



Citation: *MD v Canada Employment Insurance Commission*, 2023 SST 2003

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

# **Decision**

**Appellant:** M. D.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (590393) dated May 17, 2023 (issued by Service Canada)

---

**Tribunal member:** Lilian Klein

**Type of hearing:** Teleconference

**Hearing date:** September 1, 2023

**Hearing participants:** Appellant

**Decision date:** September 28, 2023

**File number:** GE-23-1759

## **Decision**

[1] The law requires me to dismiss the appeal. This decision explains why.

[2] The Appellant hasn't shown that the earnings her employer reported for her in 2018 are incorrect. So, the Canada Employment Insurance Commission (Commission) must allocate her unreported earnings to the weeks of her claim for Employment Insurance (EI) benefits.

[3] The allocation means that the Appellant must repay an overpayment of benefits.

## **Overview**

[4] The Appellant started a claim for EI benefits on June 24, 2018. She reported her earnings to the Commission, and it paid her benefits based on those reports.

[5] The Commission later received information from the Appellant's employer about her earnings that was different from what she'd reported. The Commission says this affected the benefits she was paid from September 2, 2018, to December 1, 2018.

[6] If the Commission finds that you reported your earnings incorrectly, it can go back within a certain period to recalculate your earnings and allocate the extra amounts. This can reduce your benefits, resulting in an overpayment of benefits.

[7] The Appellant says her figures are more accurate than those her employer reported to the Commission. She says she shouldn't have to repay any overpayment.

[8] The Commission originally imposed a penalty and a violation for knowingly providing false or misleading information. But, on reconsideration, it removed both sanctions. So, the only questions before me relate to the Appellant's earnings and their allocation.

## **The issues I must decide**

[9] Was the Appellant paid more than she reported during 2018?

[10] Was the Commission within the deadline to recalculate the Appellant's claim?

[11] Did the Commission have to allocate the extra earnings against her EI benefits?

## Post-heading documents

[12] I offered the Appellant the opportunity to obtain documents from her employer to clarify her earnings, but she declined my offer and submitted nothing further.

[13] I asked the Commission for more details about its calculations. It provided this information, which I accepted as relevant to the appeal.

## Analysis

### Did the Appellant receive more earnings than she reported?

[14] Yes. The evidence set out below shows that the Appellant had more earnings from her employer than she reported in ten of the weeks between September 2, 2018, and December 1, 2018. This extra money is part of her total earnings from this period.

[15] The Appellant's employer gave Commission information on her earnings that differed from what she'd reported. She says her pay slips show the employer is wrong.

[16] The Commission set out the information from the employer as follows:

<b>Week beginning:</b>	<b>Earnings:</b>	<b>Instead of (as declared):</b>
September 2, 2018	\$240.00	\$222.00
September 9, 2018	\$481.00	\$444.00
September 16, 2018	\$481.00	\$444.00
September 23, 2018	\$240.00	\$222.00
October 7, 2018	\$721.00	\$666.00
October 21, 2018	\$721.00	\$666.00
October 28, 2018	\$961.00	\$888.00
November 4, 2018	\$961.00	\$777.00
November 18, 2018	\$961.00	\$888.00
November 25, 2018	\$1,202.00	\$888.00

[17] The Commission listed the earnings reported by the employer week by week. But the payslips the Appellant submitted are marked by deposit date only, not by the weeks worked.<sup>1</sup> She reports that her employer paid her two weeks in arrears for two-week periods at a time, but these periods aren't described on the payslips. The payments don't fully match the weekly amounts documented in the employer's payroll records.

[18] So, a direct week-by-week comparison between what the employer reported and what the Appellant argues isn't possible using the information she's provided. As noted above, I offered her the opportunity to contact her employer for help with matching her weekly earnings to the payment deposits on her payslips, but she declined this offer.

[19] The Appellant's the one who must prove that the information the employer gave the Commission is wrong. She must show it's more likely than not that she didn't receive the extra money. And if she did receive it, she must show that it wasn't earnings.

