



Citation: *EC v Canada Employment Insurance Commission*, 2024 SST 413

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

Decision

Appellant: E. C.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (584257) dated March 30, 2023 (issued by Service Canada)

Tribunal member: Gary Conrad
Type of hearing: Teleconference
Hearing date: March 18, 2024
Hearing participants: Appellant
Decision date: March 19, 2024
File number: GE-24-602

Decision

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

[2] I also cannot erase or reduce the Appellant's overpayment as he would like, but I have provided more information for him to help him understand his options related to the overpayment.

Overview

[3] The Commission became aware that the Appellant was working during a period of time he was getting EI benefits and had not reported his work or earnings to them.

[4] After an investigation, they determined the Appellant had been working from February to September 2019, had earnings from this work, and had not reported it to them. The Commission allocated, in other words assigned, the Appellant's earnings to the weeks he did the work he was paid for. This allocation resulted in a massive overpayment for the Appellant as the Commission said he had to pay back benefits he received during the weeks he was working.

[5] The Appellant is asking that his overpayment be reviewed, with an eye to it being eliminated, or at least reduced, as he says repaying the overpayment is extremely hard at this time.

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?

Analysis

Is the money that the Appellant received earnings?

[7] Yes, the money 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 the Appellant got from any employment.¹ The law defines both “income” and “employment.”

[9] **Income** can be anything that the Appellant got or will get from an employer or any other person. It doesn’t have to be money, but it often is.²

[10] **Employment** is any work that the Appellant did or will do under any kind of service or work agreement.³

[11] The Appellant’s employer told the Commission the Appellant was paid the following amount as wages:

Week Beginning:	Wages:
February 24, 2019	\$701.00
March 3, 2019	\$1,288.00
March 10, 2019	\$1,077.00
March 17, 2019	\$1,033.00
March 24, 2019	\$1,251.00
March 31, 2019	\$977.00
April 7, 2019	\$986.00
April 14, 2019	\$1,754.00
April 21, 2019	\$1,326.00
April 28, 2019	\$994.00
May 5, 2019	\$1,462.00
May 12, 2019	\$526.00
May 19, 2019	\$1,437.00
May 26, 2019	\$2,079.00
June 2, 2019	\$1,503.00
June 9, 2019	\$1,359.00
June 16, 2019	\$1,199.00
June 23, 2019	\$1,560.00

¹ See section 35(2) of the EI Regulations.

² See section 35(1) of the EI Regulations.

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

June 30, 2019	\$1,425.00
July 7, 2019	\$1,146.00
July 14, 2019	\$809.00
July 21, 2019	\$1,642.00
July 28, 2019	\$1,068.00
August 4, 2019	\$1,725.00
August 11, 2019	\$1,692.00
August 18, 2019	\$1,051.00
August 25, 2019	\$1,840.00
September 1, 2019	\$1,117.00
September 8, 2019	\$1,582.00

[12] The Commission says the Appellant received money from his employer in the form of wages to compensate him for the work he did, which makes the money earnings.

[13] The Appellant says that he cannot remember if he worked for his employer during these exact periods, and if he did, what he would have been paid. He says that due to the severe medical issues he has faced (triple bypass) he cannot remember much at all from those times.

[14] He says that he did work for his employer, and is still working for his employer to this day, so it is possible he was working during that time. He also says that he doubts his employer would lie about him working and his earnings.

[15] I find the Appellant was working for his employer for the period of February 24, to September 14, 2019. I find as such as the Appellant says he was working for his employer around that time, and I also agree with the Appellant that his employer would not lie about such things.

[16] I find the Appellant was paid the amounts his employer reported above. I find as such because I see nothing to make me doubt the information from the employer and I agree with the Appellant that his employer would not lie about how much he was paid if he was working for them.

[17] I find the amounts reported above are earnings, as they are income arising directly from the Appellant's employment since they are wages paid to compensate him for work he did for the employer.

Did the Commission allocate the earnings correctly?

[18] 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.⁴

[19] The Commission says that since the Appellant's earnings are wages, they need to be allocated to the weeks he did the work he was paid for.

