



Citation: *GB v Canada Employment Insurance Commission*, 2023 SST 1464

Social Security Tribunal of Canada

General Division – Employment Insurance Section

Decision

Appellant:

G. B.

Respondent:

Canada Employment Insurance Commission

Decision under appeal:

Canada Employment Insurance Commission
reconsideration decision (575562) dated March 22, 2023
(issued by Service Canada)

Tribunal member:

Bret Edwards

Type of hearing:

Teleconference

Hearing date:

July 25, 2023

Hearing participant:

Appellant

Decision date:

August 11, 2023

File number:

GE-23-937

Decision

[1] The appeal is dismissed with modification.

[2] The Appellant is receiving a pension that is considered to be earnings and must be allocated to (deducted from) her Employment Insurance (EI) benefits.

[3] The Commission allocated those earnings correctly (meaning to the right weeks), but it made a small error in calculating some of the allocations.

Overview

[4] The Appellant stopped working on May 15, 2019, and started to receive Canada Pension Plan (CPP) payments on April 1, 2020. The Canada Employment Insurance Commission (Commission) decided that the Appellant's pension was earnings under the law.

[5] The law says that all earnings have to be allocated. The week to which the earnings are allocated depends on the reason why the Appellant received the earnings.

[6] The Commission decided the Appellant's earnings should be allocated to her EI benefits beginning on September 20, 2020. This meant \$137 would be allocated for each week for which the Appellant received EI benefits, so there is now an overpayment.

[7] The Appellant disagrees with the Commission. She says she doesn't think CPP benefits should be earnings. She also says she made an honest mistake when she answered the question about pension monies on her EI benefits application.

Issue

[8] I must decide the following two issues:

[9] Is the money that the Appellant received earnings?

[10] If the money is earnings, did the Commission allocate the earnings correctly?

Analysis

Is the money that the Appellant received earnings?

[11] Yes, the money the Appellant is receiving is earnings because it is a CPP retirement pension and her pension arose from her employment. Here are my reasons.

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

[13] **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

[14] **Employment** is any work that you did or will do under any kind of service or work agreement.³

[15] The law defines a pension as a “retirement pension” arising out of employment, or out of service in any armed forces or in a police service, or under the Canada Pension Plan, or a provincial pension plan.⁴

[16] The Commission says the money the Appellant is receiving is a pension. It says that pensions arising out of any employment, including the CPP, are earnings for benefit purposes.⁵

[17] The Appellant doesn’t dispute that the money she’s receiving is a pension.⁶ She testified that she started getting the CPP retirement pension in April 2020, a month after her 60th birthday.

[18] Based on this information, I find the Appellant is receiving a pension as the law describes it.

¹ See section 35(2) of the Employment Insurance Regulations (Regulations). This is how I refer to the law that applies to this appeal.

² See section 35(1) of the Regulations.

³ See section 35(1) of the Regulations.

⁴ See section 35(1) of the Regulations.

⁵ GD4-2 to GD4-3.

⁶ GD3-22.

[19] The law also says that pensions aren't considered as earnings if an appellant has accumulated enough hours of insurable employment since they started receiving their pension benefits to re-qualify for a new claim for EI benefits.⁷

[20] The Commission says the Appellant's pension should be considered earnings because she hasn't accumulated enough hours of insurable employment since she started receiving her pension benefits to re-qualify for a new claim for EI benefits. It says she hasn't worked since she applied for benefits on September 2, 2019.⁸

[21] I note the Commission also says the Appellant was paid benefits from September 20, 2020 to March 27, 2021.⁹ And I note the Appellant doesn't dispute that she was paid benefits during this period.¹⁰

[22] I asked the Commission to explain why the Appellant's pension should be considered earnings if she was able to be paid benefits from September 20, 2020 to March 27, 2021, which was after she started receiving her pension benefits.¹¹

[23] The Commission says the Appellant initially applied for EI benefits on September 2, 2019 and indicated her last day of work was July 15, 2019. It says she told the Commission on October 15, 2019 that her last day of work was actually May 15, 2019 and she received a severance package for 90.73 weeks amounting to \$98,908.40.¹²

[24] The Commission also says it established a benefit period for the Appellant as of September 1, 2019, and allocated the severance monies at her normal weekly earnings starting then. It says the allocation meant that she wasn't paid any benefits until the week of September 20, 2020.¹³

⁷ See section 35(7)(e)(ii) of the Regulations.

⁸ GD4-2.

⁹ GD4-2.

¹⁰ GD2-6.

¹¹ GD5-1 to GD5-3.

¹² GD6-1.

¹³ GD6-1.

[25] I accept the Commission's explanation. It provided evidence that the Appellant told the Commission about her severance package on October 15, 2019.¹⁴ There's also no evidence that the Appellant has worked since May 15, 2019. During the hearing, she confirmed that she hadn't worked since then.¹⁵

[26] So, based on the evidence, I find the Appellant wasn't paid benefits starting September 1, 2019 because she couldn't actually receive those benefits until the week beginning September 20, 2020 due to the Commission allocating earnings from her severance package.

[27] For income to be considered earnings, the income must be earned by labour or given in return for work or there is a "sufficient connection" between the Appellant's employment and the sum received.¹⁶ In my view, there is a sufficient connection between the work done by the Appellant in her employment and the pension arising from that employment for her pension to be treated as earnings.¹⁷ This is based on the fact that the Appellant started receiving CPP payments shortly after she stopped working (less than one year later).

