



[TRANSLATION]

Citation: *GJ v Canada Employment Insurance Commission*, 2022 SST 1466

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

**Decision**

**Appellant:** G. J.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (459731) dated March 14, 2022 (issued by Service Canada)

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**Tribunal member:** Normand Morin  
**Type of hearing:** Teleconference  
**Hearing date:** August 25, 2022  
**Hearing participant:** Appellant  
**Decision date:** September 16, 2022  
**File number:** GE-22-1289

## Decision

[1] The appeal is allowed in part. I find that the Quebec Pension Plan (QPP) retirement pension supplement that the Appellant started receiving in early January 2021 is earnings.<sup>1</sup> So, this amount of money has to be allocated or deducted from his Employment Insurance (EI) benefits.<sup>2</sup> But, because of its calculations, the Canada Employment Insurance Commission (Commission) didn't allocate these earnings correctly.<sup>3</sup>

## Overview

[2] The Appellant has received a QPP retirement pension since November 2019.<sup>4</sup> On January 1, 2021, he started receiving a QPP retirement pension supplement of \$2.36 per month.<sup>5</sup>

[3] On December 31, 2020, the Appellant made an initial claim for EI benefits (regular benefits).<sup>6</sup> A benefit period was established effective December 27, 2020.<sup>7</sup>

[4] On December 21, 2021, he made a renewal claim for benefits after working for the employer X from June 5, 2021, to December 5, 2021.<sup>8</sup> His claim for benefits was renewed effective December 12, 2021.<sup>9</sup>

[5] On January 19, 2022, the Commission verbally notified him that the QPP retirement pension supplement was earnings that needed to be allocated or deducted

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<sup>1</sup> See section 35 of the *Employment Insurance Regulations* (Regulations).

<sup>2</sup> See section 36 of the Regulations.

<sup>3</sup> See sections 36(14) and 36(20) of the Regulations.

<sup>4</sup> See GD3-6, GD3-7, and GD3-22.

<sup>5</sup> See GD3-43 and GD3-44.

<sup>6</sup> See GD3-3 to GD3-15.

<sup>7</sup> See GD3-1 and GD4-1.

<sup>8</sup> See GD3-19 to GD3-32.

<sup>9</sup> See GD4-1.

from his benefits as of January 3, 2021. It told him that the allocation had created an overpayment of benefits.<sup>10</sup>

[6] On March 14, 2022, after a request for reconsideration, the Commission told him that a new decision had replaced the January 19, 2022, decision about the allocation of his earnings. It said that, according to that new decision, the QPP retirement pension supplement was considered earnings for EI purposes. It said that an amount of \$0.54 (rounded up to \$1.00) would be applied against his weekly benefits from January 3, 2021, to the end of his claim for benefits.<sup>11</sup>

[7] The Appellant says that he started receiving a QPP retirement pension supplement of \$2.36 per month in early January 2021. His monthly pension went from \$660.18 to \$662.54. He says that, although he agrees that the supplement is earnings, it should not be applied against his benefits. He argues that he had to work to be entitled to that pension, so the related payments belong to him. He says that, in 2019, when he told the Commission that he was receiving pensions from the QPP and Quebec's construction commission (CCQ), it told him that the amount of money he was getting for his pensions would be allocated during the year in question but would no longer have an impact for later years or future claims for benefits. He says that he is being penalized again for his QPP pension, given that the related supplement was applied against his benefits, when it should not have been, in his opinion. He explains that he also disagrees with the Commission's calculation of the overpayment of benefits it says he has to repay, namely \$23.00. On April 4, 2022, he challenged the Commission's reconsideration decision. That decision is now being appealed to the Tribunal.

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<sup>10</sup> See GD3-33 to GD3-35. I find that the verbal notice serves as the Commission's initial decision, since the evidence on file doesn't show that it sent the Appellant a written notice to tell him that it had allocated his earnings and that the allocation had created an overpayment of benefits.

<sup>11</sup> See GD2-8, GD2-9, GD3-45, and GD3-46.

