



Citation: *NJ v Canada Employment Insurance Commission*, 2025 SST 529

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: N. J.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (673785) dated October 11, 2024
(issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Teleconference

Hearing date: January 9, 2025

Hearing participant: Appellant

Decision date: January 17, 2025

File number: GE-24-3975

Decision

[1] The appeal is allowed with modification.

[2] The Appellant received wages, which are earnings.

[3] These earnings need to be allocated to the weeks the Appellant did the work she was paid for.

[4] The Canada Employment Insurance Commission (Commission) incorrectly allocated the Appellant's earnings, as they used the wrong amount of earnings in multiple weeks.

[5] Instead, the earnings should be allocated as I have shown in the Adjusted allocation in TABLE A.

Overview

[6] The Commission received a Record of Employment (ROE) from the Appellant's employer. They noticed there were some discrepancies in the information on the ROE about how much the Appellant was paid and what the Appellant reported on her claim reports.

[7] After an investigation, the Commission determined that the Appellant had not accurately reported her earnings. So, they redid the allocation, using the information they had received from her employer on how much she had been paid. This resulted in a large overpayment.

[8] The Appellant says the Commission's allocation is flawed.

[9] She says they allocated earnings to weeks she never worked at all, and the amounts they used in other weeks is incorrect.

Issues

[10] What is the correct amount of earnings to allocate?

Analysis

[11] There is clearly conflicting evidence between the Appellant and the Commission/employer. Where the evidence is disputed, I will explain why I prefer to accept some evidence and reject other evidence.

[12] That stated, where the evidence of the Appellant conflicts with the evidence of the Commission/employer I prefer the evidence of the Appellant.

[13] While the passage of time has caused a loss of some particular details in the Appellant's evidence, when I consider the evidence as a whole, I find the Appellant's evidence more credible. Moreover, the evidence provided by the Commission, including information provided by the employer appears incomplete and containing evident errors. This makes the Appellant's testimony, which I have been able to question and challenge, more reliable so I give it more weight.

[14] The assessment of credibility is not a science. It is not always possible to "articulate with precision the complex intermingling of impressions that emerge after watching and listening to witnesses and attempting to reconcile the various versions of events."¹

[15] Assessing credibility is "a difficult and delicate matter that does not always lend itself to precise and complete verbalization".²

[16] There are, nonetheless, certain principles, or tools, that have emerged from the jurisprudence that can assist me when assessing credibility:

[17] The ability to consider inconsistencies and weaknesses in the Appellant's evidence.

[18] The ability to review independent evidence that confirms or contradicts the Appellant's testimony.

¹ *R. v Gagnon*, 2006 SCC 17 (CanLII), [2006] 1 SCR 621 at para 20.

² *R. v R.E.M.*, 2008 SCC 51 (CanLII), [2008] 3 SCR 3 at para 49.

[19] The ability to assess whether the Appellant's testimony is plausible.³

[20] Further, in such a case as this, where there is conflicting evidence and I am deciding based on a balance of probabilities standard, finding the evidence of one party credible (the Appellant) may well be conclusive of the issue because that evidence is inconsistent with that of the other party (the Commission). In other words, believing the Appellant means explicitly or implicitly that the Commission was not believed on the important issues in the case.⁴

Correct amount of earnings

[21] The law says that earnings are the entire income from any employment.⁵ The law defines both “income” and “employment.”

[22] **Income** can be anything that the Appellant got or will get from an employer or any other person. It doesn't have to be money, but it often is.⁶

[23] **Employment** is any work that the Appellant did or will do under any kind of service or work agreement.⁷

[24] The law says that any earnings paid to the Appellant as wages pursuant to an employment contract are to be allocated to the weeks she did the work she was paid for.⁸

[25] The Appellant agrees that the monies she was paid by her employer are wages and are considered earnings.

[26] The Appellant agrees that these earnings should be allocated to the weeks she did the work she was paid the wages for.

³ *Novak Estate (Re)*, 2008 NSSC 283 at para 36.

⁴ *F.H. v McDougall*, 2008 SCC 53 at para 86

⁵ See section 35(2) of the *Employment Insurance Regulations*

⁶ See section 35(1) of the *Employment Insurance Regulations*

⁷ See section 35(1) of the *Employment Insurance Regulations*

⁸ See section 36(4) of the *Employment Insurance Regulations*

[27] The Appellant says the only thing she is disputing is that the Commission used the wrong amounts in various weeks when they allocated her earnings.