[20] But the Appellant hasn't proved that her employer made mistakes in how it reported her earnings from September 2, 2018, to December 1, 2018. The payslips she's provided don't support her argument that her employer's payroll records are wrong. The total from her payslips isn't less than the earnings from the payroll records.

[21] As well, the Appellant hasn't proved that the extra money was anything other than earnings from employment. So, according to the law, **this money is earnings**.

[22] That's because the law says earnings is the entire income that you get from any **employment**.<sup>2</sup> The law defines both terms.

[23] **Employment** is any work that you did or will do under any kind of service or work agreement.<sup>3</sup> **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>4</sup> So, the money that your employer pays you for the work you do is earnings.<sup>5</sup>

---

<sup>1</sup> See the Appellant's submissions in the GD02B file.

<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.

<sup>5</sup> See *Blais v Canada (Attorney General)*, 2011 FCA 320.

[24] This means that all the money the employer reported counts as earnings.

### **Did the Commission act within the deadline to reconsider and recalculate the Appellant's claim?**

[25] Yes. The Commission acted within this deadline.

[26] The law says all earnings must be allocated. If unreported earnings are later discovered, then the Commission can go back and retroactively recalculate the claim.

[27] **There's a deadline for the Commission to reconsider and recalculate a claim.** The usual deadline is 36 months. But where the initial calculation was based on false or misleading information, the deadline is extended to **72 months**.<sup>6</sup>

[28] To reconsider a claim within the 72 months, the Commission doesn't have to prove that the Appellant **intended** to defraud the government. It only has to show that the information she provided was false or misleading.

[29] The employer's payroll information proves that the Commission originally calculated the Appellant's claim based on false or misleading information. So, the Commission was allowed 72 months to reconsider and recalculate her claim. It did this within those 72 months.

[30] I accept that the false or misleading information came from honest reporting errors. But those errors don't mean that the Appellant's additional earnings are exempt from allocation.

### **Did the Commission act correctly when it allocated the Appellant's extra earnings?**

[31] Yes. The Commission has to all allocate all earnings.

---

<sup>6</sup> If the Commission can prove that an Appellant gave false or misleading information **knowingly**, it may impose a penalty and a violation. That's what it first did in the Appellant's case, but it's since removed both sanctions.

[32] The Appellant's extra earnings were in payment for work she did during ten specified weeks between September 2, 2018, and December 1, 2018. She doesn't dispute that she worked for her employer during this period.

[33] The law says earnings are allocated to the weeks when you earn them.

[34] So, the Commission allocated the Appellant's earnings starting with the week beginning September 2, 2018, since this was the first week when she had additional earnings.<sup>7</sup> Subsequent unreported earnings were allocated to the weeks when she earned them. The allocation led to an overpayment.

[35] Only the Commission has the power to calculate the overpayment. So, I won't be making any findings on the amount of the overpayment. The Commission has provided this information.<sup>8</sup>

[36] The Appellant says this have been a difficult and frustrating experience for her and I sympathize with her circumstances. But I don't have the power to change the law that says all earnings must be allocated.<sup>9</sup> I also don't have the power to ignore the law that says you must repay any benefits you were overpaid.<sup>10</sup>

## Conclusion

[37] The Appellant received more earnings than she reported in 2018. Under the law, the Commission must allocate her extra earnings to the corresponding weeks of her EI claim. It did this within the 72-month period that the law allows. The allocation means that the Appellant was overpaid some of her benefits and must now repay them.

[38] This explains why I must dismiss her appeal.

Lilian Klein

Member, General Division – Employment Insurance Section

---

<sup>7</sup> See the Commission's allocation breakdown in the GD12 file.

<sup>8</sup> See the Commission's overpayment breakdown in the GD12 file.

<sup>9</sup> See *Canada (Attorney General) v Knee*, 2011 FCA 301.

<sup>10</sup> See sections 43 and 44 of the EI Act.