## Issues

[8] I have to determine whether the QPP retirement pension supplement of \$2.36 per month that the Appellant started receiving at the beginning of 2021 is earnings<sup>12</sup> and, if so, whether these earnings were allocated correctly.<sup>13</sup> To do so, I have to answer the following questions:

- Is the QPP retirement pension supplement that the Appellant started receiving in early January 2021 earnings?
- If so, did the Commission allocate the earnings correctly?

## Analysis

[9] Section 35 of the *Employment Insurance Regulations* (Regulations) defines “income,” “employment,” and “pension” and specifies what types of income have to be considered earnings, while section 36 states how earnings have to be allocated or deducted from a claimant’s EI benefits.

[10] Earnings are a claimant’s entire income from any employment.<sup>14</sup> An amount received won’t be considered earnings if it falls within the exceptions set out in the Regulations<sup>15</sup> or isn’t from employment.

[11] “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>16</sup> “Employment” is any work that you did or will do under any kind of service or work agreement.<sup>17</sup> “Pension” means a “retirement pension” under, among other things, the Canada Pension Plan or a provincial pension plan.<sup>18</sup>

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<sup>12</sup> See section 35 of the Regulations.

<sup>13</sup> See section 36 of the Regulations.

<sup>14</sup> See section 35 of the Regulations.

<sup>15</sup> See section 35(7) of the Regulations.

<sup>16</sup> See section 35(1) of the Regulations.

<sup>17</sup> See section 35(1) of the Regulations.

<sup>18</sup> See section 35(1) of the Regulations.

[12] The law says that all earnings have to be allocated to certain weeks.<sup>19</sup> What weeks earnings are allocated to depends on why you received the earnings.<sup>20</sup>

[13] The claimant has to prove that the money they received or are entitled to isn't earnings. The claimant has to prove this on a balance of probabilities. This means that they have to show that it is more likely than not that the money isn't earnings.

### **Issue 1: Is the QPP retirement pension supplement that the Appellant started receiving in early January 2021 earnings?**

[14] I find that the QPP retirement pension supplement of \$2.36 per month that the Appellant started receiving in January 2021 is earnings.<sup>21</sup>

[15] The Federal Court of Appeal (Court) has held that, when there is a clear and direct linkage between a claimant's employment and the pension plan out of which the claimant receives monthly payments, those payments are earnings under sections 35 and 36 of the Regulations.<sup>22</sup>

[16] In this case, the Appellant agrees that he started receiving a QPP retirement pension supplement of \$2.36 per month in January 2021.

[17] And, after looking into it, he agrees that the supplement increased his pension to \$662.54.<sup>23</sup>

[18] He says he also agrees that the supplement is earnings.

[19] The Commission, meanwhile, has this to say:

- a) The QPP retirement pension supplement is earnings under section 35(2)(e) of the Regulations.<sup>24</sup>

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<sup>19</sup> See section 36 of the Regulations.

<sup>20</sup> See section 36 of the Regulations.

<sup>21</sup> See section 35 of the Regulations.

<sup>22</sup> See the Federal Court of Appeal (Court) decision in *MacNeil*, 2009 FCA 306.

<sup>23</sup> See GD3-43 and GD3-44.

<sup>24</sup> See GD4-4 and GD4-6.

- b) People who are already receiving a retirement pension under the QPP and who work have to contribute to the Plan once their earnings exceed the \$3,500.00 basic exemption. These contributions entitle them to an increase in their retirement pension known as “the retirement pension supplement.” So, the supplement is earnings because it is income from employment.<sup>25</sup>
- c) The supplement can’t be “exempt” from consideration as earnings. This is because the Appellant didn’t accumulate the insurable hours required to establish his benefit period after the date the amount of money became payable or during [the period for] which he received it.<sup>26</sup> He accumulated the hours required to establish his benefit period effective December 27, 2020, during his qualifying period from December 29, 2019, to December 26, 2020.<sup>27</sup>

[20] In this case, I find that the QPP retirement pension supplement of \$2.36 per month that the Appellant started receiving in January 2021 is earnings because it is part of his entire income from employment, as set out in the Regulations.<sup>28</sup>

[21] This amount falls under the amounts of money paid or payable to a claimant “on a periodic basis or in a lump sum on account of or in lieu of a pension.”<sup>29</sup>

[22] I find that this amount doesn’t fall within the exceptions set out in the Regulations to be excluded from consideration as earnings.<sup>30</sup>

[23] On this point, I accept the Commission’s explanation that this is because the Appellant didn’t accumulate the number of hours of insurable employment required by the *Employment Insurance Act (Act)*<sup>31</sup> to establish his benefit period after the date the

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<sup>25</sup> See GD4-4 and GD4-5.

