



Citation: *PB v Canada Employment Insurance Commission*, 2023 SST 648

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

Decision

Appellant: P. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (550691) dated November 7, 2022 (issued by Service Canada)

Tribunal member: Marisa Victor

Type of hearing: Teleconference

Hearing date: March 2, 2023

Hearing participant: Appellant

Decision date: March 16, 2023

File number: GE-22-3696

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant appeals the decision of the Commission that determined that his pension was considered earnings. As a result of this decision, the Commission issued a Notice of Debt in the amount of \$3496.

[3] The Appellant applied for Employment Insurance (EI) benefits effective March 6, 2022. On his application for EI, the Appellant stated that he was receiving a Canada Pension Plan (CPP) pension as of November 1, 2020.

[4] The Appellant had previously received CPP beginning on November 1, 2020, in the amount of \$1298 monthly (2020 Pension). He cancelled the 2020 Pension after two months because he started a new job in December 2020. Starting on January 1, 2022, he started receiving a new monthly pension totalling \$1298 from the. As of April 1, 2022, his CPP pension increased to a total of \$1317 a month (the 2022 Pension).

[5] The Commission provided a weekly EI benefit rate of \$638 from March 3, 2022, to August 27, 2022. The Commission initially considered the 2020 Pension as an exempt pension because it was not considered as earnings and was therefore an exemption under the *Employment Insurance Regulations* (Regulations).

[6] When the Commission became aware that the 2020 Pension was cancelled and the 2022 Pension began only on January 1, 2022, the Commission changed its calculations. It determined that the 2022 Pension was considered earnings and was not exempt under the Regulations. The Commission recalculated the Appellant's EI benefit and determined that there had been an overpayment of \$3496.

[7] The Appellant disagrees with the Commission's decision and is of the view that the Commission made a mistake when they processed his EI application. As a result, he says that he should not be responsible for the overpayment.

Issue

[8] Does the 2022 Pension constitute earnings under the Regulations?

[9] If so, is the Appellant required to pay the overpayment amount?

Analysis

Issue 1: Does the 2022 Pension constitute earnings under the Regulations?

[10] Earnings for benefit purposes are income arising from any employment, whether wages, benefits, or other remuneration, and must be taken into account unless they fall within an exemption. Earnings refer to the entire income from any employment, including the amounts paid or payable to a claimant on a periodic basis or in a lump sum on account of or in lieu of a pension.¹

[11] A pension is defined as a retirement pension arising out of employment, among other things.² However, the Regulations also state that, despite the fact that a pension constitutes earnings, some situations lead to the finding that the pension may not constitute earnings.³ This is called an exemption.

[12] The Regulations state that, for those who are not self-employed persons, the portion of the income of a claimant that is derived from a pension does not constitute earnings when the number of hours of insurable employment required for the establishment of their benefit period was accumulated after the date on which those amounts became payable and during the period in respect of which they received those amounts.⁴

[13] The Commission's position was that the 2020 Pension was exempt because the Appellant had accumulated enough hours of insurable employment since they started

¹ Section 35 of the Regulations

² Section 35 of the Regulations

³ Section 35(7) of the Regulations

⁴ Section 35(7)(a) and (e) of the Regulations.

receiving that pension to re-qualify for a new claim for EI benefits in March 2022. However, that 2020 Pension was cancelled in December 2020.

[14] The Commission's position was that the new 2022 Pension counts as earnings because the Appellant had not accumulated enough hours of insurable employment since they started receiving the pension, as of January 2022, to re-qualify for a new claim for EI benefits in March 2022. Therefore, the 2022 Pension amount was considered earnings and was not exempt against the EI claim pursuant to Sections 35 and 36 of the Regulations.

[15] The Commission calculated that the Appellant has initially established an EI weekly benefit rate of \$638. The Commission found that the Appellant was in receipt of the 2022 Pension in the amount of \$1317 payable as of January 1, 2022. It calculated the weekly amount of \$304 as earnings ($\1317×12 months, divided by 52 weeks). This was applied against his EI claim from March 6, 2022, to the end of his claim.

