



Citation: *AT v Canada Employment Insurance Commission*, 2021 SST 190

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

## Decision

**Appellant:** A. T.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (425993) dated July 5, 2021 (issued by Service Canada)

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**Tribunal member:** Solange Losier

**Type of hearing:** Videoconference

**Hearing date:** November 4, 2021

**Hearing participants:** None

**Decision date:** November 4, 2021

**File number:** GE-21-1341

## Decision

[1] The appeal is dismissed. The Claimant received earnings. The Canada Employment Insurance Commission (Commission) allocated (in other words, assigned) those earnings to the right weeks.

## Overview

[2] The Claimant got \$54,153.85 from his former employer. The Commission decided that the money is “earnings” under the law because it was severance pay and vacation pay.

[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>1</sup>

[4] The Commission allocated the earnings starting the week of October 20, 2019 at an amount of \$3,519.00 per week until December 21, 2019 (GD3-18; GD3-29). This is the week that the Commission said that the Claimant separated from his employment. The Commission said that he separated from his job is why the Claimant received the earnings. This resulted in an overpayment of benefits to the Claimant (GD3-23; GD3-25; GD6-2).

[5] The Claimant disagrees with the Commission (GD2-1 to GD2-9). The Claimant said he had to pay significant legal fees as part of the settlement with his employer.

## Matters I have to consider first

### The Claimant asked to reschedule the first hearing date

[6] This case was first scheduled to be heard on October 6, 2021 (GD1). The Claimant wrote to the Tribunal within the 2-day grace period, so the case was rescheduled to November 4, 2021. The Claimant told a Tribunal agent that he was out

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<sup>1</sup> See section 36 of the *Employment Insurance Regulations* (EI Regulations).

of the country, but returning and available for a hearing in early November 2021. The matter was rescheduled to November 4, 2021.

### **The Claimant and Commission did not attend the second hearing date**

[7] Neither the Claimant, or the Commission attended the rescheduled hearing date on November 4, 2021. The hearing took place when it was scheduled, but without the Claimant and the Commission.

[8] A hearing can go ahead without the Claimant if the Claimant got the notice of hearing.<sup>2</sup> I find that the notice of hearing was sent to the Claimant and the Commission by email on September 1, 2021 (GD1A). A Tribunal agent also made three courtesy calls and left voicemails to remind the Claimant about the hearing.

### **I asked the Commission for more information before the hearing**

[9] I wrote to the Commission and asked them to provide a copy of the overpayment chart (GD5). The Commission sent a copy to the Tribunal and it was forwarded to the Claimant (GD6).

### **Issues**

[10] 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?

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<sup>2</sup> Section 12 of the *Social Security Tribunal Regulations* sets out this rule.

## Analysis

### Is the money that the Claimant received earnings?

[11] Yes, the \$54,135.85 that the Claimant received is earnings. Here are my reasons for deciding that the money is earnings.

[12] 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.”

[13] **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> Case law says that severance pay is earnings.<sup>5</sup>

[14] **Employment** is any work that you did or will do under any kind of service or work agreement.<sup>6</sup>

[15] The Claimant's former employer gave the Claimant \$54,153.85.<sup>7</sup> The Commission decided that this money was severance pay and vacation pay. So, it said that the money is earnings under the law.

[16] The Claimant does not agree. He told the Commission that he had to pay significant legal fees as part of the settlement with his employer.

[17] 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.

[18] I find that the money the Claimant got from his employer was earnings because it was income arising out of his employment. It was paid to the Claimant because he separated from his employment. The reason for the separation is listed on the records

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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 *Blais v Canada (Attorney General)*, 2011 FCA 320.

<sup>6</sup> See section 35(1) of the EI Regulations.

<sup>7</sup> The record of employment shows that \$9,153.85 was paid as vacation pay and \$45,000.00 was paid in severance pay (GD3-14 to GD3-17). This totals \$54,153.85.

of employment as mandatory retirement/approved workforce reduction (GD3-14 to GD3-17).

[19] The Claimant told the Commission that he paid legal fees, but provided no evidence of the legal fees he paid after being asked to provide some documentation (GD3-28).

[20] I find there was no evidence in the file that the Claimant paid legal fees as part of a settlement with his employer.<sup>8</sup> Therefore, the total amount of earnings is \$54,153.85, of which \$45,000.00 was severance pay and \$9,153.85 was vacation pay (GD3-14 to GD3-17).

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

[21] 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>9</sup>

[22] The Claimant's earnings severance pay and vacation pay. The Claimant's employer gave the Claimant those earnings because he separated from his job.

[23] The law says that the earnings you get for being separated from his job have to be allocated starting the week you were separated from his job. It does not matter when you actually receive those earnings. The earnings have to be allocated starting the week your separation starts, even if you did not get those earnings at that time.<sup>10</sup>

[24] I find that the Claimant separated from his job starting the week of October 27, 2019. The amount of money to be allocated starting that week is \$3,519.00. This is because \$3,519.00 is the Claimant's normal weekly earnings. The parties do not appear to dispute this amount, and I accept it as fact. This means that starting the week of October 27, 2019, \$3,519.00 is allocated to each week. If there is any amount of

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<sup>8</sup> See exceptions in section 35(7) of the EI Regulations.

<sup>9</sup> See section 36 of the EI Regulations.

<sup>10</sup> See section 36(9) of the EI Regulations.

earnings that is left over, it will be allocated to the last week. The overpayment chart in the file reflects how the allocation was applied to his claim (GD6-2).

## **Conclusion**

[25] The appeal is dismissed. I do not have any authority or discretion to write-off the overpayment based on financial hardship. Only the Commission can make that decision.

[26] The Claimant received \$54,153.85 in earnings. These earnings are allocated starting the week of October 27, 2019 at \$3,519.00 per week. Any amount left over is allocated to the last week.

Solange Losier

Member, General Division – Employment Insurance Section