



Citation: *SW v Canada Employment Insurance Commission*, 2024 SST 1713

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: S. W.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (666837) dated May 27, 2024
(issued by Service Canada)

Tribunal member: Katherine Parker

Type of hearing: In person

Hearing date: September 11, 2024

Hearing participant: Appellant

Decision date: October 8, 2024

File number: GE-24-2617

Decision

[1] The appeal is allowed in part. The Appellant received earnings. But the Canada Employment Insurance Commission (Commission) recovered too much, and it owes the Appellant **\$1,196.56**.

Overview

[2] The Appellant applied for compassionate care benefits starting May 7, 2023, and she was approved for 26 weeks. However, she returned to work on May 26, 2023.

[3] She informed the Commission, but it didn't update her information in the system.

[4] The Commission garnished the Appellant's tax rebates and returns from the Canada Revenue Agency (CRA). It received two uncashed cheques from the Appellant in the net amounts of \$1,188 and \$792.

[5] The Commission didn't update the system, so the Appellant returned two cheques before the Commission made its decision. The Commission recovered too much money from the Appellant, and it owes her money.

[6] 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

[7] The Commission allocated the earnings from the week of May 21, 2023, to the week of June 18, 2023, based on the Appellant's actual earnings. It took money that was overpaid but it took too much. The Commission maintains its decision and says there is no credit owing. It says that the Appellant still owes it \$23.64.

[8] The Appellant disagrees with the Commission. The Appellant says that the Commission owes her about \$2,000. She said that CRA took too much money, and she returned two uncashed cheques.

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

[9] The Appellant also says that the Commission told her to contact CRA, and CRA told her to contact the Commission. She said she wasn't getting anywhere.

issues

[10] I have to decide the following issues:

- a) Is the money that the Appellant received earnings?
- b) If the money is earnings, did the Commission allocate the earnings correctly?
- c) Did the Commission calculate the overpayment correctly?
- d) Does the Commission owe the Appellant money?

Analysis

Is the money that the Appellant received earnings?

[11] Yes, the money that the Appellant received from her employer between May 21, 2023, and June 25, 2023, is earnings. These are wages earned and the Appellant doesn't dispute these earnings.

[12] The law says that earnings are the entire income that you get from any employment.² 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.³

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

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.

Did the Commission allocate the earnings correctly?

[15] 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.⁵

[16] The Appellant's earnings are wages. The Appellant's employer gave the Appellant those earnings because the Appellant returned to work after being on compassionate care leave from May 7, 2023.

[17] The amount of money to be allocated starting that week is provided by the Commission in GD11. It didn't provide this information in GD4. It was sent after I made a request for information under section 53 of the EI Regulations. The Commission admits to making several mistakes on this claim which resulted in contradictory details.

Table 1 (see GD11-1)

Week	Initially Paid	Amended Earnings	Benefits Payable	Overpayment
May 7, 2023	\$0	\$0	0	\$0
May 14, 2023	\$424	\$0	\$424	\$0
May 21, 2023	\$424	\$159	\$344	\$80
May 28, 2023	\$424	\$319	\$264	\$160
June 4, 2023	\$424	\$638	\$105	\$319
June 11, 2023	\$424	\$9999	\$0	\$424
June 18, 2023	\$424	\$638	\$105	\$319
June 25, 2023	\$424	\$9999	\$0	\$424
Total	\$2968		\$1,242	\$1726

[18] The Commission said that the Appellant had an overpayment of \$1,726.⁶ It said it recovered \$721.20 from CRA, and adjustments of \$1,004.80.⁷ It also provided a new notice of debt which said the Appellant owed \$105.

⁵ See section 36 of the EI Regulations.

⁶ See GD3-33.

⁷ See GD3-41 to GD3-47.

[19] The details in GD4 weren't clear, so I wrote to the Commission and asked for clarification.⁸ The Commission responded in GD11 but provided yet another calculation.

[20] In GD11, the Commission said it got \$802.56 from CRA. It acknowledged the two cheques that were returned and said they amounted to \$1,272, and \$848.⁹

[21] The Commission said that the Appellant was entitled to a weekly benefit of \$424. It totalled the number of benefits owed to the Appellant as \$1,242.

[22] I agree with the Commission up to this point. However, on GD11-2, the Commission said it issued a second payment to the Appellant in the amount of \$677. This brought the total payments to \$3,645, and the net overpayment to \$2,968. On this calculation, the Commission said that the Appellant still owes it \$23.64.¹⁰

[23] I disagree with the Commission that it issued a second payment of \$677 to the Appellant. It got this wrong. The Appellant did receive three cheques, but she returned two of them.¹¹

- On June 8, 2023, she received a cheque for a net amount of \$1,188. She returned this cheque to Service Canada on June 27, 2023.
- On June 18, 2023, she received a cheque for a net amount of \$792. She kept this cheque on the advice of Service Canada.
- On July 2, 2023, she received a cheque for a net amount of \$792. She returned this cheque to Service Canada on August 16, 2023.

[24] The Appellant says she is owed about \$2,000 because the Commission took too much from her. She said that CRA continues to garnish her rebates and returns. However, I see no evidence that the CRA has taken more than \$721.20. The Appellant's accountant confirmed this amount. However, in GD11 the Commission

⁸ See GD8.

⁹ See GD11-2. This is the gross amount but represents the two cheques that the Appellant returned.

¹⁰ See GD11-3.

¹¹ See GD7-1 to GD7-2.

acknowledges that it received \$802.56 from the Commission. So I accept that the CRA took \$802.56 from the Appellant to pay back debts owing to the Commission.

[25] I accept the Commission's calculations on GD11-2 about how much money it got back from the Appellant: It took a total of \$2,922.56.

Table 2 (see GD11-2)

Type	Amount	Explanation
CRA Recoupment	\$802.56	
Returned Warrant for weeks May 14, 21, 28, 2023	\$1272	\$424+\$424+\$424
Returned Warrant for weeks June 18, 25, 2023	\$848	\$424 + \$424
Total Received	\$2922.56	\$802+\$1272+\$848

[26] I don't agree with the Commission's recalculation of debt owing which it provided in GD11 and said it was \$2,968. I believe this is a mistake when the Commission added \$677 to the debt owing of \$1,726 which is the correct amount and is shown on GD11-1.

[27] The Appellant did receive earnings and the Commission allocated them correctly.

[28] However, based on the evidence and calculations provided, I calculate that the Commission owes the Appellant \$1,196.56 because it took \$2,922.56 from her when the overpayment was only \$1,726.

Table 3

Type	Amount	Explanation
Net overpayment	\$1,726	Table 1 above ¹²
Received from the claimant	\$2,922.56	CRA and two returned cheques
Credit owing	\$1,196.50	

¹² See GD11-1.

[29] I believe the calculations are wrong because the Commission didn't update the claim when the Appellant called them. It then didn't listen to the Appellant when she tried to explain. It told her to talk to CRA. However, based on all the calculations and evidence, the Commission made a mistake and owes her money.

Conclusion

[30] The appeal is allowed. The Commission overpaid the Appellant by \$1,726 in benefits. It took \$2,922.56 from her. **It owes the Appellant \$1,196.56.**

[31] Please take prompt steps to repay the Appellant as it has been a difficult experience for her.

Katherine Parker
Member, General Division—Employment Insurance Section