



Citation: *CE v Canada Employment Insurance Commission*, 2025 SST 477

**Social Security Tribunal of Canada  
General Division – Employment Insurance Section**

## **Decision**

**Appellant:** C. E.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (702176) dated January 7, 2025  
(issued by Service Canada)

---

**Tribunal member:** Linda Bell

**Type of hearing:** Videoconference

**Hearing date:** February 5, 2025

**Hearing participant:** Appellant

**Decision date:** February 7, 2025

**File number:** GE-25-118

## Decision

[1] C. E. is the Appellant. I am dismissing her appeal with modification to the allocation of earnings.

[2] The Appellant's vacation pay and severance pay are earnings to be allocated to her Employment Insurance (EI) claims, from the week of September 22, 2024, to June 28, 2025. The balance of \$482.73 is allocated to the week of June 29, 2025.

[3] The Appellant may wish to contact the Commission to discuss the benefit period extension and request a written decision of any decisions made.

## Overview

[4] The Appellant had established a claim (benefit period) for sickness EI benefits starting on November 26, 2023. She returned to work on December 27, 2023, and her benefit period went dormant.

[5] The Appellant applied for regular EI benefits after she lost her job on September 25, 2024. The Commission reactivated (renewed) her November 26, 2023, benefit period, starting on September 22, 2024.

[6] The Appellant says that she received a letter from the Commission telling her that her November 26, 2023, benefit period would end on November 23, 2024. So, she needed to submit another application for EI benefits. She submitted another application as instructed, and the Commission set up a subsequent benefit period starting on November 24, 2024.

[7] The employer issued two Records of Employment (ROEs). The first ROE was issued on October 22, 2024, listing \$45,747.00 as severance pay paid to due separation.

[8] The second ROE was issued one month later, on November 25, 2024. This second ROE lists separation money of \$187.95 as vacation pay, \$45,747.09 as

severance pay, \$9,000.00 as a bonus starting 28-09-2024, and a \$4,906.42 bonus for 28-07-2024 to 28-09-2024.

[9] The Commission allocated the \$187.95 vacation pay and \$45,747.09 severance pay ( $\$187.95 + \$45,747.09 = \$45,935.04$ ) to the Appellant's November 26, 2023, benefit period as follows.

[10] On October 1, 2024, the Commission wrote to the Appellant stating it was applying (allocating) her separation money in the amount of \$8,524.00 to her claims from September 22, 2024, to November 16, 2024, with a balance of \$1,154.00 applied to the week of November 17, 2024. This means only \$9,678.00 ( $\$8,524.00 + \$1,154.00 = \$9,678.00$ ) of the \$45,935.04 separation money was allocated to her November 26, 2023, benefit period.<sup>1</sup>

[11] There were no documents on file that mentioned an allocation for the remaining \$36,257.04 balance ( $\$45,935.04 - \$9,678.00 = \$36,257.04$ ). So, I asked the Commission to provide supplementary representations to clarify among other things, the allocation of the Appellant's separation money, her earnings last week worked, her normal weekly earnings, and a benefit period extension.

[12] The Commission provided supplementary representations in which it states that there was an allocation of separation money on the November 24, 2024, benefit period and a 19-week benefit period extension. This response was lacking, so I sent another, more detailed request for an investigation and report but the Commission failed to respond.

[13] The Appellant appeals to the General Division of the Social Security Tribunal. She disagrees with the Commission's allocation of her separation money. She says she hasn't received any EI benefits since she lost her job on September 28, 2024.

---

<sup>1</sup> See page GD3-19.

## **Matters to consider first**

### **Method of hearing**

[14] The hearing proceeded through videoconference as requested by the Appellant. However, the video on the Appellant's computer wasn't working properly so I couldn't see her, but I could hear her clearly. She confirmed that she could see and hear me clearly.

[15] I gave the Appellant options on how we could proceed or adjourn the hearing. She said she wanted to proceed with her video off, while my video remained on. The hearing proceeded as scheduled on February 5, 2025, as requested by the Appellant. So, I find the Appellant had a full and fair opportunity to be heard.

### **Issues**

[16] Is the money paid to the Appellant due to separation considered earnings for the purpose of EI benefits?

[17] If so, how are those earnings to be allocated to the Appellant's EI claims?

[18] Is the Appellant entitled to a benefit period extension?

## **Analysis**

### **Separation money**

[19] The law says that the entire income from employment is earnings.<sup>2</sup> All pecuniary or non-pecuniary income that is or "will be" received from an employer is income.<sup>3</sup>

[20] There is no dispute that the Appellant received \$187.95 as vacation pay, \$45,747.09 as severance pay, paid due to a complete separation from her employment. She was also paid \$9,000.00 as a bonus starting 28-09-2024, and a \$4,906.42 bonus

---

<sup>2</sup> See section 35(2) of the *Employment Insurance Regulations* (EI Regulations).

