



Citation: *JK v Canada Employment Insurance Commission*, 2024 SST 1629

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

## **Decision**

**Appellant:** J. K.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (675699) dated August 21, 2024  
(issued by Service Canada)

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**Tribunal member:** Nathalie Léger

**Type of hearing:** Videoconference

**Hearing date:** October 22, 2024

**Hearing participant:** The Appellant was not at the hearing

**Decision date:** October 22, 2024

**File number:** GE-24-3202

## Decision

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

## Overview

[2] The Appellant got \$464 from his former employer. The Commission decided that the money is “earnings” under the law because it is vacation pay.

[3] 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.<sup>1</sup>

[4] The Commission allocated the earnings starting the week of June 2, 2024. This is the week that the Commission said that the Appellant was laid off from his employment. The Commission said that being laid off is why the Appellant received the earnings.

[5] The Appellant disagrees with the Commission. The Appellant says that it is unfair to allocate moneys he accumulated during his employment to his employment insurance benefits claim. He argues that only earnings gained after he started receiving benefits should be allocated.<sup>2</sup>

## Matter I have to consider first

### The Appellant wasn’t at the hearing.

[6] The Appellant wasn’t at the hearing. A hearing can go ahead without the Appellant if the Appellant got the notice of hearing.<sup>3</sup> I think that the Appellant got the notice of hearing because a notice of hearing was sent to him on October 10, 2022<sup>4</sup>. A reminder call was made on October 16, 2024 and a reminder email was also sent on

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<sup>1</sup> See section 36 of the *Employment Insurance Regulations* (EI Regulations).

<sup>2</sup> See GD3-32 and GD2-5.

<sup>3</sup> Section 58 of the *Social Security Tribunal Rules of Procedure* sets out this rule.

<sup>4</sup> See GD1.

October 21, 2021. So, the hearing took place when it was scheduled, but without the Appellant.

## Issues

[7] 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?

[8] Yes, the \$464 that the Appellant received is earnings. Here are my reasons for deciding that the money is earnings.

[9] The law says that earnings are the entire income that you get from any employment.<sup>5</sup> The law defines both “income” and “employment.”

[10] **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>6</sup>

[11] **Employment** is any work that you did or will do under any kind of service or work agreement.<sup>7</sup>

[12] The Appellant’s former employer gave the Appellant \$464. The Commission decided that this money was vacation pay. So, it said that the money is earnings under the law.

[13] The Appellant doesn’t disagree that the money is vacation pay. He says that the money isn’t earnings because it was accumulated while he was working and was supposed to be used for his time off work. For him, it is a “flaw in the policy”, especially

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<sup>5</sup> See section 35(2) of the EI Regulations.

<sup>6</sup> See section 35(1) of the EI Regulations.

<sup>7</sup> See section 35(1) of the EI Regulations.

in a “situation where a job has been lost by no fault of the individual”, to treat his vacation pay as earnings to be allocated against his benefits.<sup>8</sup>

[14] 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 he has to show that it is more likely than not that the money isn’t earnings.

[15] I find that the Appellant has not shown that the money is not earnings. The Employment Insurance Regulations is clear: the entire income of an appellant arising out of his employment is considered earnings.<sup>9</sup> And all earnings paid by reason of a lay-off have to be allocated.<sup>10</sup> Because the vacation pay arose out of his employment and was paid to the appellant because of his lay-off, it is considered earnings and must be allocated.<sup>11</sup>

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

[16] 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>12</sup>

[17] The Appellant’s earnings are vacation pay. This is not contested. The Appellant’s employer gave the Appellant those earnings because the Appellant was laid off from his job.

[18] The law says that the earnings you get for being laid off from your job have to be allocated starting the week you were laid off from your job. It doesn’t matter when you actually receive those earnings. The earnings have to be allocated starting the week your lay-off starts, even if you didn’t get those earnings at that time.<sup>13</sup>

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<sup>8</sup> See GD2-5.

<sup>9</sup> See section 35(2) of the Employment Insurance Regulations.

<sup>10</sup> See section 36(9) of the Employment Insurance Regulations.

<sup>11</sup> See *Sarrazin v. Canada (Attorney General)*, 2006 FCA 313, at paragraph 7.

<sup>12</sup> See section 36 of the EI Regulations.

<sup>13</sup> See section 36(9) of the EI Regulations.

[19] I find that the Appellant was laid off on May 31, 2024. I find this because it is what appears on the record of employment.<sup>14</sup> It is also what the Appellant said in his application for benefits.<sup>15</sup>

[20] The amount of money to be allocated starting the week of June 2, 2024, is \$464. This is because \$917.42 is the Appellant's normal weekly earnings.<sup>16</sup> The parties don't dispute this amount, and I accept it as fact. Because the amount to be allocated is lower than the normal weekly earnings, it can all be allocated to that single week.<sup>17</sup>

## **Conclusion**

[21] The appeal is dismissed.

[22] The Commission correctly allocated the Appellant's vacation pay.

Nathalie Léger

Member, General Division – Employment Insurance Section

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<sup>14</sup> See GD3-16.

<sup>15</sup> See GD3-6.

<sup>16</sup> See GD3-32.

<sup>17</sup> See section 36(9) of the Employment Insurance Regulations.