



Citation: *IP v Canada Employment Insurance Commission*, 2022 SST 787

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

Decision

Appellant: I. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (441053) dated December 7, 2021 (issued by Service Canada)

Tribunal member: Paul Dusome

Type of hearing: Teleconference

Hearing date: January 26, 2022

Hearing participant: Appellant

Decision date: January 31, 2022

File number: GE-22-17

Decision

[1] The appeal is dismissed.

Overview

[2] The Claimant applied for Employment Insurance (EI) benefits on March 21, 2020. He received the Canada Emergency Response Benefit (CERB) until October 3, 2020. The commission automatically switched the Claimant to EI regular benefits on October 4, 2020. On October 16, 2020, he reported to the Commission that he was just starting to receive two pension benefits. He asked about reporting the pensions on his weekly reports. The Commission told him not to report them, as the Commission had the information about the pensions. He did not report the pensions on his weekly reports. The Commission paid him EI benefits without deducting pension income. On October 7, 2021, the Commission notified him that it would deduct the pensions from his EI benefits, retroactively to October 2020. This produced an overpayment of \$23,534.00. The Claimant says that he should not have to repay that money. He reported his pensions when they started, and followed the advice of the Commission about reporting on the weekly reports.

Issues

[3] 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?

[4] Yes, the pension income that the Claimant received is earnings. Here are my reasons for deciding that the money is earnings.

[5] The law says that earnings are the entire income that you get from any employment.¹ The law defines both “income” and “employment.”

[6] **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.² Retirement pension benefits from the Canada Pension Plan (CPP), or arising out employment, are earnings.³

[7] **Employment** is any work that you did or will do under any kind of service or work agreement.⁴

[8] The Claimant received a CPP retirement pension beginning September 1, 2020. The amount of the pension was \$382.40 per month. The Claimant also began receiving a retirement pension beginning on November 1, 2020. The pension was in the amount of \$4,300.00 per month. That pension was paid by a union plan under a collective agreement with the Claimant's employer. The Commission decided that this money is retirement pensions. So, it said that the money is earnings under the law.

[9] The Claimant does not dispute that the two pensions are earnings. He disagrees with the Commission's decision and the overpayment because he reported the pension income in the fall of 2020. In that conversation he asked if he needed to report the pension income on his weekly reports. The Commission agent said “no”, because he had already reported the income. He followed that advice and did not report the pension income on his reports. One year later, the Commission told him that he owed \$25,534.00. I will deal with this issue after reviewing the earnings and allocation issues.

[10] 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.

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

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

³ See section 35(1) of the EI Regulations, definition of 'pension', and 35(2)(e).

⁴ See section 35(1) of the EI Regulations.

[11] I find that the two pensions are earnings. The CPP pension is named in the definition of “pension”, and the union pension arose out of employment.⁵ The Claimant did not return to employment after he started receiving the pensions. He therefore did not qualify for the exclusion of pension income from earnings.⁶

Did the Commission allocate the earnings correctly?

[12] 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.⁷

[13] The law says that the periodic earnings you get from retirement pensions have to be allocated to the period for which they are paid or payable.⁸ It doesn’t matter when you actually receive those earnings. The earnings have to be allocated starting the week your pension starts, even if you didn’t get those earnings at that time.⁹

[14] I find that the Commission has correctly allocated the pension income.

[15] I find that the Claimant started receiving his CPP pension effective September 1, 2020, and that he started receiving his union pension effective November 1, 2020. I find this because the Claimant provided those dates to the Commission on two occasions, and confirmed those dates in his testimony.

[16] The amount of money to be allocated for these two pensions is as follows. The allocation only starts from the beginning of the EI benefits, October 4, 2020. For the month of October, only the CPP pension is allocated. The weekly amount allocated is \$88.00, as stated by the Commission. Beginning November 1, 2020, both the CPP and the union pension must be allocated. The weekly amount allocated is \$1080.00, as stated by the Commission.

⁵ See *Wilson v Canada (Attorney General)*, 2019 FCA 49.

⁶ See section 35(7)(e)(ii) of the EI Regulations. The exclusion applies to claimants who have acquired enough hours to qualify for EI benefits after they started to receive the retirement pension.

⁷ See section 36 of the EI Regulations.

⁸ See section 36(14) of the EI Regulations.

⁹ See section 36(14) of the EI Regulations.

The Commission's advice on reporting the pension income

[17] The Claimant's position is clear. He reported his pensions to the Commission when he first started to receive them. He did not have the amounts of the pensions at that time. In that conversation, the Commission said he did not need to report the pensions on his weekly reports, because he had reported them already. He followed that advice, and did not report the pension income on his weekly reports. One year later, the Commission contacted him. He confirmed that receipt of the pensions, and stated the monthly amounts. The Commission allocated the pensions against his EI benefits, and imposed an overpayment. He should not have to be responsible for the Commission's failure to deal with the information he gave it in the fall of 2020.

[18] I do not have the authority to reverse the Commission's decision on the basis of an error it has made.

[19] Misinformation by the Commission is no basis of relief from the operation of the Act.¹⁰ The reliance by the Claimant on erroneous advice from the Commission, thus inducing him into error about his eligibility for benefits, does not permit the Tribunal to refuse to apply the law, even on the grounds of equity.¹¹ This case must therefore be decided on the basis of the legal principles respecting earnings and allocation, set out above. The erroneous advice by itself does not give the Appellant a legal basis to overturn the Commission's decision.

[20] The Claimant's circumstances are very sympathetic. He did nothing wrong. As the Federal Court of Appeal has said, however tempting it may be in such cases, adjudicators are not permitted to re-write legislation. They are also not permitted to interpret the law in a manner that is contrary to its plain meaning.¹² The end result is that I must apply the law as set out above to reach the conclusion in this case.

¹⁰ *Canada (Attorney General) v Shaw*, 2002 FCA 325.

¹¹ *Nadji v Canada (Attorney General)*, 2016 FC 885.

¹² *Canada (Attorney General) v Knee*, 2011 FCA 301.

Conclusion

[21] The appeal is dismissed.

[22] The Claimant received retirement pension earnings. These earnings are allocated for the weeks of October 4 to October 31, 2020, at \$88.00 per week, and from the weeks beginning November 1, 2020, at \$1080.00 per week.

Paul Dusome
Member, General Division – Employment Insurance Section