



Citation: *CA v Canada Employment Insurance Commission*, 2022 SST 864

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

## Decision

**Appellant:** C. A.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (441588) dated November 30, 2021 (issued by Service Canada)

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**Tribunal member:** Raelene R. Thomas

**Type of hearing:** Teleconference

**Hearing date:** March 16, 2022

**Hearing participant:** Appellant

**Decision date:** March 25, 2022

**File number:** GE-22-216

## Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

[2] The Claimant received employment insurance (EI) benefits that she was not entitled to receive and must repay those benefits.

[3] Nothing in this decision prevents the Claimant from writing the Commission directly to ask it to write off the debt.

[4] The Commission is instructed to reconsider the allocation (deduction) of the \$78 of earnings from the Claimant's EI benefits and advise the Claimant.

## Overview

[5] The Claimant left a job in December 2019 to take another job. Her new job fell through but she got work with another employer in October 2020. She earned less with the new employer and was laid off on April 11, 2021. The Commission calculated her EI benefits using the earnings she made in the job that she left in December 2019. She was paid EI benefits at a weekly rate of \$594.

[6] The Commission revisited the Claimant's benefit rate and found that it should have included some of the earnings the Claimant made in her second employment to calculate her weekly EI benefits. It recalculated the Claimant's benefits to be \$514 a week. It also said that she had \$78 in earnings during the first week she received EI benefits which meant she received benefits she was not entitled to receive. The Commission sent the Claimant a notice of debt for \$732.

[7] The Claimant does not agree that she should have to repay any EI benefits. She wrote on her application for EI that her last employment was with the second employer. The Commission had the Record of Employment (ROE) from that employer when it calculated her weekly benefits. This is the Commission's error and she cannot afford to repay the debt.

## **Matter I have to consider first**

### **The Claimant appealed two issues**

[8] The Commission made two decisions about the Claimant's EI benefits. First, it decided that the rate of weekly benefits was reduced from \$594 to \$514. Second, it decided that the Claimant had \$78 in earnings from her employer and those earnings should have been deducted from the first week of EI benefits she received.<sup>1</sup>

[9] The Claimant asked the Commission to reconsider both of these decisions. The Commission maintained both decisions.

[10] The Claimant then appealed to the Social Security Tribunal (Tribunal). The Commission provided submissions and representations about the rate of weekly benefits but did not provide anything about the \$78 of earnings. In light of this, I asked the Commission if it had reconsidered the earnings issue. If the Commission had reconsidered the earnings issue, I asked it to provide its submissions and representations. If the Commission did not reconsider the earnings issue, I asked that it provide submissions on whether I had jurisdiction to hear the Claimant's appeal on the earnings issue.

[11] The Commission responded that it had not reconsidered the earnings issue and that the only issue before me for a decision was the rate of weekly benefits.

[12] At the hearing the Claimant stated that she wanted the both issues reconsidered.

[13] I explained to the Claimant that my jurisdiction, in other words my ability to make a ruling on an appeal, comes only after the Commission makes a decision on reconsideration that the Claimant then chooses to appeal. My jurisdiction is limited to reviewing the reconsideration decisions the Commission has actually made. In this case, the Commission has only reconsidered its decision to recalculate the rate of weekly benefits. So, I will issue a decision on that issue only.

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<sup>1</sup> The law and the Commission use the word "allocation" when describing a deduction of earnings from EI benefits.

## **The Commission will reconsider the earnings issue**

[14] The Commission said that the only issue that it had completed the reconsideration on was the rate of weekly benefits. From this I conclude that the Commission will complete its reconsideration of the \$78 earnings issue and advise the Claimant of its reconsideration decision.

[15] If the Claimant is not satisfied with the Commission's reconsideration decision on the earnings issue she is free to appeal to the Tribunal.

## **Issue**

[16] Did the Commission correctly calculate the Claimant's rate of weekly benefits?