<sup>3</sup> See section 35(1) of the EI Regulations.

for 28-07-2024 to 28-09-2024. These amounts are income stemming directly from the Appellant's employment.

[21] I acknowledge that the Appellant said the amounts listed above were the gross amounts before deductions. She received much less after deductions. But the law states that it is the gross amount of earnings that is to be allocated.<sup>4</sup>

[22] Accordingly, I find as fact the Appellant received \$187.95 as vacation pay, \$45,747.09 as severance pay, paid due to a complete separation from her employment. She was also paid \$9,000.00 as a bonus starting 28-09-2024, and a \$4,906.42 bonus for 28-07-2024 to 28-09-2024. There is nothing in the appeal documents that would make me find otherwise.

## **Allocation**

[23] Earnings that are paid or payable to a claimant are applied to their claims and deducted from their EI benefits. This is called allocation. The reason for allocating earnings is to avoid double compensation.<sup>5</sup>

[24] Earnings are allocated depending on the nature of the earnings: why were the earnings paid? The earnings, paid for vacation pay and severance pay, due to a complete severance from employment, are allocated based on the Appellant's normal weekly earnings.

[25] The law outlines the allocation that applies to earnings that are paid by reason of permanent separation from employment. The Federal Court of Appeal clarified that a payment is made "by reason of" separation from employment at the time the employment is terminated.<sup>6</sup>

[26] The allocation of separation earnings starts the week of the Appellant's last day worked if she didn't work a full workweek. The allocation starts the week after her last

---

<sup>4</sup> See section 35(10)(a) of the EI Regulations.

<sup>5</sup> *Canada (Attorney General) v. Walford*, A-263-78.

<sup>6</sup> *Canada (Attorney General) v. Savarie*, FCA A-704-95.

day worked in cases where her last week worked was a full workweek. The allocation starts in that week despite when the earnings were paid or payable.<sup>7</sup>

[27] Earnings paid to a claimant under a contract of employment for the performance of services shall be allocated to the period in which the services were performed.<sup>8</sup>

[28] The Appellant testified that she was paid the 9,000.00 and \$4,906.42 bonuses for work done prior to her last day on September 27, 2024. She agrees those bonuses are allocated to weeks the work was performed. This means the allocation of her bonuses has no effect on her claim for EI benefits.

[29] The Appellant disputes the allocation of her vacation pay and severance pay. So, I will now proceed with determining that allocation.

– **Normal weekly earnings**

[30] Normal weekly earnings are the ordinary or usual earnings a claimant earns on a regular basis at their employment.<sup>9</sup> This does not include money paid due to separation.

[31] Where a claimant is paid wages at an hourly rate, the normal weekly earnings are calculated by multiplying the number of hours normally worked by the hourly rate of pay. If the normal hours worked varies from week to week, the normal weekly earnings are the “average” of the weekly gross wages for the weeks under review.<sup>10</sup>

[32] In cases where a claimant is paid wages plus a bonus or lump sum payment of retroactive pay, then the use of “average” normal weekly earnings may be considered when allocating separation pay. In such cases, the allocation is completed using an average of the earnings paid.<sup>11</sup>

---

<sup>7</sup> Subsection 36(9) of the EI Regulations

<sup>8</sup> See section 36(4) of the EI Regulations.

<sup>9</sup> See *Canada (Attorney General) v Fox*, A-841-96.

<sup>10</sup> For example, see *Chaulk v Canada (Attorney General)*, 2012 FCA 190 and *D.S. v Canada Employment Insurance Commission*, AD-18-373.

<sup>11</sup> See *Chaulk v Canada (Attorney General)*, 2012 FCA 190.

[33] The Appellant doesn't dispute that her average normal weekly earnings were \$1,154.00. She testified that her earnings, as reported by the employer, includes an annual bonus. Upon review of the ROEs issued by the employer, there are different amounts listed in each of the pay periods in section 15C. Plus there are bonuses listed in section 19 of the second ROE.

[34] Based on the foregoing, I accept the Commission's calculation of \$1,154.00 to be the Appellant's average normal weekly earnings. So, \$1,154.00 is to be considered as the average normal weekly earnings for the allocation of earnings. I will now determine the allocation of the Appellant's separation money.

– **The last week worked**

[35] The Appellant didn't work a full work week in her last week worked. Her last day worked was Friday, September 27, 2024. She said that September 28, 2024, was her last day paid but September 29, 2024, was technically the date of her separation from her employment.

[36] The Appellant agrees with the Commission's submission that her earnings in her last week of work were \$707.69. So, I find as fact that the Appellant's earnings in her last week of work (ELWW) were \$707.69. So, the allocation of separation money starts the week of September 22, 2024.