[28] So, since the Appellant is not disputing that her wages are earnings, or what section of the law they should be allocated under, I accept both of those things as facts, and will focus my analysis on what amount of earnings should be allocated to each week.

Weeks of May 2 to June 20, 2021

[29] The Appellant says she is not disputing the amounts for these weeks. She says that she reported \$600 per week but forgot to take into account the small raise she received at this time, so the \$658 the Commission used is actually the correct amount.

[30] Since the Appellant is not disputing these weeks, and I accept her testimony that she received a small raise for this period she forgot to take into account, I find that \$658 is the correct amount to allocation to each of these weeks.⁹

The weeks of December 20 and 27, 2020.

- What the Appellant says

[31] The Appellant says that the amount her employer told the Commission she was paid for these weeks is impossible because the Christmas break that year (the dates vary slightly every year) started on December 21 and she was not back until January 4 or 5 so she cannot possibly have earned \$1,041 for each of those weeks.

⁹ While the Commission is using information from the employer in making this allocation of \$658, and the Appellant is not disputing it, my acceptance of this information from the Appellant does not contradict my later findings that I did not find the information presented by the Commission, which they obtained from the employer, for the weeks of December 20 and 27, 2020, April 18 and 25, 2021, or June 27, 2021, accurate.

There is no requirement that a trier of fact must accept or reject the evidence from someone in its entirety. None or part of the evidence may be accepted, and different weight may be attached to various parts of the evidence. (*R. v Howe*, 2005 CanLII 253 (ON CA) at para. 44 and *R. v R. (D.)*, 1996 CanLII 207 (SCC), [1996] at para XXXIV)

[32] The Appellant says that she did get money from her employer during that period of time, but it was not wages for the weeks of December 20 and 27, 2020. She says she spoke to her employer about what this money was and was told that it was money from earlier in the year that had not been processed or paid out on time because COVID was causing so many disruptions.

- What the Commission says

[33] The Commission says that contrary to the Appellant's assertions, the spreadsheet of her pay that she provided clearly shows she was paid over those two weeks (December 20 and 27).¹⁰

[34] They also say that the employer has confirmed she was paid over those two weeks and the employer's records are considered accurate.¹¹

- My findings

[35] First, I find the Appellant credible that, working at a school, she has a Christmas break every year where no work is performed. I find as such because the Appellant has sent me an email from her employer about the Christmas break that occurred in December 2022.¹² I have no doubt if there was a Christmas break in December 2022, there was one in December 2020.

[36] I can also accept that the break started on December 21, 2020, since that is a Monday, and the Appellant was back to work on January 4, 2020, since that is also a Monday, since it seems reasonable and plausible the break would be scheduled in this manner.

[37] Now, there is evidence that would suggest the Appellant did work and get paid for the two weeks in question, that evidence being the spreadsheet the Appellant provided, her ROE, and the information from the employer. I will deal with these in turn.

¹⁰ GD04-4 referencing the spreadsheet on GD02-9

¹¹ GD04-4

¹² GD08

[38] The Appellant's spreadsheet says that she received pay on December 24, 2020, and January 7, 2021.¹³ All her pay dates are stated to be from Thursday to Thursday covering a period of 14 days.¹⁴ This would suggest that she was paid over the weeks of December 20 and 27, 2020, since she had two paycheques which cover all the days in those two weeks.

[39] However, I find that this spreadsheet does not show that the Appellant was paid wages for work she did over the week of December 20 and 27, 2020.

[40] As I have already found the Appellant's testimony she was not working for those weeks since it was the Christmas break credible, this means she would not be paid wages for those weeks. So then what is this spreadsheet showing? I find it is showing what money she received, but that does not mean it includes wages for the weeks of December 20 and 27, 2020.

[41] Now, she very well could have gotten money from her employer on both December 24, 2020, and January 7, 2021, but what matters for allocation is what that money was for. In other words, even if she received money on December 24, 2020, and January 7, 2021, if that money was wages from an earlier period in time that was not paid out yet (as the Appellant says) it would not be allocated to the weeks of December 20 and 27, 2020. The is because the law says that wages are allocated to the period the work those wages were paid for was done.

[42] Since I have accepted as credible the Appellant's testimony she was not working for the weeks of December 20 and 27, 2020, I do not think her employer decided to pay her for those weeks she was not working.

