



Citation: *MS v Canada Employment Insurance Commission*, 2023 SST 1839

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

Decision

Appellant: M. S.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (592619) dated June 8, 2023
(issued by Service Canada)

Tribunal member: Marisa Victor
Type of hearing: In person
Hearing date: September 15, 2023
Hearing participant: Appellant
Decision date: September 25, 2023
File number: GE-23-1816

Decision

[1] The appeal is dismissed. The Appellant received earnings. The Canada Employment Insurance Commission (Commission) allocated those earnings to the right week.

Overview

[2] The Appellant got \$476 from his former employer. The Commission decided that the money is “earnings” under the law because it is vacation pay.

[3] The law 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

[4] The Commission allocated the earnings starting the week of April 23, 2023. This is the week that the Commission said that the Appellant was laid off from his employment. The Commission said that being laid off from his job is why the Appellant received the earnings.

[5] The Appellant disagrees with the Commission. The Appellant says that vacation pay shouldn't be counted as earnings because it is vacation pay and employees should not have to use vacation pay for living expenses. The Appellant does not dispute the amount of vacation pay or his weekly benefit rate.

Issues

[6] 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?

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

Analysis

Is the money that the Appellant received earnings?

[7] Yes, the \$476.00 that the Appellant received is earnings. Here are my reasons for deciding that the money is earnings.

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

[9] **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

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

[11] The Appellant's former employer paid the Appellant \$476 in vacation pay. The Commission also decided that this money was vacation pay. So, it said that the money is earnings under the law.

[12] The Appellant doesn't agree. He says that vacation pay shouldn't be considered earnings because it is money that has been earned over time. He also thinks it is unfair that the vacation pay needs to be used for living expenses. He feels he should have been entitled to the full weekly benefit amount without his vacation pay being deducted.

[13] The Appellant has to prove that the money is **not** earnings. The Appellant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that the money isn't earnings.

[14] The Appellant's earnings are vacation pay. The Appellant's employer gave the Appellant those earnings because the Appellant was laid off from his job. The Appellant agrees that he was paid his vacation pay because he was laid off.

² See section 35(2) of the EI Regulations.

³ See section 35(1) of the EI Regulations.

⁴ See section 35(1) of the EI Regulations.

[15] I find that there is no dispute that Appellant received \$476 in vacation pay that was paid to Appellant because he was laid off from work. As a result, that money was properly classified as earnings.

Did the Commission allocate the earnings correctly?

[16] 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

[17] The law says that the earnings you get for being laid off have to be allocated starting the week you were laid off. It doesn't matter when you actually receive those earnings. The earnings have to be allocated starting the week your lay-off starts, even if you didn't get those earnings at that time.⁶

[18] I find that the Appellant was laid off starting the week of April 23, 2023. I find this because that is what the Appellant stated in his application for benefits, and the records from the employer support this finding.

[19] The amount of money to be allocated starting that week is the total amount of the vacation pay: \$476. The Appellant's weekly benefit amount is \$526. The parties don't dispute this amount, and I accept it as fact. This means that starting the week of April 23, 2023, \$476 is allocated to that week resulting in \$50 payable to the Appellant (\$526-\$476).

[20] The Appellant testified that the amount of vacation pay was very little and that due to his personal situation, he would have preferred to use that money for something other than his living expenses. He felt it was unfair that he was being penalized by having his vacation pay count as earnings.

[21] I sympathize with the Appellant's situation, however, I am required to follow the law. In this case, it is clear that the Appellant was paid vacation pay as a result of being laid off and those earnings were properly allocated by the Commission.

⁵ See section 36 of the EI Regulations.

⁶ See section 36(9) of the EI Regulations.

Conclusion

[22] The appeal is dismissed.

[23] The Appellant received \$476 in earnings. These earnings are allocated to the week of April 23, 2023.

Marisa Victor
Member, General Division – Employment Insurance Section