



Citation: *ZL v Canada Employment Insurance Commission*, 2025 SST 214

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: Z. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (697389) dated December 10,
2024 (issued by Service Canada)

Tribunal member: Linda Bell

Type of hearing: In writing

Decision date: January 14, 2025

File number: GE-24-4023

Decision

[1] Z. L. is the Appellant. I am dismissing their appeal.

[2] The Commission reviewed the Appellant's claims properly.

[3] The start date of the Appellant's claim (benefit period) can't be delayed (postdated) by one week. This means their benefit period start date is July 28, 2024.

[4] The Commission allocated (in other words, assigned) the Appellant's earnings to their EI claims correctly. The allocation of earnings results in an overpayment of EI benefits.

[5] The Appellant is required to repay the overpayment of EI benefits. The Appellant may wish to contact the Canada Revenue Agency (CRA) if they wish to discuss repayment options.

Overview

[6] The Appellant applied for EI benefits on July 28, 2024. They listed their last day worked on that application as being June 15, 2024.

[7] The Commission set up the Appellant's claim (benefit period) starting July 28, 2024. The calculation and start date of their claim was based on the last day worked listed on their application as being June 15, 2024, and the first Record of Employment (ROE) issued by the employer listing last day paid as June 15, 2024.

[8] The employer issued the Appellant two ROEs. The first was issued on July 25, 2024, listing the first day paid as January 3, 2000, and the last day paid as June 15, 2024.¹ The second ROE was issued on September 7, 2024, listing the first day paid as June 16, 2024, and the last day paid as July 29, 2024.²

¹ See page GD3-16.

² See page GD3-18.

[9] In September 2024, the Commission conducted a review and recalculated the Appellant's claim to include the second ROE. The recalculation didn't change their benefit rate or weeks of entitlement. But the Commission determined the Appellant had earnings in the week of July 28, 2024, to be allocated during their waiting period. This resulted in a \$638.00 overpayment of EI benefits. The Commission maintained its decision upon reconsideration.

[10] The Appellant appeals to the Social Security Tribunal (Tribunal). They disagree with the \$638.00 overpayment. The Appellant says they were misled by the incomplete information on their ROE. They believe the overpayment was caused by system errors.

Matters to consider first

English as a second language

[11] Upon review of the hearing documents, it appeared that English may not have been the Appellant's first language. So, on December 24, 2024, I wrote to the Appellant to explain how the Tribunal may schedule an interpreter to attend the hearing to assist them.³ I asked the Appellant to tell the Tribunal their first language and dialect, but they didn't respond.

Method of hearing

[12] On their appeal form, the Appellant selected a hearing by videoconference and in writing. So, on December 27, 2024, I scheduled a videoconference hearing to be held on January 15, 2025.

[13] On December 30, 2024, the Appellant wrote to the Tribunal stating he won't be attending the January 15, 2025, videoconference hearing. The Appellant asked that the hearing proceed in writing as previously requested. He also asked for guidance on how to proceed with the written hearing.

³ See page GD5-1.

[14] I wrote to the Appellant on December 31, 2024, explaining that for a written hearing process, the Tribunal Member considers the written submissions and documents received on file from both parties and issues a written decision. I said that all documents and submissions received on their appeal file by January 10, 2025, will be considered for this written hearing process.⁴

[15] The Appellant states they have a PhD and have been in Canada since 1998 working as a post-doctoral researcher at a university. All the written statements received from the Appellant are written clearly in English.

[16] Based on the documents on file, it appears that the Appellant has a clear understanding of written English. So, they would have a fair opportunity to be heard if their appeal proceeded in writing. Accordingly, I granted the Appellant's request and adjourned the hearing to be conducted in writing. I will now proceed with determining the merits of the appeal.

Issues

[17] Did the Commission review the Appellant's claims judicially (properly)?

[18] When did the Appellant suffer an interruption of earnings?

[19] Can the benefit period be postdated?

[20] Did the Appellant have earnings to be allocated during their waiting period?

[21] Is the Appellant required to repay the overpayment?

⁴ See page GD7-1.

Analysis

Did the Commission review the Appellant's claims judicially (properly)?

[22] Yes. I find the Commission reconsidered the claims properly, within the required timeframe.

[23] The law says the Commission may reconsider a claim for benefits within 36 months after the benefits have been paid or would have been payable.⁵

[24] In this case the documents on file show that the employer issued a second ROE on September 7, 2024, listing the Appellant's last day paid as July 29, 2024. The Commission conducted a review of the claims that were paid or became payable as of July 28, 2024. The Commission issued its decision letter on September 20, 2024. The Notice of Debt was issued on September 28, 2024.⁶

[25] Based on the initial decision letter and Notice of Debt, I find that the Commission allocated the earnings and reconsidered the claims less than 2 months after the benefits were payable or paid. This means the Commission acted properly because it reconsidered the claims within the required 36-month time limit.

When did the Appellant suffer an interruption of earnings?

[26] I find the Appellant suffered an interruption of earnings in the week of July 28, 2024.

[27] An interruption of earnings occurs when the following criteria are met:

- the claimant is laid off or terminated from their employment,
- the claimant doesn't work for seven consecutive days for that employer, **and**

⁵ See section 52(1) of the *Employment Insurance Act* (EI Act).