¹³ See the first four rows on GD02-9 and under the hearing PAY_DATE you can see what date she was paid.

¹⁴ December 24, 2020, is a Thursday, and January 7, 2021, is a Thursday, and there is 14 days between those two dates.

[43] As such, I find the Appellant's testimony credible that the money she received on December 24, 2020, and January 7, 2021, was actually back pay for work she did earlier in the year that had not been paid out due to disruptions caused by COVID.

[44] I find it credible because the fact that COVID caused disruptions in schooling is not the subject of debate among reasonable persons, and can easily be proven by resort to readily accessible sources of indisputable accuracy. So, I can easily believe the Appellant had worked earlier in 2020 but had not been paid in a timely manner due to COVID and ended up getting that pay later in the year, by coincidence, around the time she took Christmas break.

[45] Further, as per the Appellant's testimony, when she questioned her employer about the amount she received for these weeks, she was told it was back pay that had not been processed in a timely manner due to COVID disruptions.

[46] As for the ROE, it shows that the Appellant was paid in every single week that she worked for her employer,¹⁵ which would suggest that she was paid over the weeks of December 20 to 27, 2020. However, I place no weight on this document as it is riddled with errors.

[47] First, it says that the Appellant was paid weekly.¹⁶ But the spreadsheet she sent me, which was a copy of her pay history she received from her employer, shows that every paycheque was bi-weekly; 14 days between each cheque.¹⁷ This calls into question the accuracy of the information on the ROE.

[48] Second, the ROE says that the final pay period ended on June 29, 2021,¹⁸ but this is a Tuesday, and as all the Appellant's paycheques show, the pay period ends on Thursday. This also calls into question the accuracy of the information on the ROE.

¹⁵ GD03-23

¹⁶ GD03-23 se block 6.

¹⁷ See the first rows on GD02-9 and under the hearing PAY_DATE you can see what date she was paid. Note there is 14 days between those her paydates, showing that her pay, is in fact, bi-weekly.

¹⁸ GD03-23 see block 12 compared to all the dates on GE02-9 where every date under PAY_DATE is a Thursday.

[49] Finally, there is the actual information reported by the employer seen in the Commission's request for more information about the Appellant's pay where they report she was paid \$1,041.08 for the week of December 20 and the same amount again for the week of December 27.¹⁹

[50] Since I have found as credible the Appellant's testimony that she was not working for the weeks of December 20 and 27, 2020, the fact the employer says she was paid for these weeks shows me this information is not an accurate representation of the Appellant's wages for the weeks of December 20 to 27, 2020.

[51] The employer does not say what they are basing this information off of. If they are simply quoting what was on a paycheque covering those weeks, as I have already found, that would be pay from an earlier period of time and would not be allocatable to the weeks of December 20 to 27, 2020.

[52] Also, the employer made a mistake in reporting pay information to the Commission and included pay from a period of time that was not in the period the Commission was reviewing.²⁰

[53] So, it is for all of these reasons, why I prefer the Appellant's evidence.

[54] This means, that since I have accepted the Appellant did not work for the weeks of December 20, and 27, 2020, she had no wages paid for those weeks, so no earnings for those weeks to be allocated, because earnings paid as wages are allocated to when she did the work she was paid for. No work for that period, no pay for that period, no allocation to that period.

Weeks of April 18 and 25, 2021

[55] I find the Commission used the incorrect amount of earnings in their allocation for these two weeks.

¹⁹ GD03-27

²⁰ GD03-29

[56] The Appellant says she did not work enough hours to have been paid \$1,215 for each of these weeks as the Commission is claiming.

[57] She says that a full work week would be the \$600 that she had reported for the weeks of May 2 to June 2021, not double that amount as her employer is reporting for the weeks of April 18 and 25, 2021.

[58] She says she did receive extra money on her paycheque that covers this period of time (April 18 and 25, 2021) and when she saw it she called her employer as she knew her paycheque was too much for the amount of work she did. She says her employer told her that her paycheque was as much as it was because it contained extra monies from previous periods that had not been paid out yet.

[59] I find the Appellant's testimony on this point credible.

[60] I find her credible as there is a previous instance of the Appellant receiving extra money which she did not earn in the period covered by the paycheques. As I have previously found, the Appellant did not work for the weeks of December 20 and 27, 2020, yet she still received money covering that period of time, pay which I have found was for a previous time period. So, it is entirely believable that this happened again.

