



Citation: *AE v Canada Employment Insurance Commission*, 2025 SST 422

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: A. E.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (702858) dated January 31, 2025
(issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: Videoconference

Hearing date: March 18, 2025

Hearing participant: Appellant

Decision date: April 1, 2025

File number: GE-25-614

Decision

[1] The appeal is dismissed. The Appellant received earnings. And the Canada Employment Insurance Commission (Commission) allocated (in other words, assigned) those earnings to the right weeks. The Appellant has to repay the balance of the \$7,388 overpayment that remains.

Overview

[2] The Appellant got \$32,309.26 from her former employer. The Commission decided that \$29,758.21 of this money is “earnings” under the law because it is vacation pay, severance pay and pay in lieu of notice.

[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 October 30, 2022. This is the week that the Commission said that the Appellant was separated from her job. The Commission said that being separated from her job is why the Appellant received the earnings.

[5] The Appellant says she acted in good faith when she reported the lump sum payment she got from her employer. She says she got conflicting information from Service Canada, and the debt may result from administrative errors. So, she is asking for the debt to be removed.

Issues

[6] 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?

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

c) Does the Appellant have to repay the overpayment?

Analysis

Is the money that the Appellant received earnings?

[7] Yes, the \$29,758.21 that the Appellant 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 paid her vacation pay, pay in lieu of notice, and severance pay. It also paid her for legal fees associated with coming to a settlement with the employer.

[12] In its initial decision, the Commission said the Appellant got \$24,259.23 in separation monies. In its submissions, it said she had received \$27,296.67. So, I asked the Commission to clarify the amount of earnings the Appellant got on separation from her employment. The Commission said the Appellant got severance equivalent to 15 weeks of pay (\$29,423.10), pay in lieu of notice equivalent to one week of pay (\$1,961.54) plus \$395, and \$529.62 in vacation pay.

[13] The Commission decided that \$29,758.21 of this money is vacation pay, pay in lieu of notice and a severance pay. So, it said the money is earnings under the law.

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.

[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] The Appellant agrees that the \$29,758.21 is earnings. The Appellant said she reported the money she got and asked Service Canada what the next steps were.

[16] Since the Appellant doesn't dispute that the vacation pay, pay in lieu of notice and severance pay she got from her employer is earnings, I find that the \$29,758.21 is earnings.

Did the Commission allocate the earnings correctly?

[17] 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

[18] The Appellant's earnings are severance pay and pay in lieu of notice. The Appellant's employer paid him those earnings because he was separated from his job.

[19] 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.⁶

[20] I find that the Appellant was separated from her job starting the week of October 23, 2022. I find this because this was the Appellant's last week of work.

[21] The Commission used salary of \$1,961.54 to calculate the Appellant's earnings. But it said the pay in lieu of notice and vacation pay increased her average weekly earnings to \$1,997, so this is the amount it used to allocate the Appellant's earnings.

[22] The Commission said the Appellant had \$452 in earnings in her last week of work. So, it allocated \$1,545 to the week of October 23, 2022, to "top-up" her earnings

⁵ See section 36 of the EI Regulations.

⁶ See section 36(9) of the EI Regulations.

to her normal weekly earnings of \$1,997. It then allocated \$1,997 to the weeks from October 30, 2022, to January 29, 2023. This left a balance of \$1,348, which the Commission allocated to the week of February 5, 2023.

[23] The Appellant testified that she agrees that the earnings she got from the employer has to be applied to her EI claim for benefits. She said she isn't disputing the way the Commission allocated her earnings. But she said she did her due diligence by reporting the money. She said she doesn't think her case was handled fairly from the beginning.

[24] I will look below at the issue of the overpayment and whether the Appellant has to repay it. But I see no evidence that the Commission made an error in the allocation of the Appellant's earnings. So, I find that the Commission properly allocated the Appellant's earnings at her normal weekly earnings starting the week of October 23, 2022, with a top-up to her normal weekly earnings, then from October 30, 2022, to the week of January 29, 2023, with the remainder allocated to the week of February 5, 2023.

Does the Appellant have to repay the overpayment?

