



Citation: *MN v Canada Employment Insurance Commission*, 2025 SST 771

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

## **Decision**

**Appellant:** M. N.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (723743) dated April 1, 2025  
(issued by Service Canada)

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**Tribunal member:** Emily McCarthy

**Type of hearing:** Teleconference

**Hearing date:** May 13, 2025

**Hearing participant:** Appellant

**Decision date:** May 20, 2025

**File number:** GE-25-1311

## Decision

[1] The appeal is dismissed. The Appellant received earnings (vacation pay) because of a separation from employment. And the Canada Employment Insurance Commission (Commission) allocated (in other words, assigned) those earnings to the right weeks.

## Overview

[2] The Appellant got \$6315.67 in vacation pay from her former employer after she was laid off.<sup>1</sup> The Commission decided that the vacation pay was “earnings” under the law.<sup>2</sup>

[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.<sup>3</sup>

[4] The Commission allocated the earnings starting the week of December 2, 2024. This is the week that the Commission said that the Appellant was laid off from her employment. The Commission said that being laid off from her job is why the Appellant received the earnings.<sup>4</sup>

[5] The Appellant disagrees with the Commission. The Appellant says she worked extra hours so that she could afford to travel to care for her father-in-law. She called the Commission to make sure she would be entitled to EI caregiver benefits. And was told by the Commission that she would be eligible for caregiver benefits. Unfortunately, she was unexpectedly laid off at the same time that she left to care for her father-in-law. She says it isn't fair that an unexpected lay off changes her entitlement to caregiver benefits. She relied on information she got from the Commission that she would be entitled to caregiver benefits when she decided to buy her plane ticket and travel to care for her father-in-law. And she has paid into the EI system.<sup>5</sup>

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<sup>1</sup> See GD3-17 and GD3-22.

<sup>2</sup> See GD3-23, GD3-24 and GD6.

<sup>3</sup> See section 36 of the *Employment Insurance Regulations* (EI Regulations).

<sup>4</sup> See GD6-1.

<sup>5</sup> See GD2-1 and GD2-9.

[6] The Appellant also says that the Commission didn't allocate the earnings correctly because it shouldn't affect her caregiver benefits.

## Issues

[7] I have to decide the following two issues:

- a) Is the money that the Appellant received earnings?
- b) If the money is earnings, did the Commission allocate the earnings correctly?

## Analysis

### Is the money that the Appellant received earnings?

[8] Yes, the \$6315.67 that the Appellant received is earnings. Here are my reasons for deciding that the money is earnings.

[9] The law says that earnings are the entire income that you get from any employment.<sup>6</sup> The law defines both "income" and "employment."

[10] **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.<sup>7</sup> Case law says that vacation pay is earnings.<sup>8</sup>

[11] **Employment** is any work that you did or will do under any kind of service or work agreement.<sup>9</sup>

[12] The Appellant's former employer gave the Appellant \$6315.67 when she was laid off from her employment.<sup>10</sup> The Commission decided that this money was vacation pay.<sup>11</sup> So, it said that the money is earnings under the law.

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<sup>6</sup> See section 35(2) of the EI Regulations.

<sup>7</sup> See section 35(1) of the EI Regulations.

<sup>8</sup> See *Blais v Canada (Attorney General)*, 2011 FCA 320.

<sup>9</sup> See section 35(1) of the EI Regulations.

<sup>10</sup> See GD3-17.

<sup>11</sup> See GD3-23 and GD3-24.

[13] 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 she has to show that it is more likely than not that the money isn't earnings.

[14] I find that the evidence shows the Appellant received \$6315.67 in vacation pay.<sup>12</sup> Her employer confirmed that the money was paid as vacation pay.<sup>13</sup> And the Appellant doesn't dispute that the money is vacation pay.<sup>14</sup> Vacation pay is income from employment. This means vacation pay is earnings and must be allocated. I find that the \$6315.67 paid to the Appellant by her former employer is vacation pay and is therefore earnings that must be allocated (assigned).

### **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.<sup>15</sup>

[16] The Appellant's earnings are vacation pay. And the Appellant's employer gave the Appellant those earnings because the Appellant was laid off from her job. So the earnings are vacation pay given to the Appellant because of a separation from employment.

[17] The Appellant agrees that she was laid off on November 29, 2024. And the amended Record of Employment (ROE) says her last day of work was November 29, 2024, due to a shortage of work / end of contract or season.<sup>16</sup> The Commission spoke to the employer and its notes say that the employer told it that the vacation pay was paid because the Appellant was laid off as of the week of December 2, 2024.<sup>17</sup>

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<sup>12</sup> See GD3-17 and GD2-13.

<sup>13</sup> See GD3-17 and GD3-22.

<sup>14</sup> See GD2-9.

<sup>15</sup> See section 36 of the EI Regulations.

<sup>16</sup> See GD3-17 and GD3-22.

<sup>17</sup> See GD3-22.

