



Citation: *YH v Canada Employment Insurance Commission*, 2025 SST 80

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: Y. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (690945) dated November 27,
2024 (issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: Videoconference

Hearing date: January 16, 2025

Hearing participant: Appellant

Decision date: January 23, 2025

File number: GE-24-3946

Decision

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

Overview

[2] The Appellant's former employer said it paid the Appellant \$1,559.82. 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.¹

[4] The Commission allocated the earnings starting the week of June 16, 2024, at an amount of \$815 per week. This is the week that the Commission said that the Appellant was separated from his employment. The Commission said that being separated from his job is why the Appellant received the earnings.

[5] The Appellant disagrees with the Commission. He says he didn't get any money from his employer. So, he argues the Commission's decision is wrong.

Issues

[6] I have to decide the following two issues:

- a) Is the money that the Appellant received or should have received earnings?
- b) If the money is earnings, did the Commission allocate the earnings correctly?

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

Analysis

Is the money that the Appellant received or should have received earnings?

[7] Yes, the \$1,599.82 that the Appellant should have 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 you get from any employment.² The law defines both “income” and “employment.”

[9] **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

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

[11] The Appellant’s former employer issued two records of employment (ROEs). The first one was issued because the Appellant was sick. It notes that the Appellant’s expected return to work date is unknown.⁵

[12] The Appellant testified that he went on sick leave at the end of December. He said he was sick for maybe a week, and then he returned to work. But the Appellant explained that at the end of December 2023, his former employer lost the contract for the site where he worked. So, he transferred to the new company that took over the contract.

[13] The employer issued an amended ROE on June 19, 2024. It shows that the last day the Appellant was paid for was December 29, 2023. It lists the reason for issuing it as quit. The ROE shows that the employer paid the Appellant \$3,119.64 as vacation pay, since the Appellant no longer worked for the employer. But when the employer

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

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

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

⁵ See page GD3-17.

later spoke to the Commission, it said the amount of vacation paid was actually \$1,559.82.

[14] The Commission determined that the money the employer paid the Appellant is earnings. It said this is because the employer paid the Appellant for accrued vacation when it closed his Human Resources (HR) file on June 21, 2024.

[15] The Appellant insisted that he didn't get any vacation pay from his former employer after June 21, 2024. And he said that if he had received the money, it should be for the period February 4 to 18, 2024, when he was outside Canada on vacation.

[16] The Appellant had told the Commission that he didn't receive any money from his former employer. So, the Commission asked the employer about this. The employer said it mailed a cheque to the Appellant, since it doesn't issue final payments by direct deposit. The employer said that if the Appellant had not received the cheque, he should follow up with HR.

[17] I accept the Appellant's evidence as fact that he didn't get any money from his former employer at the time he was separated from the job. I have no reason to doubt this, especially since the Appellant provided a bank statement that only shows the deposit of a cheque for \$130. I acknowledge that the Appellant could have gotten the cheque later, but again, I have no reason to doubt his evidence that he didn't get the cheque for the vacation pay the employer paid him.

[18] Despite the above, I find that \$1,559.82 was payable to the Appellant for two weeks of vacation. I find that the vacation pay arose out of the Appellant's work for the employer, so it is earnings.

Did the Commission allocate the earnings correctly?

[19] 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.⁶

⁶ See section 36 of the EI Regulations.

[20] The Appellant's earnings are vacation pay. The Appellant's employer said it paid the Appellant those earnings when the Appellant was separated from his job. But I have to decide if the employer paid the Appellant for a vacation that he took on a specific period or if the vacation pay was payable for unused vacation credits because he was separated from his job.

[21] The law says that the earnings you get for being separated from your job have to be allocated starting the week you were separated from your job. It doesn't matter when you actually receive those earnings. The earnings have to be allocated starting the week your separation starts, even if you didn't get those earnings at that time. This includes vacation pay.⁷

[22] The law also says that if vacation pay is payable for a specific period, it is allocated to the period of the vacation at the claimant's normal weekly earnings.⁸

[23] The Appellant confirmed that his former employer had approved his request to take four weeks of vacation from January 15 to February 9, 2024. The Appellant testified that legally, he was entitled to two weeks of vacation from his former employer. He said he told the employer he needed a little more time, and the employer approved his request for the dates noted above.

[24] The Commission asked the former employer about the vacation pay. The employer acknowledged that the request for vacation may have been approved, but it said there was nothing showing that it was paid leave.

[25] As noted above, the Appellant said that the contract for the site where he worked was transferred to a new company. He sent emails to the Commission about working for the new employer. In an email the new employer sent to the Appellant, likely on December 22, 2023, the employer lays out terms of the job under its contract.⁹

⁷ See section 36(9) of the EI Regulations.

⁸ See section 36(8)(a) of the EI Regulations.

⁹ See page GD3-28.

[26] In the email, the employer also states that it won't be able to honour the Appellant's one-month vacation request made to his previous employer. The employer notes that if the Appellant stays with his previous employer, it would be obligated to honour his request.

[27] The Appellant accepted the job with the new employer. Another email confirmed that his employment started with the new employer on January 1, 2024. I accept this as fact. I also accept that the Appellant was on sick leave again as of January 4, 2024, as he testified. Because he was unable to work, he was able to go on vacation from February 4 to 18, 2024.

[28] I acknowledge that the Appellant's previous employer approved his request for a four-week vacation. But the previous employer lost its contract, and the Appellant transferred to a new employer so he could continue working at the same site.

[29] The Appellant testified that he tried to return to work with his previous employer. But he said the employer could not offer him work within the medical restrictions his doctor identified. He said the employer just let him go.

[30] The Appellant's request to his previous employer was for four weeks of vacation. But he went on vacation for two weeks. And the vacation the Appellant took doesn't align with the specific period that was approved; it overlaps by only six days. So, I find it more likely than not that the earnings the employer reported as vacation pay are payable, not for a specific period of vacation, but because the Appellant separated from his job.

[31] I find that the Appellant was separated from his job starting the week of June 16, 2024. The Appellant told the Commission that he was supposed to return to work for his former employer in June. So, I find it likely that this is the week that it was confirmed that he would not because the employer could not accommodate him.

[32] The Commission said the amount of money to be allocated starting that week is \$815. This is because it said \$815 is the Appellant's normal weekly earnings. The Appellant said his normal weekly earnings is \$840.

[33] I note that the ROE the employer issued shows that the number of hours and earnings varied in the pay periods. For those where the Appellant worked 80 hours, his weekly earnings were \$840. But there are some pay periods where he had more or less earnings than that. So, I give more weight to the Commission's calculation based on its analysis of the earnings listed on the ROE.

[34] Based on the above, I find that starting the week of June 16, 2024, \$815 is allocated to each week. And the leftover amount of \$744.82 will be allocated to the week of June 23, 2024. Since the Appellant says he didn't receive the vacation pay his former employer paid him by cheque, he may wish to follow up with the employer to get what he is owed.

Conclusion

[35] The appeal is dismissed.

[36] The Appellant is payable \$1,559.82 in earnings. These earnings are allocated starting the week of June 16, at \$815 per week. Any amount left over is allocated to the last week.

Audrey Mitchell

Member, General Division – Employment Insurance Section