



Citation: *CY v Canada Employment Insurance Commission*, 2024 SST 288

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

# **Decision**

**Appellant:** C. Y.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (625090) dated November 15, 2023 (issued by Service Canada)

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**Tribunal member:** Gerry McCarthy

**Type of hearing:** Teleconference

**Hearing date:** February 13, 2024

**Hearing participant:** Appellant

**Decision date:** February 13, 2024

**File number:** GE-24-76

## Decision

[1] The appeal is dismissed. The Appellant received earnings from “X.” The Canada Employment Insurance Commission (Commission) allocated (in other words, assigned) those earnings to the right weeks.

## Overview

[2] The Appellant received wages from “X.” The Commission decided the monies were “earnings” under the law, because the monies were provided to compensate the Appellant for hours worked.

[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.<sup>1</sup>

[4] The Commission allocated the earnings starting the week of April 26, 2020.

[5] The Appellant says he didn’t dispute his wages were earnings and allocated correctly. Instead, the Appellant says he was looking for his overpayment to be reduced by 50 percent for sympathetic reasons.

## 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?

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<sup>1</sup> See section 36 of the *Employment Insurance Regulations* (EI Regulations).

## Analysis

### Is the money that the Appellant received earnings?

[7] Yes, the wages the Appellant received from “X” were 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.<sup>2</sup> 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.<sup>3</sup>

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

[11] The Appellant’s employer (“X”) provided the Appellant wages as documented in the Appeal Record (GD3-36 and GD3-38). The Commission concluded the wages were earnings under the law.

[12] The Appellant doesn’t dispute his wages from “X” were earnings.

[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] I find the wages the Appellant received from “X” were earnings. I make this finding, because the monies were paid to the Appellant to compensate him for hours worked. As mentioned, the Appellant doesn’t dispute that his wages were earnings.

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

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

<sup>4</sup> See section 35(1) of the EI Regulations.

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

[15] 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.<sup>5</sup>

[16] The Appellant's earnings from "X" were paid to compensate him for hours worked.

[17] The law says that the earnings you receive for hours worked have to be to the weeks worked.<sup>6</sup>

[18] I find the Commission correctly allocated the Appellant's earnings. I make this finding, because the Appellant's employer documented his earnings starting the week of April 26, 2020, and ending the week starting April 18, 2021 (GD3-36 and GD3-38). As mentioned, the Appellant doesn't dispute that the Commission allocated his earnings correctly.

### **The Appellant's request for a reduction in his overpayment.**

[19] The Appellant agreed that his overpayment amount was \$10,453.00 as documented in the Appeal Record by the Commission (GD3-174 to GD3-177). I recognize the Appellant specifically requested that his overpayment be reduced by 50 percent for compassionate or sympathetic reasons. However, I wish to emphasize that I have **no authority** to reduce or write-off the Appellant's overpayment.<sup>7</sup>

[20] The Commission can decide to write-off an overpayment in certain situations—for example, if paying it back would cause the Appellant undue hardship. Nevertheless, the Appellant would have to approach the Commission directly about this matter.

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<sup>5</sup> See section 36 of the EI Regulations.

<sup>6</sup> See section 36(4) of the EI Regulations.

<sup>7</sup> *Villeneuve v Canada (Attorney General)*, 2005 FCA 440; *Mosher v Canada (Attorney General)*, 2002 FCA 355; and *Filiatrault v Canada (Attorney General of Canada)*, A-874-97).

[21] Finally, I recognize the Appellant has a large overpayment. Nevertheless, I must apply the law to the evidence. In other words, I cannot ignore or re-fashion the law even for compassionate reasons.<sup>8</sup>

## **Conclusion**

[22] The appeal is dismissed.

[23] The Appellant received earnings from “X” and the earnings were allocated correctly by the Commission to the week starting April 26, 2020.

*Gerry McCarthy*

Member, General Division – Employment Insurance Section

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<sup>8</sup> *Knee v Canada (Attorney General)*, 2011 FCA 301.