<sup>26</sup> See section 35(7)(e)(ii) of the Regulations. See also GD3-33 to GD3-35, GD4-4, and GD4-5.

<sup>27</sup> See GD3-33 to GD3-35.

<sup>28</sup> See section 35(2)(e) of the Regulations.

<sup>29</sup> See section 35(2)(e) of the Regulations.

<sup>30</sup> See section 35(7) of the Regulations.

<sup>31</sup> See section 7 or 7.1 of the *Employment Insurance Act (Act)*.

amount of money became payable.<sup>32</sup> It says that the Appellant accumulated the hours required to establish his benefit period effective December 27, 2020, during his qualifying period from December 29, 2019, to December 26, 2020.<sup>33</sup>

## **Issue 2: Did the Commission allocate the earnings correctly?**

[24] I find that the Commission correctly determined the weeks to which it had to allocate the QPP retirement pension supplement of \$2.36 per month that the Appellant started receiving in early January 2021.<sup>34</sup> But, because of its calculations, the Commission didn't allocate this amount in accordance with the provisions of the Regulations.<sup>35</sup>

[25] The law says that earnings have to be allocated to certain weeks. What weeks earnings are allocated to depends on why you received the earnings.

[26] The Court has held that amounts of money that are earnings under section 35 of the Regulations have to be allocated under section 36 of the Regulations.<sup>36</sup>

[27] The Regulations say that "the moneys [...] that are paid or payable to a claimant on a periodic basis shall be allocated to the period for which they are paid or payable."<sup>37</sup>

[28] The Regulations also say that, for the "moneys referred to," meaning amounts of money that are earnings, "a fraction of a dollar that is equal to or greater than one half shall be taken as a dollar and a fraction that is less than one half shall be disregarded."<sup>38</sup>

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<sup>32</sup> See section 35(7)(e)(ii) of the Regulations. See also GD4-5.

<sup>33</sup> See GD3-33 to GD3-35.

<sup>34</sup> See section 36(14) of the Regulations.

<sup>35</sup> See sections 36(14) and 36(20) of the Regulations.

<sup>36</sup> The Court established this principle in *Boone et al*, 2002 FCA 257.

<sup>37</sup> See section 36(14) of the Regulations.

<sup>38</sup> See section 36(20) of the Regulations.

[29] The Appellant argues that the retirement pension supplement of \$2.36 per month should not be applied against his benefits. He says that he had to work to be entitled to that pension.<sup>39</sup> In his opinion, that money belongs to him.<sup>40</sup>

[30] The Appellant explains that, in 2019, he told the Commission that he was receiving pensions from the QPP and the CCQ.<sup>41</sup> According to him, the money he had started receiving from his pensions had [translation] “penalized” him hundreds of dollars per month for his benefits.<sup>42</sup> He says that the Commission then told him that the amount of money he was getting for his pensions would be allocated during the year in question but would no longer have an impact for later years or future claims for benefits.<sup>43</sup>

[31] The Appellant says that he doesn’t understand why, in his opinion, he is being penalized again for his QPP pension because of the supplement.<sup>44</sup>

[32] The Appellant explains that he also disagrees with the Commission’s calculation of the overpayment of benefits it says he has to repay, namely \$23.00 for the 23 weeks for which he received benefits.<sup>45</sup>

[33] The Appellant says it isn’t fair that, to allocate the monthly supplement of \$2.26, the Commission rounded up to \$1.00 the amount of \$0.54 it had determined to be the weekly amount to be applied from [sic] his benefits.<sup>46</sup> He says that he has been cheated, since it is like stealing \$0.46 from him every week.<sup>47</sup>

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<sup>39</sup> See GD3-44.

