



Citation: *CH v Canada Employment Insurance Commission*, 2024 SST 864

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

Decision

Appellant: C. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (631911) dated December 4, 2023 (issued by Service Canada)

Tribunal member: John Noonan

Type of hearing: Teleconference

Hearing date: February 2, 2024

Hearing participants: Appellant

Decision date: February 9, 2024

File number: GE-23-3495

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant, C. H., was in receipt of Worker's Compensation Benefits to compensate for his loss of income due to a workplace injury suffered on July 23, 2021. These benefits were allocated against his July 25, 2021 renewal claim for benefits. The Appellant was upon reconsideration by the Commission, notified that his WCB benefits were considered earnings for Employment Insurance purposes and would be allocated against his claim at a rate of \$640.00 for the week of July 25, 2021, to July 31, 2021, and \$800 per week starting on August 1, 2021 (GD3-41 to GD3-42).. This decision resulted in an overpayment. The Appellant asserts that the Workers' Compensation benefits retro payment paid on June 6, 2023, should have been paid during the dates of July 27, 2021, and September 7, 2021, but was paid 2 years later.. The Tribunal must decide if the Appellant's WCB benefits including his retroactive payment are to be considered earnings as per section 35(2) & (7) of the Regulations, if so, was it to be allocated as per section 36(12) of the Employment Insurance Regulations (Regulations).

Issues

[3] Issue # 1: Was the Appellant's WCB benefits including his retroactive payment considered earnings as per the Regulations?

Issue #2: If so, were these earnings subject to allocation?

Issue #3: If so, were these earnings allocated correctly?

Analysis

[4] The relevant legislative provisions are reproduced at GD4.

Issue 1: { Was the Appellant's WCB benefits including his retroactive payment considered earnings as per the Regulations?

[5] Yes.

[6] Section 35 of the Regulations clearly defines what constitutes income, including Worker's Compensation benefits received or to be received by a claimant other than a lump sum or pension paid in full and final settlement of a claim.

[7] The Appellant here agrees that the \$4,796.26 was paid by WCB on June 6, 2023.

[8] This payment was retroactive to 2021 to cover the period of incapacity, July 21, 2021 through to July 22, 2022.

[9] However, he asserts that the monies should not be allocated to a period two years prior to his receiving them.

[10] That doesn't change the fact that this payout is considered, in its totality, to be earnings. It was not a lump sum or pension paid in full and final settlement of a claim, rather **it was a retroactive correction to the amount of benefits the Appellant should have received.** I find Appellant's WCB benefits including his retroactive payment are to be considered earnings.

Issue 2: If so, were these earnings subject to allocation?

[11] Yes.

[12] At his hearing, the Appellant testified that he was told by a Service Canada Representative that because the monies were paid two years after the time of his WCB entitlement, they were not subject to allocation and any debt would be written off. I can only conclude the representative was misinformed regarding the timelines involved in the allocation as prescribed by law.

[13] I find that, having not been subject to any of the exceptions outlined in section 35(7) of the regulations, the Appellant's WCB benefits including his retroactive payment here are to "be allocated to the weeks in respect of which the payments are paid or payable" as per section 36(12) of the Regulations regardless of when the payment was made.

Issue 3: If so, were these earnings allocated correctly?

[14] Yes.

[15] Having carefully reviewed the calculations, I find the Commission correctly calculated the amount to be allocated and the number of weeks involved.

[16] The Appellant testified that the figure of \$666 per week should be used in the allocation calculation, not the \$800 indicated by the Commission. However the retroactive payment received by the Appellant in June, 2023 was, as shown in the documentation, paid as a correction to the amount he should have been paid, \$800 per week.

[17] I further find the Commission acted in a judicial manner according to the legislative requirements when making its determinations and calculations here.

Conclusion

[18] Having given careful consideration to all the circumstances, I find the Appellant's WCB benefits including his retroactive payment were earnings as per the EI Regulations and as such was to be allocated against his claim for benefits and, in fact this allocation was done correctly by the Commission. The appeal is dismissed.

John Noonan
Member, General Division – Employment Insurance Section