[61] Further support that this is what happened is shown by the amounts her employer claims she was paid over the weeks of April 18 and 25, 2021.

[62] The Appellant has consistently reported amounts that show a full work week as \$600. This can be seen in her reporting over the entire period of May 2 to June 20, 2021, so her employer reporting \$1,215 the week of April 18 and \$1,215 for the week of April 25, 2021, are outliers.

[63] So, unless she was suddenly working double the number of hours over these weeks, and the Appellant said she was actually working less than a full week over this period which is why she did not report \$600, this strongly suggests that her paycheques over this period included a delayed payment for a different period of time.

[64] It is for all of these reasons why I prefer the Appellant's evidence for these two weeks.

[65] However, since the Appellant says she forgot to include the small raise she received on her claim reports, I find the amounts the Appellant reported for these two weeks are not entirely accurate.

[66] The Appellant reported she received \$480 for the week of April 18 and \$460 for the week of April 25, 2021. If the Appellant says her reporting was based on \$600 for a full week of work, then that would mean she was making \$120 a day, so her report of \$480 would represent 4 days of work. As for her report of \$460, I find this represents 4 days of work as well.

[67] Since she agrees \$658 per week is the correct amount for a full work week, and this is also the amount the Commission used for the period of May 2 to June 20, 2021, so it appears they are in agreement with the Appellant that this is the correct amount to use for a full working week. So, to accurately calculate the Appellant's pay for 4 days I will take $\$658/5 \times 4$ to get a total of \$526.40 rounded down to \$526.²¹ So, this is the amount that should be allocated to the week of April 18, 2021, and April 25, 2021.

Week of June 27, 2021

[68] The Appellant says that the amount allocated by the Commission (\$658) is incorrect, as she only worked two days this week (June 28 and 29). The Appellant says that she would have worked until the end of June 2021, but she left early because she was pregnant.

[69] The Appellant says that she cannot have earned \$658 as that is the amount that she earned in her previous full work weeks, so unless her employer decided to pay her out the other three days she did not work, \$658 is incorrect.

[70] Again, I prefer the Appellant's testimony as I find it more credible.

²¹ See section 36(20) of the *Employment Insurance Regulations*

[71] There is nothing to make me doubt the Appellant's last day of work was June 29, 2021, because she left early due to pregnancy. I also note no one has disputed this.

[72] So, since she only worked two days in her final week, I do not find it believable that her employer would pay her for the entire week.

[73] The Appellant reported she received \$240 for two days work. This makes sense as it equals \$120 a day for a total of \$600 a week, and \$600 a week is what she reported for the period of May 2 to June 20, 2021.

[74] However, as the Appellant testified, that number is not accurate, as she forgot to include the small raise she received. She says \$658 per week is the correct amount, which is also the amount the Commission used for the period of May 2 to June 20, 2021, so it appears they are in agreement with the Appellant that this is the correct amount to use for a full working week.

[75] So, I find, that to accurately calculate the Appellant's pay for two days I will take $\$658/5 \times 2$ to get a total of \$263.20 rounded down to \$263.²² This is what she was paid for the work she did over the two days of June 28 and 29, so this is the amount that should be allocated to the week starting June 27, 2021.

²² See section 36(20) of the *Employment Insurance Regulations*

Summary

[76] The Commission used the incorrect amount of earnings in various weeks when it did the allocation. I have found the allocation should be adjusted as follows:

TABLE A:

Week Beginning:	Commission's allocation (incorrect)	Adjusted allocation (correct)
December 20, 2020	\$1,041	\$0
December 27, 2020	\$1,041	\$0
April 18, 2021	\$1,215	\$526
April 25, 2021	\$1,215	\$526
May 2, 2021	\$658	\$658
May 9, 2021	\$658	\$658
May 16, 2021	\$658	\$658
May 23, 2021	\$658	\$658
May 30, 2021	\$658	\$658
June 6, 2021	\$658	\$658
June 13, 2021	\$658	\$658
June 20, 2021	\$658	\$658
June 27, 2021	\$658	\$268

Conclusion

[77] The appeal is allowed with modification.

[78] The Appellant received wages, which are earnings.

[79] These earnings need to be allocated to the weeks the Appellant did the work she was paid for.

[80] The Commission incorrectly allocated the Appellant's earnings, as they used the wrong amount of earnings in multiple weeks. The allocation should be corrected as I have shown in TABLE A.

Gary Conrad

Member, General Division – Employment Insurance Section