[25] The law says that a person who gets benefits they are not entitled to has to return the benefits.⁷

[26] As noted above, the Appellant does not dispute that she had earnings. She also doesn't dispute the way the Commission allocated her earnings.

[27] The Commission allocated the Appellant's earnings after it paid her benefits. So, the Commission sent the Appellant a notice of debt for an overpayment of \$7,388.

[28] The Commission explained that it made the decision to allocate the Appellant's earnings in September 2024. It said when the Appellant reported her earnings, it had already paid her benefits, and it had to reconsider the Appellant's claim for benefits.

⁷ Section 44 of the *Employment Insurance Act*.

The Commission said that it was within the time limit that the law allows to do so, and that it had acted judicially.

[29] The Appellant said she reported her earnings when she got them in March 2023. She said her claim for benefits had been approved from October 2022 to November 2023, but she discovered that her claim was closed in July 2023 because of the money she received. She was later told that she was eligible for benefits from July 2023, and she got a lump sum of \$3,354 in November 2024.

[30] The Appellant said she is appealing the notice of debt of \$7,388. She said the original notice of debt amount was reduced to \$2,894 but with no explanation. In response to the Commission's updated submissions, the Appellant asked for a clear breakdown of the overpayment.

[31] The Commission explained that it paid the Appellant 12 weeks of benefits for the period from July 23 to October 14, 2023. But it did so less 50% of her benefit rate, which was applied to the overpayment. Given the Appellant's recent request noted above, it would be helpful if the Commission would detail for the Appellant the benefits that were applied to the \$7,388 overpayment and what the exact balance is.

[32] The Appellant said she acted in good faith when she reported her earnings. But she said she got conflicting information from the Commission, and it made administrative errors. So, she wants the debt removed due to miscommunication and procedural inconsistencies.

[33] The law says the Commission can reconsider (re-examine) a claim for benefits within 36 months after benefits have been paid.⁸ The Appellant questioned the Commission's decision to re-examine her claim in September 2024, when her benefits were stopped in July 2023. She added that she had received confirmation that her debt was \$0, but more than a year later, her claim was reviewed without explanation.

⁸ See section 52(1) of the *Employment Insurance Act* (Act).

[34] It is true that there was some delay in the Commission notifying the Appellant of its decision to allocate those earnings. The Commission didn't give a reason for the time it took from March 2023 when the Appellant reported her earnings to September 2024 when it made its initial decision. But the Commission had the authority under the law to re-examine her claim for benefits.

[35] I find that the Commission acted on information it got from the Appellant to decide whether she had received more benefits that she was entitled to. Unfortunately, the Appellant received and reported her earnings after she had received EI benefits. So, the overpayment of benefits was unavoidable. And, I don't find that the Commission acted in bad faith when it re-examined the Appellant's claim for benefits.

[36] Under the law, the Commission has the authority to write off an overpayment of benefits.⁹ I don't have that authority, and I can't tell the Commission to write off the Appellant's overpayment. But the Commission has already decided that it will not write off the overpayment.¹⁰ So, the Appellant has to repay the remaining overpayment.

[37] The Appellant has asked for an explanation of the number of weeks of benefits she is entitled to. It appears that she believes that she is entitled to more than 36 weeks of benefits. This is not something within my jurisdiction.

[38] In general, the number of weeks of entitlement to benefits is determined based on the number of insurable hours a claimant works and the unemployment rate in the economic region where they live. But the Appellant can contact the Commission through Service Canada for a more detailed explanation of the weeks of benefits she is entitled to.

[39] I find that the law requires the Appellant to repay the balance of the \$7,388 overpayment that remains. While I sympathize with the Appellant's situation, I can't change the law but must apply it as written.¹¹

⁹ See section 56(1) of the Regulations.

¹⁰ See pages GD3-51 and GD3-52.

¹¹ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

Conclusion

[40] The appeal is dismissed.

[41] The Appellant received \$29,758.21 in earnings. These earnings are allocated starting the week of October 30, 2022. The Appellant has to repay the overpayment.

Audrey Mitchell

Member, General Division – Employment Insurance Section