– **Allocation of severance pay**

[37] After careful consideration of the evidence, as set out above, I find the \$45,935.04 separation money (vacation pay and severance pay) was paid due to separation and is allocated as follows. This is based on the Appellant's \$1,154.00 average normal weekly earnings (ANWE).

<b>Amount allocated</b>	<b>Allocated to the week(s)</b>
\$ 446.31	Sep 22, 2024, to Sep 28, 2024 (\$707.69 ELWW + \$446.31 = \$1,154 ANWE)
\$45,006.00	Sep 29, 2024, to Jun 28, 2025 (39 weeks x \$1,154.00 ANWE)
<u>\$ 482.73</u> \$45,935.04	Jun 29, 2025, to July 5, 2025

[38] The Commission's October 1, 2024, decision letter states the allocation ends November 17, 2024. The Commission's initial and supplementary representations lack specific details of the allocation on the Appellant's November 24, 2024, benefit period. The Commission failed (refused) to provide additional information as requested in my January 30, 2025, letter. So, there is insufficient evidence to determine whether the Commission allocated the separation money properly or notified the Appellant of that allocation.

[39] The evidence on file supports a finding that the Commission also failed to extend the Appellant's November 26, 2023, benefit period. Instead, it allowed that benefit period to end on November 23, 2024, and instructed the Appellant to submit another application for benefits. This may have been to the Appellant's benefit. However, the Commission failed to inform the Tribunal of the reasons for these actions.

[40] The Commission set up a subsequent benefit period starting on November 24, 2024, and extended that benefit period by 19 weeks.<sup>12</sup> However, the allocation of earnings on the subsequent benefit period may prevent the payment of EI benefits for up to 32 weeks, from November 24, 2024, to July 5, 2025. This means the benefit period **is** extended by those 32 weeks.<sup>13</sup>

---

<sup>12</sup> See the Commission's supplementary representations at page GD6-1.

<sup>13</sup> See section 10(10) of the EI Act.



[41] After careful consideration of the foregoing, I find it is more likely than not that the Commission allocated the Appellant's earnings incorrectly.

[42] I find the Appellant's earnings (vacation pay and severance pay) of \$45,935.04 are allocated from September 22, 2024, to June 28, 2025, at \$1,154.00 per week.<sup>14</sup> The balance of \$482.73 is allocated from June 29, 2025, to July 5, 2025. The Appellant is not entitled to receive EI benefits in the weeks the earnings are allocated or during the allocation of earnings in the waiting period.

### **Benefit period extension**

[43] To be paid EI benefits, a claimant must submit an application (make a claim). If they meet the qualifying conditions, a benefit period is established.

[44] A benefit period is normally 52 weeks. This is the period **when** benefits may be paid.<sup>15</sup> In most cases, a benefit period **is** extended in cases where an allocation of separation money prevents the payment of EI benefits.<sup>16</sup>

[45] When a benefit period is extended, it only increases the period during which benefits may be paid. A benefit period extension **doesn't** increase the number of weeks of benefits a claimant is entitled to receive.

[46] The Appellant testified that the Commission never told her about a benefit period extension or the total number of weeks that her separation money would be allocated. She is frustrated with this process. She is suffering from "great financial issues," is out of a job by no choice of her own, and she paid into Employment Insurance, so she believes she ought to be receiving benefits now.

[47] After reviewing the Commission's initial submissions, I recognized that important information was missing. For example, the Commission didn't provide the Appellant's

---

<sup>14</sup> See section 36(9) of the EI Regulations.

<sup>15</sup> Sections 9 and 10 of the *Employment Insurance Act* (EI Act).

<sup>16</sup> See sections 10(10)(b) of the EI Act.

earnings her last week of work or her average normal weekly earnings. The documents only mentioned a portion of the separation money being allocated. And there was no mention of a benefit period extension, which the law says **is** done. The doesn't say a benefit period "may be done". So, I sent the Commission a request for investigation and report.

[48] I found the Commission's supplementary representations to be lacking, and its statements confused the issues further. For example, the Commission said it only extended the November 24, 2024, benefit period by 19 weeks. But the allocation prevents the payment of benefits by 31 or 32 weeks.

[49] The Commission also said that with the 19-week benefit period extension the Appellant will have enough time to collect her full entitlement of 27 weeks between the end of the allocation, which is April 12, 2025, and the current last renewal week on March 29, 2026. I disagree.

[50] The Commission can't speak to any future circumstances the Appellant may experience. Perhaps she will find a job and pause her claim (benefit period) for a short period and if laid off shortly after, she would need to reactivate or renew that claim. But if that benefit period isn't extended properly it may expire prematurely, preventing the Appellant access to her full weeks of entitlement. This means the benefit period extension needs to be completed properly, in accordance with the law.