Did the Commission allocate the earnings correctly?

[28] Yes, the Commission allocated the earnings correctly. But it made a small error in calculating some of the allocations. Here are my reasons.

[29] The law says that earnings have to be allocated to certain weeks. The weeks to which earnings are allocated depends on why you received the earnings.¹⁸

[30] The law says that money received from a pension that is paid or payable to an appellant on a periodic basis shall be allocated to the period for which they are paid or

¹⁴ GD6-2.

¹⁵ The Appellant specifically testified that her last official day of employment was in July 2019, but she hadn't actually worked since May 15, 2019, which is when she got her severance package.

¹⁶ *Canada (Attorney General) v Roch*, 2003 FCA 356. This is how I refer to decisions of the courts that apply to the circumstances of this appeal.

¹⁷ *Cote v Attorney General of Canada*, A-178-86.

¹⁸ See section 36 of the Regulations.

payable.¹⁹ This means that a monthly pension must be allocated to the month in which the pension is paid.

[31] The Commission has allocated the Appellant's pension at the rate of \$82 per week from March 29, 2020 to April 4, 2020.²⁰ This is correct because the Appellant was receiving a monthly pension of \$595 from April 1, 2020 and the pension start date falls mid-week in this case. The \$595 a month multiplied by 12 months and divided by 52 weeks equals \$137 a week. \$137 a week multiplied by 0.60 (to represent the pension applying to 4 out of 7 days during that week, specifically April 1, 2020 to April 4, 2020) then equals \$82 for that week.²¹

[32] The Commission has allocated the Appellant's pension at the rate of \$136 per week from April 5, 2020 to January 2, 2021. But this is incorrect because the Appellant was receiving a monthly pension of \$595 from April 1, 2020. \$595 a month multiplied by 12 months and divided by 52 weeks equals \$137 (not \$136) a week.²² So, the Commission should have allocated the Appellant's pension at the rate of \$137 per month from April 5, 2020 to January 2, 2021.

[33] The Commission has allocated the Appellant's pension at the rate of \$137 per month from January 3, 2021 onwards. This is correct because the Appellant was receiving a monthly pension of \$595 from April 1, 2020. \$595 a month multiplied by 12 months and divided by 52 weeks equals \$137 a week.²³

[34] I therefore find the Commission allocated the earnings correctly, but just made a small error in calculating the allocations for some weeks.

So, does the Appellant have to repay the money she now owes?

¹⁹ See section 36(14) of the Regulations.

²⁰ Allocations can only be made in whole dollars, so amounts less than 50 cents are rounded down and amounts equal to or greater than 50 cents are rounded up. See section 36(20) of the Regulations.

²¹ $\$595 \times 12 = \$7,140$. $\$7,140 \div 52 = \137.307692 . $\$137.307692$ rounds down to $\$137$. $\$137 \times 0.60 = \82.20 . $\$82.20$ rounds down to $\$82$.

²² $\$595 \times 12 = \$7,140$. $\$7,140 \div 52 = \137.307692 . $\$137.307692$ rounds down to $\$137$.

²³ $\$595 \times 12 = \$7,140$. $\$7,140 \div 52 = \137.307692 . $\$137.307692$ rounds down to $\$137$.

[35] Yes, the Appellant has to repay the money she now owes, unfortunately. Her pension monies are earnings, and the Commission correctly allocated the earnings to the weeks when she received EI benefits.

[36] The Appellant says she shouldn't have to pay back the money she now owes. She testified that she made an honest mistake when she filled out her application in September 2019 and didn't indicate she was going to receive a pension within the next 52 weeks. She also testified that she just thought earnings referred to employment earnings, not to other things like pensions.²⁴

[37] I understand the Appellant is frustrated with how the law has been applied in her case. But unfortunately, I'm not allowed to re-write the law or interpret it in a different way.²⁵ This means I can't make an exception for the Appellant, no matter how exceptional or compelling I find her circumstances.²⁶

[38] And while I sympathize with the Appellant, I don't have the power to erase her overpayment either, unfortunately.²⁷ The law doesn't allow me to do this, even if find the circumstances are unfair. The overpayment remains the Appellant's responsibility to repay.²⁸

[39] These options are available to the Appellant:

- She can ask the Commission to consider writing off the debt because of undue hardship.²⁹ Should the Commission deny this request, the Appellant can appeal to the Federal Court.
- She can contact the Debt Management Call Centre at CRA at 1-866-864-5823 about a repayment schedule or other debt relief measure.³⁰

²⁴ The Appellant's submissions also cover these arguments. See GD2-6.

²⁵ *Canada (Attorney General) v Knee*, 2011 FCA 301.

²⁶ *Pannu v Canada (Attorney General)*, 2004 FCA 90.

²⁷ See *Canada (Attorney General) v Villeneuve*, 2005 FCA 440.

²⁸ Sections 43 and 44 of the *Employment Insurance Act* state that an appellant bears the responsibility for an overpayment.

²⁹ Section 56 of the Regulations gives the Commission broad powers to write off an overpayment when it would cause undue hardship were an Appellant to repay it.

³⁰ That's the phone number found on the Notice of Debt that was sent to the Appellant.

Conclusion

[40] The Appellant received earnings. The Commission allocated those earnings to the right weeks, but it made a small error in calculating some of the allocations.

[41] This means the appeal is dismissed with modification.

Bret Edwards

Member, General Division – Employment Insurance Section