[18] The Appellant agrees that her last day of work was November 29, 2024.<sup>18</sup> This means I find her lay off began in the week of December 2, 2024. According to the law, this is the week from which her earnings (vacation pay) must be allocated (assigned).<sup>19</sup>

[19] The law says that the earnings you get for being laid off from your job have to be allocated starting the week you were laid off from your job. It doesn't matter when you actually receive those earnings. The earnings have to be allocated starting the week your lay-off starts, even if you didn't get those earnings at that time.<sup>20</sup>

[20] The law also says that the earnings paid because of a lay off must be allocated based on the claimant's normal weekly earnings until the total amount of the earnings has been allocated (assigned).<sup>21</sup>

[21] The Commission decided that the Appellant's normal weekly earnings was \$1319.<sup>22</sup> So, it allocated \$1319 per week starting the week of December 2, 2024 – the week the Appellant was laid off.

[22] I asked the Commission to explain how it calculated the Appellant's normal weekly earnings. It said that it calculated the average weekly earnings based on the information in the ROE.<sup>23</sup>

[23] A claimant's normal weekly earnings from employment are the ordinary, usual earnings that they earn on a regular basis.<sup>24</sup>

[24] The Appellant's ROE shows that at the beginning of her employment she earned \$2524.69 every two weeks. Later in her employment her salary increased to approximately \$2600 (and a bit higher) every two weeks.<sup>25</sup> There is no evidence that the Commission's calculation of her normal weekly earnings as being \$1319 is incorrect.

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<sup>18</sup> See GD2-9.

<sup>19</sup> See section 36(9) of the EI Regulations.

<sup>20</sup> See section 36(9) of the EI Regulations.

<sup>21</sup> See section 36(9) of the EI Regulations.

<sup>22</sup> See GD7.

<sup>23</sup> See GD6-1 and GD6-3.

<sup>24</sup> See *Canada (Attorney General) v Fox*, A-841-96 (FCA). The calculation of normal weekly earnings doesn't include vacation pay or other amounts which are generally not include in their usual salary.

<sup>25</sup> See GD3-7.

This calculation is consistent with the salary set out in the Appellant's ROE. So, I accept that \$1319 was her normal weekly earnings

[25] This means that starting the week of the lay off (December 2, 2024) the Commission allocated \$1319 to each week between December 2, 2024, and December 28, 2024. The Commission says there was a remaining balance of \$960 which was allocated to the week of January 5, 2025.<sup>26</sup>

[26] I find the Commission allocated the vacation pay (\$6316), based on the Appellant's normal weekly earnings (\$1319), from the date of the Appellant's lay-off (week of December 2, 2024). So, I find the Commission allocated the Appellant's earnings according to the law.

## Other Matters

[27] I understand that the Appellant will be disappointed by this decision. She was careful and took steps to understand her rights and obligations. She contacted Service Canada before she decided to apply for caregiver benefits and buy plane tickets. She explained that if she had known she wouldn't get the caregiver benefit because of her lay off, she might have postponed her trip. And the situation is causing her financial difficulty.

[28] Unfortunately, the Appellant didn't know that she would be laid off at the end of November 2024 until **after** she had spoken to the Commission and made her travel arrangements. The unexpected lay-off which resulted in the payment of vacation pay changed the Appellant's circumstances.

[29] The Appellant also says that she paid into the EI programme and now, when she needs it, she isn't getting benefits. I sympathize with the Appellant's financial situation. But unfortunately, EI isn't an automatic benefit. And in this case, for the reasons set out above, the Appellant's vacation pay (earnings) must be allocated, based on her normal

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<sup>26</sup> See GD6-1.

weekly earnings, to the weeks of December 2 to December 28, 2024, with the remainder being allocated in the week of January 5, 2025.

[30] While the outcome will seem unfair to the Appellant, the law is clear that vacation pay is earnings, which must be allocated from the time of a lay off, at a claimant's normal weekly earnings.<sup>27</sup> I must apply the law. I cannot change or ignore the law.

[31] Finally, at the hearing, the Appellant mentioned the recent temporary measures put in place due to respond to major changes in economic conditions. Unfortunately, because the Appellant's lay off happened on November 29, 2024, she doesn't benefit from these temporary measures which apply to claimants whose benefit period or allocation period is between March 30 and October 11, 2025.<sup>28</sup>

## Conclusion

[32] The appeal is dismissed.

[33] The Appellant received \$6315.67 in earnings. These earnings were correctly allocated starting the week of December 2, 2024, at \$1319 per week until the week of December 28, 2024. The balance was allocated to the week of January 5, 2025.

Emily McCarthy

Member, General Division – Employment Insurance Section

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<sup>27</sup> See sections 35 and 36 of the EI Regulations.

<sup>28</sup> See [Temporary Employment Insurance measures to respond to major changes in economic conditions - Canada.ca](https://www24.international.gc.ca/ei/employment-insurance/employment-insurance-measures-to-respond-to-major-changes-in-economic-conditions-Canada.ca)