



Citation: *SA v Canada Employment Insurance Commission*, 2026 SST 111

**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 (0) dated December 15, 2025 (issued by Service Canada)

Tribunal member: Linda Bell
Type of hearing: Videoconference
Hearing date: February 2, 2026
Hearing participant: Appellant
Decision date: February 9, 2026
File number: GE-25-3558

Decision

[1] S. A. is the Appellant. I am dismissing her appeal, with modification to the allocation of earnings.

[2] The Commission reviewed the Appellant's Employment Insurance (EI) claims judicially (properly), and within the required time limit.

[3] The Appellant received a total of **\$4,943.05**, that was paid due to separation from her employment.¹ That money is earnings to be allocated to her EI claims.

[4] The allocation (in other words, assignment) of the Appellant's earnings is amended, based on new evidence submitted during the hearing. The amount of the overpayment may be reduced once the Commission amends the allocation, as set out below.

[5] The Appellant is responsible (liable) to repay any overpayment of EI benefits. The Appellant may wish to contact the Canada Revenue Agency (CRA) if she wishes to make repayment arrangements, by calling toll-free 1-800-864-5841.

[6] The Appellant is at liberty to contact the Commission if she wishes to clarify her entitlement to an extension of her benefit period.²

Overview

[7] The Appellant stopped working due to a shortage of work. Her last day paid was June 19, 2024. She applied for EI benefits several weeks later, on July 9, 2024. The Commission set up her claim (benefit period) starting on July 7, 2024.

¹ The Appellant was paid \$1,523.76 vacation pay plus \$3,419.29 of the employer's RRSP / pension contributions for a total amount of \$4,943.05 paid due to separation. See the Record of Employment (ROE) at page GD3-16 and the T4RSP at page RGD05-2.

² The Appellant raised the issue of a benefit period extension before the Appeal Division. I so no evidence that the Commission issued a decision regarding a benefit period extension.

[8] The employer listed \$1,523.76 as vacation pay paid due to separation on the Appellant's ROE.³ That vacation pay was allocated to the weeks prior to the start of her benefit period.

[9] On October 8, 2024, the Appellant told the Commission she had also received \$4,314.14, as reimbursement of the employer's pension contributions. The Commission determined that both the vacation pay and the return of the employer's RRSP / pension contributions were earnings paid due to separation totalling \$5,837.90.

[10] The Commission considered the total amount of \$5,837.90 separation money, starting from the week of June 16, 2024, which was the Appellant's last week worked. It allocated amounts to the Appellant's claims from July 7, 2024, to July 13, 2024, with a balance of \$608.38 allocated to the week of July 14, 2024. This allocation resulted in a \$1,202.00 overpayment of EI benefits. The Commission maintained this allocation upon reconsideration.

[11] The Appellant appeals to the General Division of the Social Security Tribunal (Tribunal). She says her vacation pay was listed on her ROE, and she declared all her earnings. She doesn't understand how the overpayment was calculated.

Matters to consider first

Appeal returned from the Appeal Division

[12] This is the second time this appeal has been before the Tribunal's General Division (GD). The Commission appealed the first decision of the General Division to the Appeal Division (AD).⁴ The AD decided that the GD made legal errors and didn't follow a fair process. The AD returned the matter to the GD to be reconsidered.

[13] The appeal was returned to me, a different member of the GD. I must consider the appeal *De Novo*, (a new), and take a fresh look at all the facts and determine

³ See page GD3-16.

⁴ See appeals GD-25-1621 and AD-25-485.

whether the Commission acted judicially (properly) when reviewing the Appellant's claims and whether the allocation of earnings was done correctly.

Adjournment

[14] During the January 20, 2026, hearing, the Appellant said she would like to submit additional documents to clarify that the amount she told the Commission that she had received from her employer, included employee and employer contributions to the RRSP/pension plan.

[15] I granted the Appellant's request and adjourned the hearing to February 2, 2026. Additional documents were received from the Appellant on January 26, 2026, and during the February 2, 2026, hearing.⁵

[16] Had the Commission appeared at either hearing, they would have had the opportunity to speak to those additional documents. Copies of all documents were sent to the Commission, so I find both parties had a fair opportunity to be heard. Accordingly, I have considered all documents received up to February 2, 2026, and proceeded to consider the merits of this appeal.

Issues

[17] Did the Commission reconsider the claims properly?

[18] Is the separation money paid to the Appellant earnings?

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

[20] Is the Appellant required to repay an overpayment?

⁵ See the RGD4 and RGD5 documents.

