



Citation: *JH v Canada Employment Insurance Commission*, 2022 SST 1259

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: J. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (460459) dated March 24, 2022
(issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: Videoconference

Hearing date: August 30, 2022

Hearing participant: Appellant

Decision date: September 1, 2022

File number: GE-22-1522

Decision

[1] The appeal is dismissed. The Claimant received earnings. The Canada Employment Insurance Commission (Commission) was correct when it didn't allocate (in other words, assign) the Claimant's severance and vacation pay.

Overview

[2] The Claimant got \$109,557.99 from his former employer. The Commission decided that the money paid was severance pay and vacation pay isn't "earnings" under the law for the purposes of allocation.

[3] The Claimant disagrees with the Commission. He says that he tried to speak to an officer at Service Canada about delaying receiving EI benefits. He could not reach Service Canada by phone. The Claimant says the Canada Revenue Agency wants to claw back 30% of the EI benefits.

Issues

[4] Did the Commission correctly decide not to allocate the Claimant's severance and vacation pay?

Analysis

Did the Commission correctly decide not to allocate the Claimant's severance and vacation pay?

[5] Yes, the Commission correctly decided not to allocate the Claimant's severance and vacation pay.

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

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

[7] **Employment** is any work that you did or will do under any kind of service or work agreement.²

[8] **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.³ Case law says that severance pay is earnings.⁴

[9] The law was amended due to the COVID-19 pandemic. It says that any pay that results from being separated from a job is excluded from earnings that would normally be allocated. This applies to claimants whose benefit periods start on or after September 27, 2020.⁵

[10] The Claimant's former employer paid him \$109,557.99. The Commission decided that this money was severance pay and vacation pay. But it says that because of when his benefit period started, there is no legal provision to allocate this money.

[11] The Claimant doesn't agree. He says the Commission should have consulted him before it decided not to delay the start of his EI benefits. He states that because they didn't, he is economically disadvantaged.

[12] The Claimant applied for EI benefits on July 20, 2020. He testified that this was the date he thought his employer let him go. He learned from the internet that he should apply as soon as possible so he did. The Claimant confirmed that his employer continued to pay him until September 4, 2020. This is the date shown on the record of employment (ROE) as the last day for which the employer paid him.

[13] The Commission says it used the Claimant's ROE to establish a benefit period starting on October 4, 2020. The Claimant doesn't dispute this.

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

³ See section 35(1) of the EI Regulations.

⁴ See *Blais v Canada (Attorney General)*, 2011 FCA 320.

⁵ See section 153.193 of the *Employment Insurance Act* (EI Act)

[14] The law says claimants can't start a benefit period before September 26, 2020 to claim regular benefits.⁶ It also says that claimants can't start a benefit period from September 27 to October 3, 2020 if they got the Emergency Response Benefit, but didn't get the maximum number of weeks of that benefit.⁷

[15] The Claimant doesn't remember when he started to get benefits. But he thinks he got about one year's worth of benefits. Since the Commission is the one who paid benefits to the Claimant, I give a lot of weight to its statement and find that the Claimant's benefit period started on October 4, 2020.

[16] The Claimant referred to a different part of the law, saying that the Commission waived his waiting period.⁸ He says the Commission should have consulted him before doing so. He says should have made sure the effects of the COVID-19 pandemic would be mitigated for him, as the government intended. He says the amendments to the law were supposed to help claimants, not cause them economic hardship.

[17] The Claimant testified that if he had been able to speak to someone at Service Canada, he would have asked if he could delay receiving his EI benefits until January 2021, or if he could serve the waiting period before getting EI benefits.

[18] I don't find the Claimant's arguments about waiving the waiting period are relevant or valid. The part of the EI Act he referred to relates to the one-week waiting period that claimants usually serve. It is waived under the pandemic-related temporary measures. I find what the Claimant is really asking for is for the Commission to allocate his severance and vacation pay in the way it normally did before the amendments to the law.

[19] I accept that receiving EI benefits at the same time as a lump sum payment from his employer may have affected his taxes. But I don't find the Commission could do other than apply the law. Section 153.193 of the EI Act came into force as one of the government's temporary measures. As a result, section 36(9) of the EI Regulations was

⁶ See section 153.8(5) of the EI Act.

⁷ See section 153.8(6) of the EI Act.

⁸ See section 153.191(1) of the EI Act.

repealed. This was the section that required allocation of earnings arising from separation from employment.

[20] I don't find the Commission could do what the Claimant is asking. He applied for EI benefits, started a benefit period on October 4, 2020, and completed bi-weekly reports. So, the Commission paid him benefits. I don't find it had the responsibility to confirm with him that it wouldn't allocate his severance and vacation pay. I find so even if claiming benefits from October 4, 2020 may have not have been good for him financially.

[21] While I sympathize with the Claimant's situation, I can't change the law.⁹ I find that the Commission correctly decided not to allocate his severance and vacation pay.

Conclusion

[22] The appeal is dismissed.

[23] The Claimant received \$109,557.99 in severance and vacation pay. But the Commission correctly decided not to allocate the money.

Audrey Mitchell

Member, General Division – Employment Insurance Section

⁹ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.