hearing, the Claimant was looking for extra documents and paystubs. So, I adjourned the hearing and asked the Claimant to submit all of the documents he wanted to use at the hearing. I rescheduled the hearing for March 23, 2022.

[8] The Claimant sent some documents before the hearing. But during the new hearing, he started looking for even more documents and paystubs. I asked him why he hadn't submitted these documents before the hearing and he couldn't explain why.

[9] After the hearing, the Claimant submitted more paystubs. I didn't ask him for these paystubs. This means that I have to decide if I am going to accept these documents and use them to make my decision.

[10] I have decided to accept these documents, even though I didn't ask the Claimant to submit them. I think this would be the fairest approach for the Claimant. Also, I don't think the Commission would suffer any harm if I accept these documents. This is because the Tribunal shared the documents with the Commission.

Issues

[11] I have to decide the following issues:

- a) Are workers' compensation benefits earnings?
- b) How much did the Claimant receive each week in workers' compensation benefits?

Analysis

Are workers' compensation benefits earnings?

[12] The Commission says that workers' compensation benefits are earnings. The Claimant agrees that the workers' compensation benefits are earnings.

[13] The law also says that workers' compensation benefits are earnings.¹

[14] The Claimant and the Commission agree that the money the Claimant received was workers' compensation benefits and not some other kind of income. There isn't any disagreement on whether workers' compensation benefits are earnings. This means that the Commission has to look at the Claimant's workers' compensation benefits when it decides how much EI benefits to pay the Claimant each week. So, now I have to decide how much the Claimant received as workers' compensation benefits.

How much did the Claimant receive each week in workers' compensation benefits?

[15] The Claimant and the Commission don't agree on this point. The Commission relies on a November 29, 2021 letter from the workers' compensation board² and says the Claimant received \$931 nearly every week between August 12, 2019 and July 11, 2020.

[16] The Claimant says the Commission's information is wrong. He says the November 29, 2021 letter is incorrect because it doesn't match the amounts on his paystubs. He says he always reported his correct weekly income from workers' compensation when he did his biweekly claimant reports.

[17] I agree with the Commission. I think the November 29, 2021 letter from the workers' compensation board has the most reliable, up-to-date information about the Claimant's workers' compensation benefits.

[18] I understand that the Claimant says the letter isn't accurate. He says he has paystubs that contradict the amounts listed on the November 29, 2021 letter. He has provided copies of these paystubs and I agree that they list different amounts than appear on the letter.

¹ Paragraph 35(2)(b) of the *Employment Insurance Regulations*

² GD3-118 to GD3-119

[19] Even so, I think the letter is more reliable than the paystubs for the following reasons:

- The Claimant asked the workers' compensation board for a letter showing his payment amounts. This is the letter the workers' compensation board gave him.
- The Commission asked the agent if the letter was correct, and the Claimant agreed that it was likely correct.³
- The workers' compensation board claim number on the letter matches the claim number the Claimant entered on his EI application.
- The payment dates on the letter match the payment dates the Claimant gave the Commission.
- The date on the letter (November 29, 2021) is more recent than the dates on any of the Claimant's paystubs.

[20] Most importantly, I think the evidence shows me that the Claimant's workers' compensation payments changed several times. So I think it is likely that the November 29, 2021 letter gives me the most up-to-date information about the Claimant's workers' compensation payments. I think the letter shows me the final amounts, taking into account all the adjustments and retroactive payments.

[21] Here are my reasons for thinking that the Claimant's workers' compensation payments changed and that he received retroactive payments:

- The Claimant told the Commission that the amount of his workers' compensation benefits kept changing.⁴ At the hearing, he agreed that his workers' compensation payment amount changed several times.

³ See GD3-120

⁴ See the Claimant's reconsideration request at GD3-113.

- The Claimant got a lump sum payment in late December 2019.⁵ He told the Commission that this was a retroactive payment for September 9 to December 19, 2019. The paystub he submitted after the hearing also suggests that he received retroactive pay when his workers' compensation payment amounts changed.

[22] So, I find that the November 29, 2021 letter is the most reliable source of information about the Claimant's workers' compensation payments. The Commission used this letter and made the following decisions about the Claimant's earnings:

- \$931 each week from August 11 to December 28, 2019
- \$266 for the week beginning December 29, 2019
- \$931 each week from January 26 to July 11, 2020

[23] I agree with the Commission's decisions about the Claimant's weekly earnings from his workers' compensation benefits.

[24] The Claimant also made arguments about the Commission's decision to retroactively review his entitlement to EI benefits. But the law gives the Commission very broad powers to revisit any of its decisions about EI benefits.⁶ Generally, the Commission has a maximum of three years to revisit its decisions.⁷

[25] The Commission made its reconsideration decision about the Claimant's benefits on December 23, 2018. It reviewed the benefits it paid to the Claimant starting August 11, 2019. So, the Commission completed its review within the time limits described in

⁵ See GD3-83 and GE9

⁶ See *Briere v Canada Employment and Immigration Commission*, A-637-86 on the broad power given by section 52 of the Employment Insurance Act:

This provision authorizes it to amend a posteriori within a period of three or six years, as the case may be, a whole series of claims for benefit and to make a fresh decision on its own initiative as to entitlement to benefit, and in appropriate cases to withdraw its earlier approval and require claimants to repay what had been validly paid pursuant to such approval.

⁷ Subsection 52(1) of the *Employment Insurance Act*. The law says the Commission has 36 months. See also *Canada (Attorney General) v Laforest*, A-607-87. In this decision, the Federal Court of Appeal held that the Commission has 36 months to reconsider a claim for benefits, make a decision, calculate the overpayment, if any, and notify the claimant of the overpayment.

the law. This means the Commission had the authority to review the Claimant's entitlement to EI benefits.

[26] And since the Claimant received more EI benefits than he was entitled to receive, the Commission can ask him to repay those EI benefits.⁸

Conclusion

[27] I am dismissing the Claimant's appeal. The Claimant's workers' compensation payments are earnings. The Commission correctly relied on the November 29, 2021 letter from the workers' compensation board to calculate the weekly amount of his workers' compensation benefits.

Amanda Pezzutto
Member, General Division – Employment Insurance Section

⁸ Subsection 52(3) of the *Employment Insurance Act*.