Analysis

Did the Commission reconsider the claims properly?

[21] Yes. I find the Commission reconsidered the claims properly and within the required timeframe.

[22] The law says the Commission may reconsider a claim for benefits within 36 months after the benefits have been paid or would have been payable.⁶ This period is extended to 72 months in cases where, if in the opinion of the Commission, a false or misleading statement or representation has been made in connection to a claim.⁷

[23] There is no indication that false or misleading statements were made by the Appellant. Instead, the documents on file show the Appellant contacted the Commission on October 8, 2024, and reported she had received \$4,314.14 from her employer's RRSP / pension contributions that were paid due to separation.⁸ The Commission acted based on information provided by the Appellant and allocated those earnings along with her vacation pay that was listed on her ROE.

[24] In this case the week of July 7, 2024, is the first claim reconsidered. The Commission issued its Notice of Debt four months later, on November 9, 2024, setting out the \$1,202.00 overpayment that resulted from the allocation of the separation money. So, the claims were reconsidered within the 36-month time limit.

[25] There is no evidence that the Commission failed to consider all relevant factors, ignored irrelevant factors, didn't act in good faith, or acted in a manner that was discriminatory.⁹ However, there is new evidence that supports the Appellant's testimony that she reported amounts she saw deposited into her bank account but did not know which amounts were her bonus, vacation pay, or the payout of the employer's contributions to her work RRSP or pension plan that were reimbursed.

⁶ See section 52(1) of the *Employment Insurance Act* (EI Act).

⁷ See section 52(5) of the EI Act.

⁸ See pages GD3-20 to GD3-21.

⁹ *Canada (Attorney General) v. Purcell*, A-694-94.

[26] As per the facts set out above, I find the Commission reconsidered the claims within the required 36-month time limit and considered all relevant information it had before it. This means the Commission reconsidered the claims properly and within the required time limit.

[27] As stated above, hearings before the Tribunal are *De Novo*. This means I must consider any new evidence that may not have been before the Commission when determining if the allocation of earnings is correct or is to be amended.

Earnings to be allocated

– Is separation money considered earnings?

[28] Yes. The law says that the entire income from employment is earnings.¹⁰ All pecuniary or non-pecuniary income that is or “will be” received from an employer is income.¹¹

[29] I disagree with the Appellant when she states earnings means salary. Earnings include any money stemming directly from her employment, such as wages and employer contributions to an RRSP/pension program.

[30] The Appellant agrees she received the \$1,523.76 vacation pay. She could not say for certain what the other amounts were paid for, but she agrees she told the Commission she had received \$4,314.14 from the employer’s RRSP/pension fund, but she had also received other money that day for her bonus. The bonus was paid based on worked she had performed prior to her lay-off. She said she chose to have the RRSP/pension money paid out when her job ended instead of rolling it over to a private RRSP account.

[31] The Appellant submitted copies of her pay stubs which clearly show she contributed a portion to the employee/employer paid RRSP/pension fund. She paid a certain percentage while the employer paid a higher percentage. She didn’t know the exact percentage split amount. For example, on her pay stub for the period ending April

¹⁰ See section 35(2) of the *EI Regulations* (EI Regulations).

¹¹ See section 35(1) of the EI Regulations.

7, 2024, she contributed \$60.77 and her employer contributed \$182.31 to the “DC” plan.¹²

[32] The Appellant testified that she received a T4RSP listing the payout from her employee - employer paid RRSP / pension fund. She confirmed that she had no other personal RRSP, so this had to have been the payout of her employer’s contributions. In box [22] of that T4RSP lists a withdrawal amount of \$3,419.29. This is the taxable amount that was withdrawn.

[33] On the Appellant’s pay stub from pay period ending June 30, 2024, the employer’s year to date contributions to the DC RRSP/pension was \$2,680.67. She had worked for this employer for 9 months in the previous year, starting at the end of March 2023. So, it is more likely than not that the \$3,419.29, listed on the T4RSP, is the total amount of the employer’s contributions that were paid to the Appellant upon separation from employment.

[34] Accordingly, I find the Appellant received a total of **\$4,943.05** (\$1,523.76 vacation pay plus \$3,419.29 as the pay out of the employer’s contributions to her RRSP/pension), paid due to separation from her employment, which is income stemming directly from her employment. So, I find as fact the Appellant received **\$4,943.05** as earnings paid due to separation from her employment.

– **How are earnings allocated?**

[35] 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.¹³

[36] Earnings are allocated depending on the nature of the earnings: why were the earnings paid? The earnings are allocated based on the Appellant’s normal weekly earnings.

