



Citation: *RA v Canada Employment Insurance Commission*, 2024 SST 175

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

Decision

Appellant: R. A.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (620204) dated October 12, 2023 (issued by Service Canada)

Tribunal member: Gerry McCarthy
Type of hearing: Teleconference
Hearing date: January 9, 2024
Hearing participant: Appellant
Decision date: January 11, 2024
File number: GE-23-2946

Decision

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

Overview

[2] The Appellant applied for regular Employment Insurance (EI) benefits on December 29, 2020, and established a claim on December 27, 2020.

[3] The Appellant's former employer ("X") issued a Record of Employment that showed the Appellant's first day worked was August 3, 2021, and her last day paid was January 17, 2022 (GD3-15).

[4] The employer ("X") reported the Appellant earned \$1,020.00 for the week commencing August 1, 2021, and \$1,275.00 for the week commencing August 8, 2021 (GD3-19 to GD3-20). The Appellant declared \$0 earnings for both weeks on her claimant report (GD3-39).

[5] The Canada Employment Insurance Commission (Commission) decided that the money paid to the Appellant by the employer was "earnings" under the law, because the payment was made to compensate the Appellant for hours worked for the employer.

[6] 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

[7] The Commission allocated the Appellant's earnings of \$1,020.00 to the week of August 1, 2021, and \$1,275.00 to the week of August 8, 2021. The Commission allocated these earnings to those weeks because this was the period in which the services were performed.

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

[8] The Appellant disagrees with the Commission. The Appellant says she was surprised when she was paid by the employer on August 26, 2021. She says she started an orientation program for the employer on August 3, 2021, but didn't perform any services during the period her pay was allocated by the Commission.

Matters I have to consider first

Post-Hearing documents

[9] The Appellant submitted documents that were received by the Tribunal post-hearing. I accepted these documents, and they were listed in the Appeal Record as GD4-1 to GD4-4.

Issues

[10] 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?

[11] Yes, the wages the Appellant received from the employer of \$1,020.00 (for the week of August 1, 2021) and \$1,275.00 (for the week of August 8, 2021) were earnings. Here are my reasons for deciding that the money is earnings.

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

[13] **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

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

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

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

[15] The Appellant's former employer ("X") paid the Appellant \$1,020.00 for the week of August 1, 2021, and \$1,275.00 for the week of August 8, 2021. The Commission decided these wages were earnings under the law.

[16] The Appellant says she never performed any services for the employer for the week of August 1, 2021, and for the week of August 8, 2021. The Appellant says she was doing orientation for the employer starting August 3, 2021. She also says she was "surprised" when monies from the employer were deposited to her bank account on August 26, 2021.

[17] 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 she has to show that it was more likely than not that the money wasn't earnings.

[18] I find the monies the Appellant received from her former employer were earnings, because they were paid to compensate the Appellant for hours worked. I realize the Appellant testified she didn't perform any services for these monies and was doing orientation starting August 3, 2021. However, the Appellant confirmed her orientation consisted of attending seminars and meetings. In short, this was work performed by the Appellant and she was compensated for that work by "X."

[19] I further realize the Appellant didn't want her orientation for the employer to be described as training. Nevertheless, most employers compensate employees for attending orientation and training because this was considered work.

Did the Commission allocate the earnings correctly?

[20] 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

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

⁵ See section 36 of the EI Regulations.

[21] The Appellant's earnings are wages she received from "X." The Appellant's employer gave her those earnings because the Appellant was being compensated for attending work.

[22] The law says that the earnings you get for being compensated for work have to be allocated starting the week in which the services were performed. It doesn't matter when you actually receive those earnings. The earnings have to be allocated starting the week you performed the services even if you didn't get those earnings at that time.⁶

[23] I find the Commission correctly allocated the Appellant's earnings to the weeks in which the services were performed. Specifically, the Commission allocated the earnings of \$1,020.00 to the week of August 1, 2021, and \$1,275.00 to the week of August 8, 2021. I recognize the Appellant testified that she wasn't paid by the employer until August 26, 2021. The Appellant also explained she couldn't report her earnings prior to August 26, 2021, because she didn't know exactly what the amount would be from the employer. However, I agree with the Commission that when the Appellant completed her claimant report she was asked the following question: "Did you work or receive any earnings during the period of this report? This includes work for which **you will be paid later**, unpaid work or self-employment." The Appellant answered "No" to the question on her claimant report (GD3-39).

[24] I further recognize the Appellant argued that she never performed any services for the employer for the weeks beginning August 1, 2021, and August 8, 2021. However, the Appellant confirmed that she started orientation for the employer on **August 3, 2021**. As mentioned, the Appellant was considered working for the employer during her orientation and was compensated with wages for this work.

Additional Testimony from the Appellant

[25] The Appellant further testified that it was "not fair" that the monies she received from her employer on August 26, 2021, were allocated as earnings. However, I must

⁶ See section 36(4) of the EI Regulations.

apply the law to the evidence. In other words, I cannot ignore or re-write the law even for compassionate reasons.⁷

[26] I further realize the Appellant has an overpayment. Nevertheless, I have no authority to write-off an overpayment.⁸ However, the Appellant can contact the Canada Revenue Agency (CRA) to discuss a fair re-payment arrangement.

[27] Finally, I recognize the Appellant submitted post-hearing documents (GD4). I have reviewed those documents. The Appellant states that her employment status at “X” was “contingent” on providing a medical proof of chest X-ray tuberculosis clearance and Covid-19 second dose complete vaccination. Nevertheless, the Appellant was still an employee of “X” at the time and started her employment on August 3, 2021, as documented on her Record of Employment (GD3-15).

Conclusion

[28] The Appellant received earnings of \$1,020.00 for the week starting August 1, 2021, and \$1,275.00 for the week of August 8, 2021. The Commission has allocated those earnings correctly.

[29] The appeal is dismissed.

Gerry McCarthy

Member, General Division – Employment Insurance Section

⁷ *Knee v Canada (Attorney General)*, 2011 FCA 301.

⁸ *Villeneuve v Canada (Attorney General)*, 2005 FCA 440; *Mosher v Canada (Attorney General)*, 2002 FCA 355; and *Filiatrault v Canada (Attorney General)*, A-874-97.