



[TRANSLATION]

Citation: *FF v Canada Employment Insurance Commission*, 2023 SST 705

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

Decision

Appellant: F. F.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (406603) dated November 4, 2020 (issued by Service Canada)

Tribunal member: Manon Sauvé
Type of hearing: Teleconference
Hearing date: December 8, 2022
Hearing participant: Appellant
Decision date: January 24, 2023
File number: GE-22-1683

Decision

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

Overview

[2] The Claimant worked as a customer service agent for a bank for several years. On July 13, 2017, she was let go.

[3] On March 29, 2019, a settlement was reached in connection with grievances filed by her and her union.

[4] In March 2020, she got \$29,013.12 in settlement of the grievances. The employer agreed to pay back any money owing to the Commission.

[5] On August 3, 2020, the Commission decided to apply \$520.29 against the Claimant's benefits for the week beginning June 24, 2018. In addition, the benefit rate changed, and the number of weeks went from 15 to 19. The Commission asked to be repaid an overpayment of \$10,243.

[6] The Claimant asked the Commission to reconsider. She hadn't received the amount the bank claimed to have paid her. She ended up getting \$8,615.53. The bank claimed that it had paid the Commission back. But, she hadn't received this amount, since her position was cut. She had asked to be reinstated, but a decision hadn't been made.

[7] On November 4, 2020, the Commission reconsidered its decision in the Claimant's favour. The evidence shows that she received the \$29,013.12 in compensation for not getting her job back.

[8] The Claimant says that the Commission hasn't paid back all the money it owes her.

Matter I have to consider first

[9] On November 29, 2022, I held a pre-hearing conference with the parties. I wanted to find out which decisions the Claimant was challenging.

[10] The Claimant confirmed that she disputed the Commission's calculation for the repayment of the overpayment.

Issues

[11] I have to decide the following two [*sic*] issues:

- a) Is the money that the Claimant received earnings?
- b) If the money is earnings, did the Commission allocate the earnings correctly?
- c) If the money isn't earnings, did the Commission correctly calculate the amounts owing to the Claimant?

Analysis

Is the money that the Claimant received earnings?

[12] No, the \$29,013.12 that the Claimant received isn't earnings. Here are my reasons for deciding that the money isn't earnings.

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

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

¹ See section 35(2) of the *Employment Insurance Regulations* (Regulations).

² See section 35(1) of the Regulations.

³ See *Blais v Canada (Attorney General)*, 2011 FCA 320.

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

[16] The Commission initially decided that the money the Claimant had received from the bank was severance pay. So, it recalculated the benefits she was entitled to. It determined that she was overpaid \$10,243.

[17] After the Claimant asked it to reconsider, the Commission decided in her favour. The \$29,013.12 wasn't severance pay; the Claimant received it in exchange for her right to be reinstated.

[18] As a result, this money isn't considered earnings and isn't allocated to the weeks of benefits.

[19] So, the Commission wrote off the overpayment and changed the benefit period back to what it originally was. This change affected the calculation of benefits. Given that the benefit period was extended as a result of the second decision and that the decision was later overturned, this created an overpayment of \$1,862.

[20] In addition, the amount of benefits for the claim went from \$307 to \$271, which is what it was originally. There was an overpayment of \$570.

[21] The Claimant disagrees with the Commission's calculation. This will be dealt with later on.

[22] I find that the \$29,013.12 isn't earnings under the Act.

Did the Commission allocate the earnings correctly?

[23] 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.⁵

⁴ See section 35(1) of the Regulations.

⁵ See section 36 of the Regulations.

[24] Since the \$29,013.12 isn't earnings, I don't have to decide whether the Commission allocated it correctly.

Did the Commission correctly calculate the amounts owing to the Claimant?

[25] The Claimant says that the Commission hasn't paid back the \$10,243 in full. She did get some money back, but not in connection with the overpayment.

[26] The Claimant filed several documents to show that she hasn't received the full amount.

[27] The Commission, meanwhile, is of the opinion that it has paid the Claimant back correctly. It understands that this can be complex.

[28] I should start by saying that I don't have the power to decide issues relating to the information on tax slips (T4E and Relevé 1). This falls outside the Tribunal's jurisdiction.

[29] After reviewing the file and hearing the Claimant's explanations, I find that the Commission has paid the Claimant back correctly. When it overturned its initial decision, it needed to pay her back. However, taking the \$29,013.12 into account in calculating benefits changed the benefits that the Claimant was entitled to. She was overpaid \$1,862 on the claim established effective September 3, 2017, and \$570 on the claim established effective September 8, 2019 (\$2,432). This money was deposited in August 2020.

[30] After reconsideration, the \$10,243 owing to the Commission now had to be paid back to the Claimant, and the Claimant had to pay back the \$2,432. The Claimant received \$7,436, or \$7,811 less the tax payable. The \$7,811 is what you get after deducting the \$2,432 overpayment. So she received \$7,811.

[31] I understand that the Claimant's situation is complex. The grievance settlement was reached in 2019, and she was paid in 2020 for a termination that happened in

2017. This affected her benefits—initially because the Commission considered the \$29,013.12 to be earnings, and later because the Commission reconsidered its decision in the Claimant’s favour. A recalculation was necessary, and it resulted in an underpayment and an overpayment. Lastly, the Claimant had other periods of unemployment during this time, which may add to the complexity of the situation.

Conclusion

[32] The appeal is dismissed.

[33] The \$29,013.12 that the Claimant received isn’t earnings. This means that the Commission was right not to allocate it to the weeks of unemployment.

[34] In addition, the Commission properly corrected the calculation of benefits after making a decision in the Claimant’s favour.

Manon Sauvé
Member, General Division – Employment Insurance Section