[51] It appears based on the Commission's supplementary representations that the benefit period extension was done incorrectly. However, because the Appellant was never informed of the benefit period extension on her subsequent claim (November 24, 2024, benefit period), she never had an opportunity to request reconsideration on that decision made by the Commission.

[52] The Commission's Supplementary Representations created more questions about how the Commission allocated the Appellant's separation earnings and managed

the benefit period. So, I sent a second request for an investigation and report.<sup>17</sup> But the Commission failed to respond.

[53] The law says that a person may ask for reconsideration of a Commission decision.<sup>18</sup> If they don't agree with the reconsideration decision, they can appeal that decision (issue) to the Tribunal's General Division.<sup>19</sup> However, if the Commission fails to inform a claimant about a decision it made, there is no opportunity for the claimant to ask for that decision to be reconsidered.

[54] The Department of Employment and Social Development Act (DESD Act) says that the General Division has the power to, "give the decision that the ... Commission should have given."<sup>20</sup> However, to do this the Tribunal needs access to all pertinent information.

[55] There is case law that suggests the Tribunal should take a broad approach to its jurisdiction, within the limits of the law, to manage appeals fairly and efficiently and to consider the underlying requests and decisions to determine the scope of the reconsideration.<sup>21</sup>

[56] The Appellant may very well be prevented from receiving EI benefits during the 40 or 41 weeks of the allocation of her severance pay. But in cases such as this, the law clearly states that her benefit period **is** extended by the number of weeks the allocation prevents the payment of benefits. The use of the words **is extended**, indicates that the extension is completed, not may or will be completed.

[57] However, as set out above, it appears that the Commission failed to extend the Appellant's benefit period(s) properly and failed to notify her of those decisions. It

---

<sup>17</sup> See the GD8 document.

<sup>18</sup> See EI Act, section 112.

<sup>19</sup> See EI Act, section 113.

<sup>20</sup> See DESD ACT, section 54(1).

<sup>21</sup> See *Fu v Canada (Attorney General)*, 2019 FC 527; *ML v Minister of Employment and Social Development*, 2020 SST 281 at paragraph 17; and *MS v Canada Employment Insurance Commission*, 2022 SST 933.

appears that the Commission provided limited or guarded communication about the benefit period extensions.

[58] It may very well have been in the Appellant's best interests to start her subsequent, November 24, 2024, benefit period on this date, or earlier, or to extend her November 26, 2023, benefit period further. But without access to the requested information, this can't be determined by the Tribunal at this time.

[59] The Commission's failure or refusal to provide the Tribunal with the requested information, or to notify the Appellant of decisions made relating to a benefit period extension, is not only reprehensible but is a breach of procedural fairness and inhibits the Tribunal's ability to resolve all related issues under appeal as simply and quickly as fairness allows.<sup>22</sup>

[60] Based on the foregoing, the Appellant may wish to contact the Commission to discuss what actions were taken to extend her benefit period(s) and then request reconsideration if she disagrees with the Commission's decision.

## **Additional arguments**

[61] I acknowledge that the Appellant said she didn't choose for her job to end, and she had no choice but to accept the separation package. But that doesn't change the fact that her separation money is earnings to be allocated to her EI claims.

[62] I am truly empathetic with the circumstances the Appellant presented. I acknowledge that this isn't the outcome she was seeking. But my decision is not based on fairness or financial hardship. Instead, my decision is based on the facts before me and the application of the EI law. There are no exceptions and no room for discretion. I

---

<sup>22</sup> See *Fu v Canada (Attorney General)*, 2019 FC 527; *ML v Minister of Employment and Social Development*, 2020 SST 281 at paragraph 17; and *MS v Canada Employment Insurance Commission*, 2022 SST 933, section 8(1) of the *Social Security Tribunal Rules of Procedures*, and section 54(1) of the DESD ACT.

can't interpret or rewrite the EI Act in a manner that is contrary to its plain meaning, even in the interest of compassion.<sup>23</sup>

## Conclusion

[63] The appeal is dismissed, with modification to the allocation of earnings.

[64] The Appellant's \$45,935.04 separation money is earnings to be allocated from September 22, 2024, to June 28, 2025, with a balance of \$482.73 allocated to the week of June 29, 2025.

[65] The Appellant may wish to contact the Commission to discuss what actions were taken to extend her benefit period(s) and request a written decision of any decisions made regarding a benefit period extension. If she disagrees with the Commission's decision, she can proceed with a request for reconsideration and an appeal to the Tribunal if needed.

Linda Bell  
Member, General Division – Employment Insurance Section

---

<sup>23</sup> *Canada (Attorney General) v Knee*, 2011 FCA 301