



Citation: *DA v Canada Employment Insurance Commission*, 2025 SST 238

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: D. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (693436) dated
December 17, 2024 (issued by Service Canada)

Tribunal member: Paul Dusome

Type of hearing: Teleconference

Hearing date: January 29, 2025

Hearing participant: Appellant

Decision date: February 18, 2025

File number: GE-25-65

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant had been receiving employment insurance (EI) benefits since July 2022. While receiving benefits, he worked from December 13, 2022, to June 9, 2023. The Appellant had not reported to the Commission all the money from his work during six weeks between January and June 2023. He had reported receiving no money for five of those weeks and receiving \$951.00 for the other week. The Commission decided that the money is “earnings” under the law because it is wages for work performed.

[3] The Commission allocated the earnings to those six weeks from January to June 2023. That allocation reduced the EI benefits payable to the Appellant for those six weeks. This produced an overpayment of EI benefits to the Appellant, and he had to pay that money back.

[4] The Appellant disagrees with the Commission. The Appellant says that the employer was paying him retroactively, so he reported the wages when he received them, rather than when he was actually working. So, it looked like he was working when he was not working. He thought he was reporting correctly but is now aware of the correct way to report.

Matter I have to consider first

The Appellant’s post-hearing documents

[5] At the hearing, the dollar amount of individual pays from the employer, and the frequency with which the employer paid the Appellant, were unclear. The employer had reported regular weekly pay amounts for all but two of the weekly pay periods it showed on the Record of Employment (ROE). The Appellant worked on a fishing vessel that was at sea for 35 days at a time. He testified that the pay from the employer was in two components. One was a regular pay for two daily six-hour shifts worked during the

voyage. The other was a bonus based on the size of the catch. The bonus was calculated after the return to port, then paid to the employees who were on that just-returned ship.

[6] The Appellant's main argument in the appeal was the timing of the receipt of the pay from the employer, and the timing of the reports to the Commission. The Appellant said he reported the money when he received it, not during the weeks of the voyage. Having the Appellant's pay stubs or bank statements (blacking out all but the employer's pays deposited to the account) could be helpful in understanding what had happened. The documents should cover the period from January 1, 2023, to June 30, 2023. That would ensure capturing the six weeks at issue in this appeal, from January 15, 22 and 29, 2023, and May 21 and 28, 2023, and June 4, 2023.

[7] I gave the Appellant the option of submitting these documents if he wished to do so. He did not have to submit them. The deadline for submitting any documents was set at February 13, 2025. I would hold off releasing the decision until after the deadline had passed, or the Appellant notified me earlier that he would not be submitting the documents. The Appellant did not contact the Tribunal about these documents up to the date of this decision. Nor did he submit any documents by the deadline. So I proceeded with this decision in the absence of that evidence.

Issues that are not part of this appeal

[8] The Commission initially decided that, in addition to matters set out in the Overview above, the Appellant would be subject to a money penalty for filing false reports and would be subject to a notice of violation that required him to work more hours to qualify for EI benefits in the future.

[9] After the Appellant filed his request for reconsideration of the Commission's decisions, the Commission reversed its decision on both the penalty and notice of violation issues. Those two issues have been resolved in favour of the Appellant before he started his appeal. They are not part of this appeal.

Issues

[10] 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?

[11] Yes, the \$13,108.00 that the Appellant received for the six weeks is earnings. Here are my reasons for deciding that the money is earnings.

[12] The law says that earnings are the entire income that you get from any employment.¹ The law defines both “income” and “employment.”

[13] **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.² If it is money, income means the gross amount paid, not the net amount after deductions such as income tax, CPP, EI, or other items.

[14] **Employment** is any work that you did or will do under any kind of service or work agreement.³

[15] Based on the ROE, the Appellant’s former employer paid the Appellant \$2,238.25 for each of the five weeks of January 15, 22 and 29, 2023, and May 21 and 28, 2023. The employer paid the Appellant \$1,918.00 for the sixth week of June 4, 2023, his last week of work with the employer. The total earnings were \$13,108.00. The Commission decided that this money was earnings for EI purposes because it was payment to compensate the Appellant for work done by the Appellant for the employer.

¹ See section 35(2) of the EI Regulations.

² See section 35(1) of the EI Regulations.

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

[16] The Appellant did not dispute that this money was earnings for EI purposes.

[17] He said that the pay was in two components. One was an hourly wage for two daily six-hour shifts. The other was a bonus based on the size of the catch from the 35-day voyage. The employer showed regular payments in the same amounts for all but the first and last of the pay periods in the ROE.

[18] I find that the money the Appellant received from the employer was earnings for EI purposes. I see no evidence in this appeal against this conclusion.

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.⁴ Earnings for work performed are to be allocated to the weeks during which the work was performed.⁵

[20] The Appellant's earnings were wages and bonuses. The Appellant's employer gave the Appellant those earnings because the Appellant was an employee under a contract of employment.

[21] The Appellant testified that he did not report any money in five of the six weeks at issue in this appeal. The \$951.00 he did report for the week of May 21, 2023, was an estimate on his part. The Appellant's reason for not reporting those weeks of earnings was that he only reported the earnings when he received the money from the employer. The Appellant also told the Commission that he understands that he has to repay the benefits he should not have received. (GD3-27)

[22] The law does require that persons receiving EI benefits report their weekly earnings to the Commission on a bi-weekly basis. The report form is clear. The recipient of EI benefits must report the money earned in each week, regardless of whether the money is paid that week, or later.

⁴ See section 36 of the EI Regulations.

⁵ See section 36(4) of the EI Regulations.

[23] I find that the Appellant performed services for the employer under his employment contract for the six weeks at issue in this appeal. That is because, based on the pay history set out in the ROE he was working during those weeks engaged in fishing for the employer. I find this because the employer showed on the ROE a consistent earnings amount for all but the first and last shorter weeks. That is inconsistent with the Appellant's testimony that the amounts were the same because the bonus for the catches were the same each time. The bonus was based on the total amount of the catch. It is improbable that the earnings including a bonus for all but the first and last shorter work weeks from December 13, 2022, to June 9, 2023, are the same number of dollars, down to the pennies: \$2,238.25. The Appellant testified that the catch could vary, and that he was lucky for those weeks. That was his explanation of why the wage and bonus amounts of \$2,238.25 were all the same. I do not find that explanation persuasive. In addition, the regular pay amounts shown on the ROE contradict the Appellant's testimony that he was receiving his earnings at irregular times, not on a regular pay date. In the absence of pay stubs or bank records to show irregular payment dates, I do not accept the Appellant's claims that he received pay on an irregular basis.

[24] The allocation of those earnings has resulted in an overpayment of EI benefits that the Appellant was not entitled to receive. As a result, he must repay those benefits. The total amount of the overpayment is \$3,352.00, as shown on the Commission's overpayment breakdown document (GD3-31). The Notice of Debt dated August 17, 2024 (GD3-21) shows that amount, less a \$201.00 payment leaving an outstanding balance of \$3,151.00. The current outstanding balance will have to take into account any payments made after the Notice of Debt was calculated.

Conclusion

[25] The appeal is dismissed. The Appellant received \$13,108.00 in earnings. These earnings are allocated to the following weeks: \$2,238.00 to each of January 15, 22 and 29, 2023, and May 21 and 28, 2023; and \$1,918.00 to the week of June 4, 2023.

[26] The Commission correctly calculated an overpayment created from the allocation of the earnings. The Appellant is responsible for paying the outstanding current balance of that overpayment.

Paul Dusome

Member, General Division – Employment Insurance Section