



Citation: *SA v Canada Employment Insurance Commission*, 2025 SST 1331

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

Decision

Appellant: S. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (716155) dated April 24, 2025 (issued by Service Canada)

Tribunal member: Peter Mancini

Type of hearing: Videoconference

Hearing date: June 9, 2025

Hearing participants: Appellant

Decision date: June 25, 2025

File number: GE-25-1621

Decision

[1] The appeal is allowed. The Appellant received earnings. But the Canada Employment Insurance Commission (Commission) didn't act judicially in the reconsideration process.

Overview

[2] The Appellant got \$1523.76 (vacation pay) and \$4314.14 (pension reimbursement) from her former employer for a total of \$6748.78. The Commission decided that the money is "earnings" under the law because they are vacation pay and a return of contributions.

[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 June 19th, 2024, at an amount of \$1535.10 per week. This is the week that the Commission said that the Appellant was laid off. The Commission said that being laid off from her job is why the Appellant received the earnings.

[5] When the Commission first communicated the issue of an overpayment to the Appellant, they referred to the fact that the overpayment resulted from an amended record of employment submitted by the employer. The Commission admits that this was an error. The Commission should have told the Appellant the overpayment resulted from a modification of the record of employment which the Commission had amended². The Appellant was unaware of this error until the hearing.

[6] The Appellant spent considerable time trying to prove that there was no error in the ROE submitted, contacting her employer, and trying to find the amended ROE from the Commission.

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

² See GD4-2

[7] Once the Appellant understood the error of the Commission she was prepared to consider the money she received as earnings, but wondered why the Commission didn't allocate the vacation pay as earnings when she applied for E.I. Benefits, as the Vacation pay was clearly recorded on the ROE submitted by her employer and in the possession of the Commission when they agreed to provide her benefits.

Issues

[8] I have to decide the following three issues:

- a) Is the money that the Appellant received earnings?
- b) If the money is earnings, did the Commission allocate the earnings correctly?
- c) Did the Commission act judicially when assessing the overpayment?

Analysis

Is the money that the Appellant received earnings?

[9] Yes, the \$ 6748.78 that the Appellant received is earnings. Here are my reasons for deciding that the money is earnings.

[10] The law says that earnings are the entire income that you get from any employment.³ The law defines both "income" and "employment."

[11] **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.⁴

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

³ See section 35(2) of the EI Regulations.

⁴ See section 35(1) of the EI Regulations.

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

[13] The Appellant's former employer gave the Appellant \$ 6748.78. The Commission decided that this money was vacation pay and pension reimbursement. So, it said that the money is earnings under the law.

[14] The Appellant doesn't disagree. But she raises the question why the Commission didn't allocate the earnings earlier, when they were aware of the vacation pay.

[15] I find that the vacation pay, and the pension reimbursement are earnings under the act.

[16] Vacation pay is income arising out of employment and is earnings at the time it is paid or payable to the claimant. The Appellant received vacation pay when she left her job on June 19th, 2024. The ROE dated July 9th, 2024, clearly indicates this. The reason the Appellant left her job was a shortage of work/end of contract⁶

[17] Pensions are earnings⁷, as are pension contributions reimbursed by an employer at the end of the claimant's employment⁸

[18] The Appellant received the pension contribution reimbursements because she was laid off, and I find the reimbursement are earnings.

Did the Commission allocate the earnings correctly?

[19] The Appellant did not raise the issue of allocation in her appeal, but I will examine it anyway.

[20] 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.⁹

⁶ See GD3 -16

⁷ CUB 71590. Wilson v Canada) Attorney General), 2019 FCA49, 2019 CarswellNat 743, 2019 Carswell Nat 13494, 2019 C.L.L.C. 240-001.

⁸ C.E.I.C. v M.D., 2017 SSTA DEI 350

⁹ See section 36 of the EI Regulations.

[21] The Appellant's earnings are vacation pay and pension reimbursement. The Appellant's employer gave the Appellant those earnings because the Appellant was laid off. This is reference in the ROE and confirmed by the Appellant.

[22] 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.¹⁰

[23] I find that the Appellant was laid off starting the week of June 19th, 2024. I find this because it is reported in the ROE.

[24] The amount of money to be allocated starting that week is \$1535.10. The parties don't dispute this amount, and I accept it as fact. This means that starting the week of June 16, 2024, \$ 1535.10 is allocated to each week. If there is any amount of earnings that is left over, it will be allocated to the last week.

Did the Commission Act Judicially

[25] The Appellant's claim for regular employment insurance benefits was established July 7th, 2024. An ROE from her employer was prepared on July 9th, 2024. That ROE was filed with the Commission. That ROE stated at box 17 that the Appellant received \$1,523.76 vacation pay because she was no longer working. The Commission began paying benefits to the Appellant in July of 2024.

[26] On October 8th, 2024, the Appellant properly notified the Commission that she had received money from her employer, a pension contribution reimbursement. She had received the money September 9th, 2024. She reported the income as soon as she could. The Appellant had been dealing with the deaths of her mother and her sister.

[27] It was after this that the Commission assessed the vacation pay and the pension reimbursement as income. A notice of det was sent to the Appellant dated November

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

11th, 2024, a month after the Appellant reported the pension reimbursement income and was received by her December 30th, 2024.

[28] The Appellant paid the overpayment. She then filed a reconsideration request. In the reconsideration request she said she received a letter dated November 11th, 2024, received by her December 30th, 2024. She said she had been told by the Agent for the commission that she had an overpayment due to not reporting income earnings for July 14th- July 20th and July 21st to July 27th. In a conversation with the Commission April 24th, 2025, the Appellant was again advised that the overpayment resulted from an amended record of employment submitted by her employer. Her reconsideration request was denied.

[29] Section 52 of the Act deals with the Commissions power to reconsider a claim. The Commission may reconsider a claim within 36 months from the date that benefits were or should have been paid. The time limit of 36 months is extended to 72 months where a false or misleading statement has been made. The Commission must act judicially in reconsidering a claim.¹¹ At a minimum, acting judicially means considering the criteria set out in its own policy. The Commission ordinarily does not reconsider in the following circumstances: benefits were not underpaid; benefits were not paid contrary to the structure of the E.I. Act; benefits were not paid as a result of a false or misleading statement; there is no evidence that the claimant ought to have known they were not entitled to the benefits they received.¹²

[30] I must respect the Commission's discretionary power. Usually, this means that I can't change the Commission's decision even if I disagree with it. but, if the Commission didn't "exercise discretion judicially" (in other words, make its decision fairly), then I can decide that the Commission can't reconsider its original decision.

¹¹ C.J. v C.E.I.C., 2024 SST 484, GZ v C.E.I.C, 2024 SST 427.

¹² CJ v C.E.I.C., 2024 SST484

[31] It is important to understand that I can only review how the commission came to its decision, not why. The Commission can fail to act judicially if it didn't consider something it should have,

[32] In this case the Appellant made contact to provide all the required information and didn't make any false or misleading statements. Moreover, the Commission was aware that the Appellant had received vacation payments when it received the ROE. The Commission should have considered this fact when assessing benefits.

[33] I believe that if the Commission had followed its own policy, it would mean that the claim for benefits wouldn't have been reconsidered.

[34] As a result, I find that the Commission didn't act judicially.

Conclusion

[35] The appeal is allowed, and the Appellant does not have to repay the Commission

Peter Mancini

Member, General Division – Employment Insurance Section