⁶ See pages GD3-25 and GD3-27.

- the claimant doesn't receive any earnings arising from that employment.⁷

[28] The day on which the interruption of earnings occurs is the day on which the claimant is laid off or separates from employment, provided that day is followed by seven days without work and without earnings, including Saturdays and Sundays.

[29] In other words, once a lay off or other stoppage of work occurs, the interruption of earnings does not occur at the end of the seven-day break in work and earnings, but rather at the beginning.⁸ For example, where an employee is laid off from work on a Monday, the interruption of earnings occurs on the Monday, as the assumption is that there will be a seven-day break.

[30] The Appellant's last day paid was Monday, July 29, 2024, at which time he was laid off from his job. I recognize that two ROEs were issued to the Appellant from the same employer. However, there were no breaks in employment in between the two ROEs. Specifically, the first ROE shows a last day paid as June 15, 2024, while the second ROE lists a first day worked the next day on June 16, 2024.

[31] Weeks for the purpose of EI benefits always start on a Sunday. So, I find as fact that the Appellant suffered an interruption of earnings in the week of July 28, 2024.

Can the benefit period be postdated?

[32] No. The EI Act doesn't allow us to postdate a benefit period. I recognize that the Commission may use an administrative policy when determining a benefit period start date. But that policy isn't law.

[33] The law states that a benefit period begins on **the later of**

- a) the Sunday of the week in which the interruption of earnings occurs, **and**
- b) the Sunday of the week in which the initial claim for benefits is made.⁹

⁷ See section 14(1) of the *Employment Insurance Regulations* (EI Regulations).

⁸ See section 2.2.5 of the Digest of Benefit Entitlement Principles.

⁹ See section 10 of the EI Act.

[34] As stated above, the Appellant suffered an interruption of earnings in the week of July 28, 2024. The Appellant submitted their application (initial claim) for benefits on Wednesday, July 31, 2024. Weeks start on the Sunday, so this means that the Appellant's claim (benefit period commencement) starts on Sunday, July 28, 2024.

Did the Appellant have earnings to be allocated during their waiting period?

[35] Yes. There is no dispute that the Appellant received \$638 as earnings in the week of July 28, 2024.

[36] The law says that earnings must be applied (allocated) to certain weeks. The weeks that the earnings are allocated depends on why you received the earnings.¹⁰

[37] Normally, earnings that are payable to you for work performed under a contract of employment are allocated to the weeks in which the work was performed.¹¹ But earnings allocated to the waiting period do not prevent a waiting period from being served.

[38] Once the waiting period is served, your earnings are deducted dollar for dollar, up to the maximum benefit rate. This allocation starts from the week after your waiting period and continues for three weeks immediately after the waiting period.¹²

[39] The Commission determined the Appellant's weekly benefit rate is \$668.00. As set out above, the Appellant earned \$638 during the week of July 28, 2024, which is the week in which they must serve the waiting period. This means their earnings are deducted dollar for dollar, in the week after the waiting period is served.

[40] The Commission allocated the Appellant's waiting period earnings as set out above. So, I find the Commission allocated the Appellant's earnings correctly.

¹⁰ See sections 35 and 36 of the EI Regulations.

¹¹ See sections 36 and 39 of the EI Regulations.

¹² This is set out in section 19(1) of the EI Act and section 39 of the EI Regulations.

[41] In this case, the Appellant had already been paid multiple weeks of EI benefits by the time the Commission received the second ROE and allocated their earnings for the week of July 28, 2024. When the allocation was completed, it resulted in an overpayment of EI benefits. The Commission completed its review within the required time limit, so the overpayment is valid.

Requirement to repay an overpayment of EI benefits

[42] The law says a claimant is required to repay the benefits they were not entitled to receive.¹³

[43] I don't have the authority (jurisdiction) to decide on requests to write off or reduce an overpayment. This authority belongs to the Commission.¹⁴

[44] A decision by the Commission about waiving an overpayment can't be appealed to the Tribunal.¹⁵ It is the Federal Court of Canada who has the jurisdiction to hear an appeal relating to a write-off issue.¹⁶ So if the Commission refuses to write off the debt, the Appellant may wish to pursue an appeal at the Federal Court of Canada.

[45] If the Appellant is wanting to negotiate repayment arrangements of the overpayment, he may wish to contact the CRA to discuss repayment options, by calling toll-free 1-800-864-5841.

[46] I recognize that this may not be the outcome the Appellant was seeking. However, tempting as it may be in such cases (and this may well be one), adjudicators such as myself, are not permitted to rewrite law, nor to interpret it in a manner that is contrary to its plain meaning, even in the interest of compassion.¹⁷

¹³ See section 44 of the EI Act.

¹⁴ See section 56 of the EI Regulations.

¹⁵ Section 112.1 of the EI Act.

¹⁶ See *Steel v Canada (Attorney General)*, 2011 FCA 153, and *Bernatchez v Canada (Attorney General)*, 2013 FC 111.

¹⁷ See *Canada (Attorney General) v Knee*, 2011 FCA 301 at para 9.

Conclusion

[47] The appeal is dismissed.

Linda Bell

Member, General Division – Employment Insurance Section