



[TRANSLATION]

Citation: *MH v Canada Employment Insurance Commission*, 2023 SST 1351

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: M. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (579480) dated May 1, 2023 (issued by Service Canada)

Tribunal member: Jacques Bouchard

Type of hearing: In writing

Decision date: August 28, 2023

File number: GE-23-1345

Decision

[1] The appeal is dismissed.

[2] I find that the retiring allowance received retroactively under the retirement plan is earnings under section 35 of the *Employment Insurance Regulations* (Regulations).

Overview

[3] The Appellant is appealing the Commission's decision under section 112 of the *Employment Insurance Act* (Act) concerning the allocation of the pension amounts he received under sections 35 and 36 of the Regulations.

[4] A benefit period was established effective November 21, 2021. The Appellant had worked mainly for the Government of Quebec, from January 2006 to August 2021 (GD3-16), and for X, from June 2021 to November 2021 (GD3-17).

[5] The Appellant has retroactively received pension income from the Quebec Government and Public Employees Retirement Plan (RREGOP) since October 2021. He has also received a pension under the Quebec Pension Plan since January 2022.

[6] The Commission decided that the pension income is earnings and that the earnings should be allocated at a rate of \$274 per week for the period from November 21, 2021, to January 1, 2023. This allocation created an overpayment of \$4,577 (GD3-24 and GD3-25).

[7] The Appellant disagrees with that decision, saying (GD3-27) that he had more than 1,000 insurable hours in his file and that he was misled by a Commission agent, who allegedly mentioned that there would be no retroactivity in the calculation. The Appellant also disagrees with the non-exemption of the RREGOP earnings.

[8] I have to decide whether the pension is earnings under the law and, if so, how the earnings have to be allocated.

Issue

[9] Were the pension earnings that the Appellant received periodically or retroactively allocated correctly? The first thing to decide is whether they are earnings under section 35 of the Regulations and, if so, how they have to be allocated.

Analysis

The Commission based its decision on section 35(7)(e)(ii) of the Regulations, which says that the insurable hours must be accumulated after the date the pension became payable, so after October 27, 2021, the date the pension (RREGOP) started

[10] The Appellant acknowledges that he has received a pension retroactively and has continued to receive a retiring allowance since October 2021. But, he disagrees with the non-exemption of the allowance and says that he was misled by a Commission agent. The agent allegedly told him that the retroactive amounts would not be included in calculating his benefits.

[11] The Appellant wants the Tribunal to make a decision on the record given his busy schedule.

[12] The Commission says that the retirement pension is earnings under the Act because it is based on employment income.

[13] The entire income of a claimant arising out of any employment must be taken into account when calculating the amount to be deducted from benefits.¹

[14] Moneys payable to a claimant on a periodic basis as a retirement pension under a provincial pension plan are earnings under the Act.²

¹ See section 35(2) of the *Employment Insurance Regulations* (Regulations) and *McLaughlin v Attorney General of Canada*, 2009 FCA 365 (CanLII).

² This principle is explained in sections 35(1)(c) and 35(2)(e) of the Regulations and in the following decision: *Boone v Canada (Employment Insurance Commission)*, 2002 FCA 257.

[15] Such moneys that are paid on a periodic basis have to be allocated to the period for which they are paid or payable and are earnings under section 35 of the Regulations.

[16] Section 35(7)(e)(ii) of the Regulations says that the claimant needs to have accumulated a sufficient number of insurable hours after the date on which those pension moneys became payable and during the period for which the claimant received those moneys. The pension won't be considered earnings in this case.

[17] The Tribunal agrees with the Commission that moneys paid on a periodic basis as retirement income are earnings under the Act.

[18] However, the Commission allocated the earnings received retroactively, which resulted in an overpayment of benefits that the Appellant has to repay. I understand that this situation has a significant impact on the Appellant's budget.

[19] Lastly, the Appellant mentioned that pension income doesn't always have to be allocated. A pension isn't earnings under the Act when a worker has accumulated enough insurable hours of employment since they started receiving their pension to be able to establish a new benefit period.³ That way, your pension would have been exempted, as you wished.

[20] The facts of the case (GD3-33) show that you had accumulated 125 insurable hours since the start of your pension, which you don't dispute.

[21] Although the consequences are disappointing for the Appellant, the pension amounts he received are earnings, and these earnings have to be allocated to his benefit periods as of November 21, 2021, in the manner determined by the Commission.

³ See section 35(2)(e)(ii) [*sic*] of the Regulations.

Conclusion

[22] The appeal is dismissed.

Jacques Bouchard
Member, General Division – Employment Insurance Section