



Citation: *CE v Canada Employment Insurance Commission*, 2025 SST 750

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: C. E.

Respondent: Canada Employment Insurance Commission

Respondent's Representative: Michelle Mombourquette

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

Tribunal member: Angela Ryan Bourgeois

Type of hearing: Teleconference

Hearing date: July 15, 2025

Hearing participants: Appellant
Respondent's representative

Decision date: July 22, 2025

File number: GE-25-1517

Decision

[1] The appeal is dismissed, but I am changing the original decision. The Appellant received earnings. The Canada Employment Insurance Commission (Commission) was right to allocate the earnings, but the way it allocated them wasn't correct.

Overview

[2] 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

[3] The Appellant started an EI sickness claim in November 2023. She returned to work, but lost her job in September 2024.

[4] The Appellant got some money from her former employer upon the separation from her employment.

[5] The Commission decided that the money is "earnings" under the law because it represented vacation pay and severance pay.

[6] The Commission allocated \$45,935, representing \$188 in vacation pay, and \$45,747 in severance pay.² It started the allocation the week of September 22, 2024, at her normal weekly earnings of \$1,154.³ It didn't allocate a payment of \$9,000 that was also paid upon separation.

[7] The Appellant appealed that decision to the General Division of the Tribunal.

[8] The General Division dismissed the Appellant's appeal but made changes to the allocation.

[9] The Appellant appealed the General Division's decision to the Appeal Division.

[10] The Appeal Division allowed the appeal based on procedural fairness.

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

² See page GD3-23.

³ See page GD3-19.

[11] And that is how this appeal has come before me.

[12] The Commission says that upon further investigation, the Appellant had earnings of \$54,935.04. It says this amount should be allocated at \$1,462.09 per week, starting September 22, 2024.⁴

[13] The Appellant disagrees with the amount of earnings. She says she didn't receive that much because of deductions, and what she did get went to pay debt.

[14] The Appellant also says that I must take her personal financial circumstances into account. For example, I should recognize that the money she received was gone before it reached her hands.

Matter I have to consider first

I accepted documents sent in after the hearing

[15] I scheduled a case conference but due to a mistake in the invitation, the Appellant and the Commission's representative attended at different times. So, I asked the Commission's representative to attend the hearing, which she did.

[16] At the hearing, I asked the Commission some questions about its proposed allocation, especially for the first week. The Commission requested time to answer my question. I agreed to accept its response after the hearing. I told the Appellant that the Commission's response would be sent to her. I told her that she would have a day to review the Commission's response. But if she needed more time, she only had to let the Tribunal know.

[17] I received the Commission's response (RGD09) on July 16, 2025. And the Tribunal sent a copy to the Appellant by email later the same day.

[18] I waited three whole business days. The Appellant didn't ask for more time to review RGD09, and she didn't provide a written response. So, I proceeded to make my decision.

⁴ See the Commission's revised position in RGD06, as amended by RGD09.

Issues

[19] I must decide:

- What money counts as earnings and the amount of those earnings
- How those earnings get allocated to weeks
- What were the Appellant's normal weekly earnings
- How much she earned in her last week of work

[20] I am also going to look at the benefit period commencement date and the benefit period extension because these issues came up in the earlier proceedings. The parties had a chance to explain their positions on these additional matters.

Analysis

How much did the Appellant receive in earnings?

[21] I find that the Appellant received \$54,935 in earnings.⁵

Amount received	Reason it was paid	Comments
\$9,000	Paid upon separation representing \$1,000 for every year of employment	This was called "Bonus Non-pensionable" on her pay stub ⁶
\$17,500	Severance	Paid in October 2024
\$10,000	Severance	Paid directly to RRSP
\$18,247	Severance	Paid in January 2025. ⁷
\$188	Vacation pay paid upon separation from employment	As shown on her record of employment. ⁸
\$54,935 in total earnings		

⁵ Earnings are allocated to the nearest dollar.

⁶ See page RGD4-2.

⁷ See page RGD4-4.

⁸ See page RGD5-71.