[16] The Appellant submits that he feels the Commission made a mistake. He states that he put his pension on his EI application and the Commission should have not overpaid him since they knew he was in receipt of a pension.

[17] The Appellant also states that the amount owed is incorrectly calculated. He says that his 2022 Pension amount was \$1298 per month from January 1, 2022 until it was increased to \$1371 on April 1, 2022. He says that the weekly amount of overpayment calculated is incorrectly calculate for the month of March 2022 before the pension amount was increased. He also states that he was told that the overpayment amount was reduced to \$3267. He says that he should have received a notice of the change of the amount of the debt owed.

[18] In this case, I find that the 2022 Pension is considered earnings under the Regulations. The Appellant's does not dispute the timelines of the 2020 Pension, the 2022 Pension nor the date he applied for EI. Unfortunately, the 2022 Pension is not exempt because the Appellant does not have enough insurable hours from the start of that Pension (January 1, 2022), to when he stopped working (March 4, 2022). This

means that he does not have enough insurable hours to establish a new benefit period. The Regulations state that the pension must be counted against his EI claim and no exemption applies.

[19] I also find that the weekly pension amount is allocated correctly. The 2022 Pension amount changed from \$1298 to \$1317 in April 2022. However, the amount of \$1317 was payable as of January 1, 2022. In other words, the amount was retroactively increased. This is shown on the Attestation Certificate – Notice of Debt Details where the 2022 Pension is shown as \$1317 with a start date of January 1, 2022. The *Employment Insurance Act* (Act) requires me to accept the Attestation Certificate as evidence of the facts appearing in the document.⁵

[20] With regard to the reduced overpayment amount, the Commission's documents show that the amount owed is now \$3267 due to a \$299 credit that was applied. The Appellant should contact the Commission to confirm his amount owing.

Issue 2: If so, is the Appellant required to pay the overpayment amount?

[21] A person who receives EI benefits to which they are not entitled must return the amount wrongly paid.⁶ All amounts payable, or overpayments are debts to the Crown and are recoverable by the Minister of Employment and Social Development Canada (ESDC).⁷

[22] The Tribunal has jurisdiction to decide an appeal relating to a person's entitlement to a benefit and the amount of that benefit, which may sometimes result in an overpayment. The Tribunal does not have the authority to write off an overpayment.

[23] Only the Commission has the authority to decide whether to write-off an overpayment.

⁵ Section 134(1) of the Act.

⁶ Section 43-46.1 of the Act

⁷ Section 47 of the Act.

[24] The Commission says that it is unfortunate that the Appellant could not avoid the overpayment ramifications from the decision that the 2022 Pension is earnings.

[25] The Appellant submits that he reported his pension on his EI application and he should not be held responsible for the overpayment.

[26] I find that the Appellant must pay the overpayment. The law says that the Appellant is liable to repay benefit money paid by the Commission to which he was not entitled.⁸ The courts have upheld the principle that an Appellant who receives benefit money that they were not entitled to receive must repay the amount.⁹ Unfortunately, in this case that means that the Appellant must repay the overpayment which is currently \$3267.

The Appellant can ask the Commission to write off the debt

[27] I do not have the jurisdiction to write off a debt.¹⁰ Nothing in my decision prevents the Appellant from writing the Commission directly to ask it to reduce or write off the debt. If he is not satisfied with the Commission's response, he may appeal to the Federal Court.

Conclusion

[28] The appeal is dismissed.

Marisa Victor

Member, General Division – Employment Insurance Section

⁸ Section 43 of the Act.

⁹ See *Lanuzo v Canada (Attorney General)*, 2005 FCA 324.

¹⁰ See *Canada (Attorney General) v. Villeneuve* 2005 FCA440; *Buffone v. Canada (Minister of Human Resources Development)*, A-666-99.