[20] I find I agree with the Commission. According to the law, earnings paid as wages need to be allocated to the week the Appellant did the work he was paid for.⁵ In other words, while those wages might have arrived in the Appellant's bank account weeks after he did that work, since the wages were to compensate him for the work he did in previous weeks, it is to those weeks where the wages must be assigned.

The Overpayment

[21] The allocation of the Appellant's wages has resulted in a massive overpayment. This is the real issue the Appellant cares about. He wants me to reduce it in some way, or to eliminate it entirely, because he says that as the sole wage earner in his household (due to his wife's severe medical issues she has not been working for years) he is not able to repay it.

[22] He says the government is threatening to start garnishing his wages and if that happens, he will be out on the street. He says all he wants to do is provide for his family, but this debt is preventing that.

⁴ See section 36 of the EI Regulations.

⁵ Section 36(4) of the EI Regulations.

[23] The Appellant says he has never owed anything to the government before, and the only reason he does now was due to the memory problems caused by his triple bypass.

[24] I want to start by saying that if I could erase this debt, or reduce it, I would immediately do so, but my hands are tied. The Federal Court of Appeal has said I cannot reduce or eliminate the Appellant's debt.⁶

[25] I understand the Appellant has been trying to work with the Commission to reduce his debt, or eliminate it, but they have not been helpful. He has asked for the forms to fill out in order to request a reduction or elimination due to the hardship he is facing, but the forms have never been sent.

[26] So, while I cannot tell the Appellant what to do, or provide him with advice, I can provide him with information so that he can understand all his options, and how to avail himself of those options, so that he can, if he chooses to, exercise all his rights under the law. This is a fundamental part of natural justice.

[27] Where all this following information came from is in the footnotes. Please refer to them to see the official sources of this information.

[28] So, strictly for the Appellant's information, what he chooses to do with it is up to him, it is the Canada Revenue Agency (CRA) that handles the collection of EI debt.⁷ Since he says he is having problems with the Commission, perhaps he could talk to the CRA, if he wants.

[29] The Commission says that the CRA can be reached at 1-866-864-5823.⁸

[30] The CRA says that anyone can request relief of payments.

⁶ *Canada (Attorney General) v Villeneuve*, 2005 FCA 440 at para 16

⁷ <https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/overpayments/repayments.html>

⁸ <https://www.canada.ca/en/employment-social-development/programs/ei/ei-list/overpayments/repayments.html> under the heading Repayment Arrangement

[31] According to the CRA some circumstances that may qualify for such relief are Financial Hardship and Extraordinary Circumstances like illness.⁹

[32] The CRA also explains how to apply for relief.

[33] In the case of financial hardship, they list a form to complete and send in and all the necessary information that they would like to see, such as bills, mortgage payments, any loans, bank and credit card information, and of course income statements, showing how much money is being made.¹⁰

[34] For factors such as illness, the CRA suggests sending in things such as doctors' notes, hospital information, and any documents that explain the impact on a person's ability to work and meet payment obligations.¹¹

[35] Again, I am not saying the Appellant should, or must, do any of these things. Neither am I saying that if he contacts the CRA he will get the relief he is seeking. I am only providing this information to the Appellant so that he can have all the options in front of him to allow him to make an informed decision on what he wants to do, since he says the Commission was not helpful in providing this information to him.

Conclusion

[36] The appeal is dismissed.

⁹ <https://www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/complaints-disputes/cancel-waive-penalties-interest/who-can-apply.html> under the heading Situations that may qualify

¹⁰ <https://www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/complaints-disputes/cancel-waive-penalties-interest/how-to-apply.html> see under the heading Financial Hardship

¹¹ <https://www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/complaints-disputes/cancel-waive-penalties-interest/how-to-apply.html> see under the heading Extraordinary Circumstances and the sub-heading Serious Illness

[37] The Appellant received earnings from his employer in the form of wages for work he performed. The Commission correctly allocated these earnings to the weeks in which he did the work the wages were paid for.

[38] I also cannot erase or reduce his overpayment.

Gary Conrad
Member, General Division – Employment Insurance Section