[22] These amounts are all earnings because they represent income paid to her by her former employer.

[23] The law says that earnings are the entire income that you get from any employment.⁹ This includes vacation pay. Case law says that severance pay is earnings.¹⁰

[24] So, the Appellant's earnings of \$54,935 must be allocated to weeks. I'll explain how the earnings are allocated below.

– **Incentive bonus**

[25] The Appellant also received a performance or incentive bonus. This money is earnings, but it isn't allocated to the period under appeal.¹¹ These types of bonuses are allocated to the period when the work was performed.

– **I can't consider her personal financial circumstances**

[26] The total earnings of \$54,935 must be allocated no matter how the Appellant used it. The law doesn't let me consider what she needed the money for.

The allocation of earnings

[27] The law says that earnings must be allocated to certain weeks. What weeks earnings are allocated to depends on why you received the earnings.¹²

[28] The \$54,935 was paid to the Appellant because she was separated from her employment. There is no dispute about this.

[29] The law says that the earnings you get for being separated from your job have to be allocated starting the week of separation. It doesn't matter when you actually receive

⁹ See section 35(2) of the EI Regulations. 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. Employment is any work that you did or will do under any kind of service or work agreement. See section 35(1) of the EI Regulations.

¹⁰ See *Blais v Canada (Attorney General)*, 2011 FCA 320.

¹¹ This bonus is still relevant to the appeal because it affects the calculation of her normal weekly earnings.

¹² See section 36 of the EI Regulations.

those earnings.¹³ So, even the amount paid in January 2025 is allocated starting the week of separation.

– **The week of separation**

[30] The Appellant's last day of work was September 27, 2024. This means that her week of separation is the week of September 22, 2024. There is no dispute about this.

– **Normal weekly earnings**

[31] The Commission says that the Appellant's normal weekly earnings are \$1,462.09.¹⁴ This amount is higher than originally determined because it now includes her regular performance bonus.

[32] The Appellant didn't dispute the amount of \$1,462.09, but she pointed out that the bonus she received was different every year.

[33] Since the Appellant hasn't said that her normal weekly earnings should be a different amount, I accept the Commission's determination as fact.¹⁵

– **Earnings in last week of work**

[34] Since only an amount up to the Appellant's normal weekly earnings can be allocated to a week, I must determine how much she earned in her last week of work, the week of September 22, 2024.¹⁶

[35] Recently the employer told the Commission that the Appellant had earnings of \$1,004.09 in her last week of work.¹⁷ The Appellant doesn't dispute this. At the hearing, she agreed that she took vacation and sick time during her last week of work. She didn't say that her earnings were other than what the employer told the Commission.

¹³ See section 36(9) of the EI Regulations. See also section 36(10) with respect to that portion paid in January 2025.

¹⁴ See page RGD5-84.

¹⁵ Note that the 2024 bonus was for a partial year only. See record of employment on page RGD5-71.

¹⁶ See section 36(9) that says that the earnings are allocated in such a manner that the total earnings of the claimant from that employment are, in each consecutive week except the last, *equal to the claimant's normal weekly earnings from that employment*.

¹⁷ See page RGD5-79.

[36] I accept as fact that the Appellant's earnings in her last week of work were \$1,004 (rounded to the nearest dollar). The Appellant didn't say her earnings were a different amount and I see nothing in the file to call this into question.

– **The allocation**

[37] Based on these findings, the Appellant's earnings are allocated as shown on the next page.