## **Analysis**

[17] To qualify for EI benefits, you need to have worked enough hours and have earnings within a certain time frame. This time frame is called the "qualifying period."<sup>2</sup>

[18] The dollar amount of EI benefits that a claimant receives is 55% of a claimant's weekly insurable earnings in a calculation period.<sup>3</sup>

[19] The formula to calculate a claimant's weekly insurable earnings involves four steps.<sup>4</sup>

- a) Determine the rate of unemployment in the economic region where the claimant resides when they apply for EI benefits.
- b) Determine the "number of weeks" used to calculate the weekly insurable earnings in the calculation period.<sup>5</sup> The "number of weeks" is the calculation period.

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<sup>2</sup> See section 7 of the *Employment Insurance Act* (EI Act) and section 93 of the *Employment Insurance Regulations* (EI Regulations).

<sup>3</sup> See section 15 of the EI Act.

<sup>4</sup> See section 14 of the EI Act.

<sup>5</sup> See section 14(2) of the EI Act.

- c) Review each week of the claimant's insurable earnings in the qualifying period to find the highest weekly insurable earnings for the "number of weeks."
- d) Add together the highest weekly amounts and any money paid to the claimant by reason of lay-off or separation from employment and then divide by the "number of weeks" to get the claimant's insurable weekly earnings.<sup>6</sup>

[20] Temporary measures in place at the time the Claimant applied for EI extended the qualifying period.<sup>7</sup> For the Claimant this meant that the qualifying period was extended from 52 weeks to 78 weeks and ran from September 29, 2019 to April 10, 2021. The Claimant does not dispute this is the qualifying period and I accept it as fact.

[21] Temporary measures in place at the time the Claimant applied for EI benefits said the weekly insurable earnings were the deemed to be the greater of:

- a) a claimant's insurable earnings in the calculation period divided by the number of weeks in that period in which the claimant had earnings, and
- b) \$909<sup>8</sup>

[22] The Claimant worked for an employer from September 16, 2019 to December 20, 2019. She earned \$10,799 over the course of 10 weeks. She got another job on October 24, 2020 and was laid off April 11, 2021. She applied for EI on April 24, 2021. The ROE for the second job was issued on April 21, 2021. It shows that she earned \$12,184 over the approximately 25 weeks that she worked.

[23] At the time the Claimant applied for EI benefits she was living in the EI economic region of Eastern Ontario. The unemployment rate was 13.1%. The Claimant did not object to this being the unemployment rate so I accept it as fact.

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<sup>6</sup> See section 14(3) of the EI Act.

<sup>7</sup> See section 153.18 of the EI Act.

<sup>8</sup> See section 153.192(1) of the EI Act.

[24] Because the Claimant lived in an economic region with an unemployment rate of 13.1%, the “number of weeks” in the calculation period was 14.<sup>9</sup>

[25] However, in its first calculation of the Claimant’s weekly benefits the Commission only used the Claimant’s earnings from the job that ended on December 20, 2019.<sup>10</sup> She had earned \$10,799 over 10 weeks. Because she had less than the “number of weeks” (in her case 14) the law required the Commission to divide her earnings by actual number of weeks in which she had earnings (in her case 10). So, the Commission divided the \$10,799 by 10 to determine her weekly insurable earnings were \$1,080. This meant the Commission calculated the Claimant’s rate of weekly benefits to be \$594.<sup>11</sup>

[26] The Commission recalculated the Claimant’s rate of weekly benefits in October 2021. It wrote to the Claimant that it reviewed new ROEs from the employment that ended on April 11, 2021. The Commission confirmed that the ROE it used for the recalculation was the one issued on April 12, 2021. That the ROE is used was not new but the original ROE is not determinative of the matter.