<sup>40</sup> See GD3-44.

<sup>41</sup> See GD2-4.

<sup>42</sup> See GD2-4.

<sup>43</sup> See GD2-4 and GD3-40.

<sup>44</sup> See GD3-40.

<sup>45</sup> See GD2-4.

<sup>46</sup> See GD3-44.

<sup>47</sup> See GD3-44.



[34] The Commission argues as follows:

- a) The retirement pension supplement is earnings for the Appellant's benefit period established effective December 27, 2020.<sup>48</sup>
- b) The Commission didn't allocate the QPP and CCQ pension amounts the Appellant reported having received as of 2019 to the benefit period established effective December 27, 2020.<sup>49</sup>
- c) The retirement pension supplement has to be allocated as of January 3, 2021. The supplement is payable as of January 1 of the year following the one during which the person made contributions. There was no need to allocate amounts of money to the week of December 27, 2020, to January 2, 2021, because it was the Appellant's waiting period, so he wasn't paid benefits for that week.<sup>50</sup>
- d) After reconsideration of the Appellant's file and his own verification with the QPP office, the Commission was able to use the correct amounts to allocate the QPP retirement pension supplement, namely \$2.36 per month, which amounts to \$0.54 per week. This amount was rounded to the nearest dollar to make the allocation.<sup>51</sup>
- e) Although the Appellant alleges that he feels cheated, that it isn't fair that \$0.54 was rounded up to \$1.00 in allocating the \$2.26 supplement, and that it is like stealing \$0.46 from him every week,<sup>52</sup> the Commission says that it made this allocation in accordance with the provisions of section 36(20) of the Regulations. For "the moneys referred to," this section says that "a fraction of a dollar that is equal to or greater than one half shall be taken as a dollar and

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<sup>48</sup> See GD4-6.

<sup>49</sup> See GD4-6.

<sup>50</sup> See GD4-5.

<sup>51</sup> See GD3-44 and GD4-5.

<sup>52</sup> See GD3-44.

a fraction that is less than one half shall be disregarded.”<sup>53</sup> Since the weekly allocation of the retirement pension supplement was \$0.54, the Commission rounded it up to the nearest dollar.<sup>54</sup>

- f) The allocation of \$1.00 per week as of January 3, 2021, was made in accordance with the provisions of sections 36(14) and 36(20) of the Regulations.<sup>55</sup>
- g) The overpayment was determined to be \$23.00 for the 23 weeks for which the Appellant received benefits, that is, the period from the week starting January 3, 2021, to the week ending August 7, 2021.<sup>56</sup>

[35] In this case, I find that the QPP pension supplement of \$2.36 per month that the Appellant started receiving on January 3, 2021, was correctly allocated to the applicable weeks for which he received benefits, or “to the period for which [the moneys] are paid or payable,” as the Regulations put it.<sup>57</sup>

[36] The allocation as of January 3, 2021, takes into account the Appellant’s one-week waiting period, namely the week of December 27, 2020, to January 2, 2021, for which he could not be paid benefits, as the Commission explains.

[37] I understand from the Commission’s explanations that only the QPP retirement pension supplement of \$2.36 per month was allocated for the claim for benefits established effective December 27, 2020.

[38] But I find that the monthly amount of \$2.36 that was allocated doesn’t amount to \$1.00 per week, as the Commission determined.

[39] Based on the Commission’s information on this point, I understand from its calculations that it got \$0.54 by first multiplying the monthly QPP pension supplement

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<sup>53</sup> See section 36(20) of the Regulations.

<sup>54</sup> See GD4-5.

<sup>55</sup> See GD4-5 and GD4-6.

<sup>56</sup> See GD3-41, GD3-44, GD4-2, and GD4-5.

<sup>57</sup> See section 36(14) of the Regulations.

amount of \$2.36 by 12 to determine the annual amount: \$28.32 ( $\$2.36 \times 12 = \$28.32$ ).<sup>58</sup> I understand that the Commission then divided that amount by 52 to determine that the pension [*sic*] was \$0.54 per week ( $\$28.32 \div 52 = \$0.5446$ ), which it rounded to the nearest dollar to get \$1.00.<sup>59</sup> So, the resulting overpayment of \$23 was determined based on the number of weeks for which the Appellant received benefits, that is, the period from the week starting January 3, 2021, to the end of his benefit period.