Week of	Earnings allocated	Comments	Weeks with no benefits payable due to severance money
22-Sep-24	\$458	\$1,462 minus \$1,004 = \$458	n/a
29-Sep-24	\$1,462		1
06-Oct-24	\$1,462		2
13-Oct-24	\$1,462		3
20-Oct-24	\$1,462		4
27-Oct-24	\$1,462		5
03-Nov-24	\$1,462		6
10-Nov-24	\$1,462		7
17-Nov-24	\$1,462		8
24-Nov-24	\$1,462		9
01-Dec-24	\$1,462		10
08-Dec-24	\$1,462		11
15-Dec-24	\$1,462		12
22-Dec-24	\$1,462		13
29-Dec-24	\$1,462		14
05-Jan-25	\$1,462		15
12-Jan-25	\$1,462		16
19-Jan-25	\$1,462		17
26-Jan-25	\$1,462		18
02-Feb-25	\$1,462		19
09-Feb-25	\$1,462		20
16-Feb-25	\$1,462		21
23-Feb-25	\$1,462		22
02-Mar-25	\$1,462		23
09-Mar-25	\$1,462		24
16-Mar-25	\$1,462		25
23-Mar-25	\$1,462		26
30-Mar-25	\$1,462		27
06-Apr-25	\$1,462		28
13-Apr-25	\$1,462		29
20-Apr-25	\$1,462		30
27-Apr-25	\$1,462		31
04-May-25	\$1,462		32
11-May-25	\$1,462		33
18-May-25	\$1,462		34
25-May-25	\$1,462		35
01-Jun-25	\$1,462		36
08-Jun-25	\$1,462		37
15-Jun-25	\$383		n/a
Total	\$54,935		

[38] Only \$458 is allocated to the week of separation. The most that can be allocated in any week is the amount of her normal weekly earnings from that employment. So, I deducted the amount she earned in her last week (\$1,004) from her normal weekly earnings (\$1,462) to determine how much could still be allocated to that first week.

[39] The amount of \$383 is allocated to the last week, June 15, 2025, because that is the amount left over after allocating an amount equal to her normal weekly earnings in the previous weeks.

[40] I have allocated only whole dollars because the *Employment Insurance Regulations* say that earnings are rounded to the nearest dollar.¹⁸

– **Benefit period commencement**

[41] The Commission started the Appellant's benefit period on September 29, 2024. It says that is the best date for her to start her benefit period because it gives her the benefit of all her insurable hours. Starting the benefit period a week earlier would reduce the total weeks of entitlement.¹⁹

[42] The Commission explained its position in RGD9, which was sent to the Appellant.

[43] The Appellant didn't provide any arguments about when her benefit period should start, and she hasn't disputed anything the Commission said in RGD9.

[44] So, I accept as fact that the Appellant's new benefit period starts on September 29, 2024.

– **The benefit period extension**

[45] I agree with the Commission that the Appellant's benefit period is extended by 37 weeks.

¹⁸ For the exact wording, see section 36(2) of the EI Regulations.

¹⁹ See page RGD9-1.

[46] When a claimant receives too much in earnings, they aren't entitled to EI benefits.²⁰ But if those earnings are because of a separation from employment, the benefit period may be extended.

[47] A claimant's benefit period will be extended by the total number of weeks that they aren't entitled to benefits because they are in receipt of earnings from a complete severance of their relationship with their former employer.²¹

[48] The Appellant isn't entitled to receive benefits for 37 weeks because of the money she received upon the severance of her relationship with her former employer. The amount allocated to the 37 weeks shown in the allocation table above prevents the payment of benefits.

[49] The Appellant isn't entitled to benefits for the week of September 22, 2024, but that week doesn't count. This is because the severance money wasn't the only reason she wasn't paid benefits that week. Also, that week was in a different benefit period.

[50] So, her benefit period starting September 29, 2024, is extended by 37 weeks.

²⁰ See section 19 of the *Employment Insurance Act* (EI Act).

²¹ See section 10(1)(b) of the EI Act.

Conclusion

[51] The Appellant has \$54,935 in earnings. That amount is allocated at \$1,462 per week (her normal weekly earnings), starting the week of September 22, 2024 (the week of separation).

[52] The Appellant has earnings in her last week of work of \$1,004, so the earnings allocated to the week of September 22, 2024, are \$458.

[53] Earnings of \$383 are allocated to the last week, the week of June 15, 2025.

[54] The allocation is shown in table format in paragraph 37.

[55] The Appellant's new benefit period starts on September 29, 2024.

[56] That benefit period is extended by 37 weeks.

[57] This means that the appeal is dismissed with modification.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section