[27] For the recalculation, the Commission determined the highest weeks of earnings in the qualifying period were the 10 weeks of earnings from the Claimant’s first employment (\$10,799) plus the four highest weeks of earnings from the second employment (\$2,369.51). This meant the Claimant had \$13,168.51 in earnings for the 14 highest weeks in the calculation period. As a result, her weekly insurable earnings were \$941, which meant that she was entitled to weekly benefits of \$517.<sup>12</sup>

[28] The Claimant received 9 weeks of benefits at the weekly rate of \$594. The reduction in benefits to \$517 meant the Claimant was overpaid by \$77 in each of those weeks and had to repay \$693 in EI benefits that she was not entitled to receive.<sup>13</sup>

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<sup>9</sup> See section 14(2) of the EI Act

<sup>10</sup> The first calculation was done on April 12, 2021. See page GD3-26 in the appeal file.

<sup>11</sup>  $\$1,080 \times 55\% = \$594$

<sup>12</sup>  $\$13,168.51 \div 14 = \$940.61$ .  $\$940.61 \times 55\% = \$517.33$ .

<sup>13</sup> The notice of debt issued to the Claimant was for \$732. That amount includes the deduction of \$39 for the \$78 in earnings the Claimant had from her last employment.

[29] The Claimant does not dispute the calculations.

[30] The Claimant argues that she should not have to repay any money. The Commission had the ROE issued by her last employer. She stated on her application for EI the name of her last employer and the dates of that employment. The Commission did not need to go back to the employment that ended on December 20, 2019 to calculate her benefits. She said that the recalculation was done several months after she stopped receiving EI benefits. No one got in touch with her. The possibility of a recalculation should have been stipulated from the beginning. It took too long for the Commission to do the recalculations.

[31] The Claimant said that the \$732 was a substantial amount to repay. She could not afford to remain in school and had to return to work so that she could pay off the \$732 all because of an oversight and clerical error from no one looking over her claim until months later.

[32] I recognize the Claimant's argument that it took too long for the Commission to look over and recalculate her weekly rate of benefits. However, the law says the Commission may review any claim within 36 months of benefits being paid.<sup>14</sup> And, where benefits are either underpaid or overpaid, as is the case here, the Commission must calculate the amount of money and notify the claimant.<sup>15</sup> The Commission can ask a claimant to repay any benefits the claimant was not entitled to receive.<sup>16</sup>

[33] I find that the Commission correctly recalculated the Claimant's rate of weekly benefits to be \$514. It used the correct number of weeks (14) and chose the 14 highest paid weeks from the two employments that she had in the qualifying period. This means that the re-calculation was in accordance with the EI Act and the EI Regulations. As a result, the Claimant received \$693 of EI benefits that she was not entitled to receive and must repay those benefits.<sup>17</sup>

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<sup>14</sup> See section 52(1) of the EI Act.

<sup>15</sup> See section 52(2) of the EI Act.

<sup>16</sup> See section 52(3) of the EI Act.

<sup>17</sup> My finding does not address the allocation of the \$78 in earnings because that issue is not before me.

## Other matters

[34] I am sympathetic to the Claimant's financial circumstances that the request to repay benefits has created. As tempting as it may be in such cases (and this may well be one), I am not permitted to re-write legislation or to interpret it in a manner that is contrary to its plain meaning.<sup>18</sup> I must follow the law and render decisions based on the relevant legislation and precedents set by the courts.

[35] I do not have the jurisdiction to write off the debt.<sup>19</sup>

[36] Nothing in my decision prevents the Claimant from writing directly to the Commission to ask it to write-off the debt created by the overpayment given her financial circumstances. If the Claimant is not satisfied with the Commission's response, she may appeal to the Federal Court.

## Conclusion

[37] The appeal is dismissed.

Raelene R. Thomas  
Member, General Division – Employment Insurance Section

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<sup>18</sup> *Canada (Attorney General) v. Knee*, 2011 FCA 301. This how I refer to court cases that apply to the circumstances of this appeal

<sup>19</sup> *Arksey v. Canada (Attorney General)*, 2019 FC 1250