



Citation: *LR v Canada Employment Insurance Commission*, 2025 SST 1388

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

Decision

Appellant: L. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (680169) dated September 6, 2024 (issued by Service Canada)

Tribunal member: Gerry McCarthy

Type of hearing: Videoconference

Hearing date: December 18, 2025

Hearing participant: Appellant

Decision date: December 19, 2025

File number: GE-25-3299

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.

Overview

[2] The Appellant received vacation pay (\$4,268.25), pay in-lieu of notice (\$3,886.32), and a retiring allowance (\$8,435.69) from his former employer (“Encore Canada”). The Commission decided the money was “earnings” under the law because it was vacation pay and severance pay.

[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 March 5, 2023, at an amount of \$1,415.47 per week. This is the week the Commission said the Appellant was separated from his job. The Commission said that being separated from his job is why the Appellant received the earnings.

[5] The Appellant says he never received the retiring allowance of \$8,435.69. He further says there was a “calculation error” by the Commission on the allocation of the retiring allowance. He also says his overpayment amount seems too high.

Issues

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

- a) Is the money 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).

Analysis

Is the money the Appellant received earnings?

[7] Yes, the vacation payment (\$4,268.25), pay in-lieu of notice (\$3,886.32), and retiring allowance (\$8,435.69) for a total of \$16,590.26 that the Appellant received were earnings (GD3-43). Here are my reasons for deciding that the money is earnings.

[8] The law says that earnings are the entire income that you receive 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 Case law says that severance pay is earnings.⁴

[10] **Employment** is any work that you did or will do under any kind of service or work agreement.⁵

[11] The Appellant's former employer gave the Appellant vacation pay of \$4,268.25, pay in-lieu of notice of \$3,886.32, and a retiring allowance of \$8,435.69. The Commission decided this money was severance pay and vacation pay. So, it said the money was earnings under the law.

[12] The Appellant says he never received the retiring allowance of \$8,435.69.

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

[14] I find the vacation pay of \$4,268.25, pay in-lieu of notice of \$3,886.32, and a retiring allowance of \$8,435.69 (for a total of \$16,590.26) were earnings. I make this finding because the payments were made to compensate the Appellant for statutory

² See section 35(2) of the EI Regulations.

³ See section 35(1) of the EI Regulations.

⁴ See *Blais v Canada (Attorney General)*, 2011 FCA 320.

⁵ See section 35(1) of the EI Regulations.

requirements and the loss of other benefits related to his employment. I realize the Appellant indicated he never received the retiring allowance of \$8,435.69. However, the “Minutes of Settlement” (and a letter from the Appellant’s counsel) confirmed in writing the Appellant would receive a lumpsum of \$8,435.69 in a retirement allowance from his former employer (GD-28 to GD3-31).

[15] I wish to emphasize that the Appellant testified there were “taxes” and “legal fees” deducted by the Canada Revenue Agency (CRA). Perhaps the CRA also deducted monies from the Appellant’s retiring allowance to address his overpayment. In any event, I have to determine whether the retiring allowance given by the employer to the Appellant in the “Minutes of Settlement” were earnings. As mentioned, the retiring allowance was considered severance pay and therefore earnings under the law.

Did the Commission allocate the earnings correctly?

[16] 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.⁶

[17] The Appellant’s earnings are severance pay and vacation pay. The Appellant’s employer gave the Appellant those earnings because the Appellant was separated from his job.

[18] The law says that the earnings you receive 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 receive those earnings at that time.⁷

[19] I find the Appellant was separated from his job starting the week of March 3, 2023. I find this because the Appellant confirmed his last day paid was February 28,

⁶ See section 36 of the EI Regulations.

⁷ See section 36(9) and 36(10) of the EI Regulations.

2023. The Appellant's Record of Employment also confirmed the Appellant's last day paid was February 28, 2023 (GD3-43).

[20] The amount of money to be allocated starting the week of March 3, 2023, was \$1,415.47. This is because \$1,415.47 was the Appellant's normal weekly earnings. The parties don't dispute this amount, and I accept it as fact. This means that starting the week of March 3, 2023, the amount allocated to each week is \$1,415.47. If there is any amount of earnings that is left over, it will be allocated to the last week. In the Appellant's case, there was a balance of \$307.81 applied against his benefits for the week beginning May 21, 2023.

[21] In summary: I find the Commission correctly allocated the Appellant's earnings to his claim. I recognize the Appellant testified he never received the \$8,435.69 in a retirement allowance from his former employer and there was a calculation error. However, the "Minutes of Settlement" with the Appellant's former employer confirmed in writing that he was to be given \$8,435.69 in a retirement allowance (GD3-29 to GD3-31). As mentioned, the Appellant explained there were taxes and legal fees deducted by the CRA. Perhaps the CRA has deducted the retiring allowance from the Appellant's overpayment. Still, there was no way I can confirm this occurred because I don't have updated information from the CRA. So, the Appellant should contact the CRA for an update *after* he receives this decision.

The Appellant's Overpayment

[22] I realize the retroactive allocation of the Appellant's severance monies caused an overpayment listed by the Commission as \$5,508.00. I further recognize the Appellant requested that his overpayment be written off. However, I have no authority to write-off the Appellant's overpayment.⁸ But the Commission can decide to write-off an

⁸ *Villeneuve v Canada (Attorney General)*, 2005 FCA 440; *Mosher v Canada (Attorney General)*, 2002 FCA 355; and *Filiatrault v Canada (Attorney General)*, A-874-97.

overpayment in certain situations—for example, if paying it back would cause the Appellant undue hardship.

[23] So, the Appellant can ask the Commission to write-off his overpayment. Or he can contact the CRA to discuss fair payment arrangements.

[24] Finally: I recognize the Appellant testified the overpayment listed is too high and wasn't correct. I wish to emphasize the Commission submitted that the Appellant's overpayment represented the **combination** of the \$5,508.00 overpayment (for the issue at hand) and the remaining \$1,111.35 overpayment for **his prior issue**. Specifically, the Commission submitted that the notifications the Appellant provided in his Notice of Appeal included an unrelated issue and that issues relating to taxes **were not within their authority** (GD2-11 to GD2-14). In short, the authority for this issue would lie with the CRA.

The Commission's Authority to Reconsider a claim

[25] The law provides the Commission the authority to reconsider a claim for benefits retroactively, but subject to specific time limits.⁹

[26] The law further says the reconsideration may occur within 36-months of the week for which benefits were paid.¹⁰

[27] In this case, the Commission's reconsideration decision was made on April 15, 2024. The Commission says that benefits reconsidered as a result of this reconsideration decision were for the period from April 2, 2023, to June 3, 2023. The Commission further says this was within 36-months of the decision to reconsider.

[28] In summary: I find the Commission has the authority (under the law) to reconsider the Appellant's claim retroactively for the period from April 2, 2023, to June 3, 2023.

⁹ Section 52 of the *Employment Insurance Act* (EI Act).

¹⁰ Section 52(1) of the EI Act.

Conclusion

[29] The appeal is dismissed.

[30] The Appellant received a total of \$16,590.26 in earnings. These earnings were allocated starting the week of March 3, 2023, at \$1,415.47 per week. In the Appellant's case, there was a balance of \$307.81 applied against his benefits for the week beginning May 21, 2023.

Gerry McCarthy

Member, General Division – Employment Insurance Section