[40] But I find that the monthly amount of \$2.36 taken into account in allocating the pension supplement to each week for which the Appellant was paid benefits has to be rounded to the nearest dollar, just like the result of the Commission's calculation to make this allocation.

[41] The \$2.36 is earnings. It is the monthly amount of the retirement pension supplement that the Appellant started receiving in early January 2021. In my view, this is the amount of money that was initially paid or payable to him "on a periodic basis," as stated in section 36(14) of the Regulations.

[42] I find that this amount is the "[amount of] mone[y] referred to" that has to be allocated, as set out in section 36(20) of the Regulations. This amount has to be rounded to the nearest dollar, meaning that a fraction of a dollar that is equal to or greater than one half shall be taken as a dollar and a fraction that is less than one half shall be disregarded.<sup>60</sup> So, the \$2.36 has to be rounded to the nearest dollar, which is \$2.00.

[43] I also note that, when it comes to rounding off "percentages or fractions" for unemployment benefits, the Act says that a reference to an amount equal to a percentage or fraction of earnings or benefits in a period "shall be rounded to the

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<sup>58</sup> See GD3-33 to GD3-35, GD3-40 to GD3-42, GD3-44, and GD4-5.

<sup>59</sup> See GD3-33 to GD3-35, GD3-40 to GD3-42, GD3-44, and GD4-5.

<sup>60</sup> See section 36(20) of the Regulations.

nearest multiple of one dollar or, if the amount is equidistant from two multiples of one dollar, to the higher multiple.”<sup>61</sup>

[44] This points to a need to round to the nearest dollar not just the result of the calculation to allocate the QPP retirement pension supplement to each week of benefits, but also the amount initially taken into account in making this calculation, namely \$2.36.

[45] Rounding the monthly amount of \$2.36 to the nearest dollar, meaning \$2.00, gives you an annual amount of \$24.00 ( $\$2.00 \times 12 = \$24.00$ ), which amounts to \$0.46 per week ( $\$24.00 \div 52 = \$0.4615$ ). That \$0.46 has to be rounded to the nearest dollar too because it is also the amount of money that was paid or payable to the Appellant on a periodic basis and the amount of money referred to that has to be allocated.<sup>62</sup> Since a fraction that is less than one half has to be disregarded, the amount becomes \$0.00.<sup>63</sup>

[46] This means that the overpayment for the relevant period—the number of weeks for which the Appellant received benefits—has to be \$0.00.

[47] In summary, I find that the Commission correctly determined that it had to allocate the QPP pension supplement of \$2.36 to the period from January 3, 2021, to August 7, 2021. It allocated this amount to the period for which benefits were paid or payable to the Appellant, as set out in the Regulations.<sup>64</sup>

[48] But the Commission didn’t correctly calculate the amount to be allocated and didn’t correctly determine the weekly amount of the resulting overpayment of benefits.

## Conclusion

[49] I find that the QPP retirement pension supplement of \$2.36 per month that the Appellant started receiving in early January 2021 is earnings and has to be applied against his benefits.

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<sup>61</sup> See section 6(2) of the Act.

<sup>62</sup> See sections 36(14) and 36(20) of the Regulations.

<sup>63</sup> See section 6(2) of the Act and section 36(20) of the Regulations.

<sup>64</sup> See section 36(14) of the Regulations.

[50] The Commission correctly determined the allocation period to be from the week starting January 3, 2021, to the week ending August 7, 2021.

[51] But, because of its calculations, the Commission didn't correctly determine the amount to be allocated to each week of the Appellant's benefit period.

[52] So, it was incorrect in determining that the amount of the resulting overpayment of benefits was \$23.00. The allocation of the Appellant's earnings shows that there is no overpayment of benefits.

[53] This means that the appeal is allowed in part.

Normand Morin

Member, General Division – Employment Insurance Section