



[TRANSLATION]

Citation: *GM v Canada Employment Insurance Commission*, 2023 SST 1998

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: G. M.
Representative: É. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (591430) dated June 22, 2023
(issued by Service Canada)

Tribunal member: Josée Langlois

Type of hearing: Teleconference
Hearing date: October 31, 2023
Hearing participant: Representative

Decision date: November 1, 2023
File number: GE-23-2077

Decision

[1] The appeal is dismissed with modification.

[2] The Appellant received \$3,860 in earnings. The Canada Employment Insurance Commission (Commission) rightly found that this money was earnings to be allocated (in other words, assigned) to the Appellant's benefit period.

[3] But the Commission allocated these earnings starting with the wrong week. They have to be allocated starting the week of October 30, 2022, since this is the week the Appellant was separated from his job.

Overview

[4] The Appellant got \$3,860 from his employer as vacation pay when his employment ended.

[5] On June 22, 2023, the Commission decided that the money was "earnings" under the Act because it was vacation pay. The Commission told the Appellant that the \$3,860 would be allocated to his benefit period from November 6, 2022, to January 14, 2023, and that the remaining balance—\$38—would be allocated to the week of January 15, 2023.

[6] The Act says that all earnings have to be allocated to certain weeks. What weeks earnings are allocated to depends on why you received the earnings.¹

[7] The Appellant disagrees with the Commission. He says he got this money from the employer for vacation he had accumulated since 2019. He argues that only the vacation pay for the last year should be allocated to his benefit period, that is, \$1,028.58.

¹ See section 36 of the *Employment Insurance Regulations* (Regulations).

Issues

[8] I have to decide the following two issues:

- a) Is the money that the Appellant received earnings?
- b) If the money is earnings, did the Commission allocate the earnings correctly?

Analysis

Is the money that the Appellant received earnings?

[9] Yes, the \$3,860 that the Appellant received is earnings. Here are my reasons for deciding that the money is earnings.

[10] The Act says that earnings are the entire income that you get from any employment.² The Act defines both “income” and “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.³

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

[13] The Appellant’s former employer gave the Appellant \$3,860. The Commission decided that this money was vacation pay. So, it said that the money is earnings under the Act.

[14] The Appellant agrees that the money is earnings, but he disagrees that all of it should be allocated to his benefit period. He says that only the vacation pay for the last year should be allocated.

² See section 35(2) of the Regulations.

³ See section 35(1) of the Regulations.

⁴ See section 35(1) of the Regulations.

[15] I find that this income is earnings and that it has to be taken into account in calculating the amount to be deducted from the Appellant's benefits.

Did the Commission allocate the earnings correctly?

[16] The Act says that earnings have to be allocated to certain weeks. What weeks earnings are allocated to depend on why you received the earnings.⁵

[17] The Appellant's earnings are vacation pay. He got it from the employer when his employment ended.

[18] However, the \$3,860 he received is vacation pay for 2019, 2020, 2021, and 2022.

[19] The Appellant doesn't dispute that vacation pay has to be allocated to the benefit period. But he says that only the vacation pay for the last year should be allocated, that is, \$1,028.58. He argues that the employer didn't pay him his vacation pay every year.

[20] He says that, according to labour standards, the employer breached its duty to pay him his vacation pay every year and that the Commission should not have allocated this amount. He says that a detailed document sets out the vacation pay for each year and that only the last year should be considered.

[21] The Act says that the earnings you get for being separated from your job have to be allocated starting the week you were separated from your job. It doesn't matter when you actually receive those earnings. The earnings have to be allocated starting the week your separation began, even if you didn't get those earnings at that time.⁶

[22] The Appellant's employment ended on November 5, 2022, that is, during the week of October 30, 2022.

⁵ See section 36 of the Regulations.

⁶ See section 36(9) of the Regulations.

[23] The Commission allocated the entire amount starting the week of November 6, 2022.

[24] However, at the hearing, the Appellant's representative confirmed that the Appellant was separated from his job on November 5, 2022.

[25] While I understand the Appellant's explanations and the fact that he was paid retroactively to 2019, the Commission was correct in allocating the entire amount he had received as vacation pay.

[26] The facts show that the Appellant didn't take any vacation or ask for his vacation pay. He got his accumulated vacation pay when his employment ended. It is true that, when it comes to intermittent activities, vacation pay can be paid with each pay, but that isn't what happened. The Appellant got his accumulated vacation pay when he was separated from his job. Even though he argues he should have received his vacation pay every year, the fact is that he got it when he asked for it.

[27] An employer can agree to defer vacation pay in very specific cases or if a collective agreement says that it can. In this case, the employer didn't object to deferring, and the Appellant didn't ask for vacation time. He also didn't ask for his vacation pay to be paid or deferred, and the employer paid him his vacation pay when he was separated from his job.

[28] As the Commission pointed out, it is true that an amount received as vacation pay and paid on separation has to be allocated from the week of the Appellant's separation.

[29] While I understand the Appellant's disappointment, the earnings he received have to be allocated to his benefit period.

[30] However, this amount has to be allocated starting the week the Appellant was separated from his job. He was separated from his job on November 5, 2022. That

week started on October 30, 2022. The \$3,860 has to be allocated starting the week of October 30, 2022.

Conclusion

[31] The Appellant received \$3,860 in earnings. These earnings have to be allocated starting the week of October 30, 2022.

[32] The appeal is dismissed with modification.

Josée Langlois

Member, General Division – Employment Insurance Section