



Citation: *VS v Canada Employment Insurance Commission*, 2023 SST 1897

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

## Decision

**Appellant:** V. S.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (598127) dated August 1, 2023 (issued by Service Canada)

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**Tribunal member:** Gary Conrad

**Type of hearing:** Teleconference

**Hearing date:** November 9, 2023

**Hearing participant:** Appellant

**Decision date:** November 13, 2023

**File number:** GE-23-2583

## Decision

[1] The appeal is dismissed.

[2] The Appellant's pension payments are earnings. The Canada Employment Insurance Commission (Commission) allocated (in other words, assigned) those earnings to the right weeks.

## Overview

[3] The Appellant started receiving a pension from her former employer on January 1, 2021. She was also in receipt of Employment Insurance (EI) benefits at this time.

[4] In 2022 the Commission became aware the Appellant had started receiving her pension back in January 2021.

[5] The Commission decided that the Appellant's pension payments are "earnings" under the law because they arise from her employment. The law says that all earnings have to be allocated to certain weeks. The Commission allocated the earnings starting the week of January 1, 2021, and proceeding onward from there.

[6] This allocation resulted in an overpayment because the Commission says the Appellant's pension payments should have been deducted from the EI benefit payments she received back in 2021.

[7] The Appellant says she should not have to pay back anything as this entire issue is the Commission's fault.

[8] She says that prior to claiming her pension she called the Commission multiple times and was told every single time that she did not have to report her pension money to the Commission.

[9] The Appellant says if she had been given the correct information, that she did have to report her pension money, then she would have budgeted accordingly for the reduced weekly rate of EI that would come from having her pension money deducted from her benefits.

[10] However, she says that since she was given incorrect information, she is now facing a large lump sum payment, that she is being charged interest on, and she has no chance of repaying it.

[11] The Appellant says the Commission should just own up to the fact they made a mistake and not punish her by trying to retroactively correct their mistake.

## Issues

[12] 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?

[13] Yes, the \$701.03 per month that the Appellant started receiving January 2021 as a pension is earnings. Here are my reasons for deciding that the money is earnings.

[14] The law says that earnings are the entire income the Appellant gets from any employment.<sup>1</sup> The law defines both “income” and “employment.”

[15] **Income** can be anything the Appellant got or will get from an employer or any other person. It doesn't have to be money, but it often is.<sup>2</sup>

[16] **Employment** is any work the Appellant did or will do under any kind of service or work agreement.<sup>3</sup>

[17] The money the Appellant receives has two parts. A monthly lifetime pension amount of \$455.67 and a monthly bridge benefit amount of \$245.36. The bridge benefit

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<sup>1</sup> See section 35(2) of the EI Regulations.

<sup>2</sup> See section 35(1) of the EI Regulations.

<sup>3</sup> See section 35(1) of the EI Regulations.

will end when the Appellant turns 65. These two amounts are combined into one monthly payment of \$701.03.<sup>4</sup>

[18] The Commission says that the Appellant's pension is earnings because it arises out of her employment.<sup>5</sup>

[19] The Appellant says that she learned she could be eligible for a pension in November 2020, but did not apply for it until March 2021 because she wanted to do her research before applying.

[20] The Appellant says when she applied for her pension, she could have gotten it backdated to November 2020, which would have meant it would not be considered earnings, but instead she chose to start it in January 2021 to avoid any tax issues.

[21] I find the Appellant's pension payment of \$701.03 per month is earnings. I find it is earnings because it is income directly arising from her employment. If she had not worked for her employer, she would not have gotten the pension payment. The law also says that pension payments are earnings.<sup>6</sup>

[22] While there is an exemption in the law that allows for pension payments to not be considered earnings, I find that the Appellant does not meet the conditions for the exemption.

[23] In order for the Appellant's pension to not be considered earnings, she would have had to accumulate enough hours of work to start her EI claim after the pension became payable and have been paid the pension during the period she was accumulating these hours of work.<sup>7</sup>

[24] I find, that as the Appellant's benefit period started on November 29, 2020, and her pension payments started on January 1, 2021, she did not earn the hours of work to

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<sup>4</sup> GD03-18

<sup>5</sup> GD04-2

<sup>6</sup> Section 35(2)(e) of the EI Regulations

<sup>7</sup> Section 35(7)(e) of the EI Regulations

start her EI claim after her pension became payable. This means her pension payments count as earnings for her claim that started November 29, 2020.

### **Did the Commission allocate the earnings correctly?**

[25] The law says that earnings have to be allocated to certain weeks. What weeks earnings are allocated to depends on why the Appellant received the earnings.<sup>8</sup>

[26] The Commission says they took the Appellant's monthly pension amount of \$701.03 and multiplied it by 12 months to get a total amount of pension payments per year of \$8,412.36. They took that amount and divided it by 52 weeks to get the weekly amount of \$161.78 which they rounded up to \$162. They then allocated this amount starting the week of January 1, 2021.

[27] The Appellant argues that her pension should not be allocated at all as she was told multiple times when she called EI that she did not need to report her pension payments.

[28] The Appellant says the Commission just needs to accept their mistake and stop trying to get her to pay back money to cover their mistake.

[29] I find that the Commission correctly allocated the Appellant's pension payments.

[30] The Appellant's earnings are pension payments. The law says that pension payments are allocated to the period for which they are paid or payable.<sup>9</sup> Earnings are also allocated on a weekly basis.<sup>10</sup>

[31] I find the Commission correctly took the monthly payments and calculated a weekly amount, as earnings are allocated on a weekly basis, and correctly allocated these amounts to the periods they were paid, which is what the law says must be done.

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<sup>8</sup> See section 36 of the EI Regulations.

<sup>9</sup> Section 36(14) of the EI Regulations

<sup>10</sup> Section 36(1) of the EI Regulations

## Final Points

[32] I accept the Appellant's testimony that what she took away from her conversations with the Commission was that she did not need to report her pension payments on her claimant reports.

[33] Unfortunately, what she may have been told, or may have understood, does not change the law, or prevent the law from being applied. The law says that pension payments are earnings unless the Appellant can meet the exemption, and she cannot meet the exemption for her November 29, 2020, claim.

[34] I have absolutely no doubts the Appellant is suffering financial hardship. If I could help her in some way, I would. Unfortunately, there is nothing I can do, as the Appellant has earnings, (her pension payments) and the law says earnings **must** be allocated.<sup>11</sup> I am not able to ignore the law, or to change it for the Appellant, despite how much sympathy I have for her.

## Conclusion

[35] The appeal is dismissed.

[36] The Appellant's pension payments are earnings. The Commission correctly allocated these earnings starting in the week of January 1, 2021.

[37] Despite what the Appellant may have been told, or what she understood, it cannot change the law, so her pension payments must be allocated.

Gary Conrad

Member, General Division – Employment Insurance Section

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<sup>11</sup> Section 36(1) of the EI Regulations. It says earnings "shall" be allocated. This means it has to be done. If a law says "shall" or "must", that means that action has to happen. It is only if a law says "may" that there is a choice to do or not do something.