



Citation: *VD v Canada Employment Insurance Commission*, 2023 SST 2055

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

## Decision

<b>Appellant:</b>	V. D.
<b>Respondent:</b>	Canada Employment Insurance Commission
<hr/>	
<b>Decision under appeal:</b>	Canada Employment Insurance Commission reconsideration decision (595836) dated July 6, 2023 (issued by Service Canada)
<hr/>	
<b>Tribunal member:</b>	Audrey Mitchell
<b>Type of hearing:</b>	In person
<b>Hearing date:</b>	October 4, 2023
<b>Hearing participant:</b>	Appellant
<b>Decision date:</b>	October 5, 2023
<b>File number:</b>	GE-23-2243

## Decision

[1] The appeal is dismissed with modification. The Appellant received earnings. But the Canada Employment Insurance Commission (Commission) should have allocated (in other words, assigned) those earnings to the weeks starting January 10, 2021. The Appellant has to repay the overpayment.

## Overview

[2] The Appellant applied for Employment Insurance (EI) benefits. He started to receive pension from the Canada Pension Plan (CPP) in January 2021. The Appellant let the Commission know about his CPP pension, but he didn't declare it on his bi-weekly claims. The Commission decided that the CPP pension the Appellant received is earnings that had to be allocated. This resulted in an overpayment.

[3] The Appellant says he went to Service Canada many times. He says each time he was told he only had to declare his CPP pension once and that it would not affect his EI benefits. He wants the Commission write off at least half of the overpayment.

## Matter I have to consider first

### The Claimant didn't send the Commission's reconsideration decision

[4] The Appellant has to send the Tribunal a copy of the Commission's decision with his notice of appeal.<sup>1</sup> He didn't do so. I have a copy of the Commission's file that has this decision. So, I don't need the Appellant to send it.<sup>2</sup>

## Issues

[5] I have to decide the following three issues:

- a) Is the money that the Appellant received earnings?

---

<sup>1</sup> Paragraph 24(1)(b) of the *Social Security Regulations*.

<sup>2</sup> Paragraph 3(1)(b) of the *Social Security Regulations*.

- b) If the money is earnings, did the Commission allocate the earnings correctly?
- c) Does the Appellant have to repay the overpayment?

## Analysis

### Allocation of earnings

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

[6] Yes, the CPP pension benefits that the Appellant received are earnings. Here are my reasons for deciding that the money is earnings.

[7] The law says that earnings are the entire income that you get from any employment.<sup>3</sup> It also says that money that you get on a periodic basis on account of a pension is earnings.<sup>4</sup>

[8] The law defines “pension”. It includes a retirement pension under the Canada Pension Plan.<sup>5</sup>

[9] The Appellant has to prove that the money is **not** earnings. He 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.

[10] The Appellant applied for EI benefits on January 13, 2021. He said he would not be receiving a pension in the next 52 weeks. He later told Service Canada that he was receiving a CPP pension from January 2021, after he reached the age of 65.

[11] The Commission told the Appellant that the CPP pension is earnings. It said it would allocate the pension at a rate of \$256 per week starting the week of January 3, 2021.

[12] The Appellant doesn’t dispute that the CPP pension benefits he got are earnings. But he said he went to Service Canada many times to ask about his CPP benefits. He

---

<sup>3</sup> See section 35(2) of the *Employment Insurance Regulations* (EI Regulations).

<sup>4</sup> See section 35(2)(e) of the EI Regulations.

<sup>5</sup> See section 35(1) of the EI Regulations.

said each time he was told that he only had to claim the first payment, and that his CPP benefits had nothing to do with EI.

[13] I find that the Appellant's CPP pension benefits are earnings. I do so because the law says periodic payments from a pension are earnings, and because the Appellant doesn't dispute it. I see no evidence that contradicts this.

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

[14] 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>6</sup>

[15] The Appellant's earnings are CPP pension benefits. The law says that earnings paid on a periodic basis due to a pension are allocated to the period where they are paid.<sup>7</sup>

[16] The Commission says it allocated the Appellant's CPP pension at \$256 per week from January 3, 2021. The Appellant testified that he has nothing to say about this because he doesn't understand it.

[17] I don't agree that the Appellant's pension benefits should be allocated from the week of January 3, 2021. This is because the Appellant's benefit period starts on January 10, 2021, based on the date he applied for benefits.

[18] The Appellant confirmed that he received \$1,102.17 per month in CPP benefits from January 2021. So, in the absence of other evidence, I accept as fact that the se earnings have to be allocated at \$256 per week to the weeks where the Appellant's pension benefits were paid, starting the week of January 10, 2021.

**Does the Appellant have to repay the overpayment?**

[19] The Appellant has to repay the overpayment.

---

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

<sup>7</sup> See section 36(14) of the EI Regulations.

[20] The law says that if you get benefits you aren't entitled to, you have to return the benefits.<sup>8</sup>

[21] I asked the Appellant about the overpayment. He said someone at Service Canada suggested to him that he appeal the Commission's reconsideration decision since he was given incorrect information about declaring his CPP pension benefits. The Appellant said he was told that maybe the outcome of the appeal would be that half of the overpayment would be taken off.

[22] Because I have found that the Appellant's earnings should be allocated from the week of January 10, 2021, I can only look at whether the Commission calculated the overpayment correctly.

[23] The Commission sent the Tribunal a breakdown of the overpayment. It shows the allocation of earnings from the week of January 10, 2021, and the amount of pension earnings that had to be deducted. This resulted in an overpayment of \$6,656. I find from the breakdown that the Commission correctly calculated the overpayment amount.

[24] Despite what the Appellant says Service Canada told him, I don't have the authority concerning any write-off of the overpayment. I also don't have the authority to tell the Commission to write it off.

[25] The Appellant asked where he's going to get the money to repay the overpayment. I suggest that he ask the Commission to write off all or part of the overpayment. And if the Commission refuses to do so, he can contact the Canada Revenue Agency to make a payment arrangement that he can manage as a pensioner.

[26] While I sympathize with the Appellant's situation, I can't change the law.<sup>9</sup>

---

<sup>8</sup> See section 44 of the *Employment Insurance Act*.

<sup>9</sup> See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

## **Conclusion**

[27] The appeal is dismissed with modification.

[28] The Appellant received CPP pension earnings. The Commission should have allocated the earnings to the weeks starting January 10, 2021. The Appellant has to repay the overpayment.

Audrey Mitchell

Member, General Division – Employment Insurance Section