¹² See page RGD4-2.

¹³ See *Canada (Attorney General) v. Walford*, A-263-78.

[37] 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.

[38] The **allocation of earnings starts the week of the lay-off** or separation from employment. The allocation starts in that week despite when the earnings were paid or payable. The earnings are allocated to weeks beginning with the week of the lay-off or separation, at amounts equal to the claimant's normal weekly earnings from that employment.

– **Normal weekly earnings and earnings last week worked**

[39] Normal weekly earnings are the ordinary or usual earnings a claimant earns on a regular basis at their employment.¹⁴ This does not include money paid due to separation.

[40] 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.¹⁵

[41] In some cases, a claimant may work overtime or receive bonuses throughout the year, so their normal weekly earnings vary from week to week. In such cases, the Commission may use the amounts listed on the ROE, less the amounts paid due to separation, to determine the **average normal weekly earnings** to use when setting out the allocation.¹⁶

[42] The Appellant agrees with the Commission's determination that her normal weekly earnings (NWE) were \$1,535.10 and her earnings last week worked (ELWW) were \$911.54.

¹⁴ See *Canada (Attorney General) v Fox*, A-841-96.

¹⁵ For example, see *Chaulk v Canada (Attorney General)*, 2012 FCA 190 and *D.S. v Canada Employment Insurance Commission*, AD-18-373.

¹⁶ For example, see *Chaulk v Canada (Attorney General)*, 2012 FCA 190 and *D.S. v Canada Employment Insurance Commission*, AD-18-373.

[43] Based on the foregoing, I find as fact that the Appellant's NEW were \$1,535.10 and her ELWW were \$911.54. I will now determine the allocation of the separation pay.

Allocation of earnings

[44] I find the Commission erred in its allocation of the separation money. Although the Commission allocated the separation money to the correct weeks, its allocation was based on an incorrect amount of separation money. I have set out the correct amounts and allocation below.

[45] The law states that when a claimant receives a subsequent payment of separation earnings those earnings are to be added to the earnings that were previously allocated, and a revised allocation is to be made.¹⁷ This means the payout of the RRSP/pension money is to be added to the Appellant's vacation pay, and the allocation is to be considered **starting from the week of separation**. In this case the Appellant's last day worked was June 19, 2024, so the week of separation is the week starting June 16, 2024.

[46] The Appellant's **\$4,943.05** earnings (vacation pay and employer's pension contributions) paid due to separation is allocated as set out below.

Amount allocated	Allocated to the week(s)
\$ 623.56	June 16, 2024, to June 22, 2024 (\$911.54 ELWW + \$623.56 = \$1,535.10 NWE)
\$ 3,070.20	June 23, 2024, to July 6, 2024 (\$1,535.10 NWE x 2 weeks = \$3,070.20) (2 weeks before start of benefit period)
\$ 1,249.29	July 7, 2024, to July 13, 2024 (Balance to the week starting July 7, 2024)
<u> </u>	
\$ 4,943.05	Earnings paid due to separation

[47] When calculating an allocation, it starts the week of separation, which in this case is June 16, 2024. But for the purpose of EI benefits, the allocation is recorded and

¹⁷ See section 36(10) of the EI Regulations.

communicated for the dates that fall within the benefit period. The Appellant's benefit period started July 7, 2024. The amount allocated in the week of July 7, 2024, is \$1,249.29.

[48] Accordingly, I find the Appellant's earnings paid due to separation are allocated during the first week of the benefit period, from July 7, 2024, to July 14, 2024, in the amount of \$1,249.29.¹⁸

[49] The law says you cannot be paid **any** EI benefits until you serve a waiting period of one week of unemployment for which benefits would otherwise be payable.¹⁹ This means no EI benefits can be paid during the waiting period week. Accordingly, the Appellant is not entitled to the benefits she was paid during the allocation weeks and subsequent week for the waiting period. This means she was overpaid EI benefits. The calculation of the overpayment is to be determined by the Commission upon correction of the allocation, as set out above.

Is the Appellant required to repay the overpayment?

[50] Yes. The law says a claimant, who is paid EI benefits they are not entitled to receive, must repay that amount.²⁰

[51] The Commission concedes that it erred when it told the Appellant the overpayment was from an allocation of undeclared earnings. The RRSP/pension earnings were reported by the Appellant, and the vacation pay was reported on her ROE. I note that the Commission also erred when it set out the allocation amounts in its submissions, which may have confused the Appellant. But those errors did not prejudice the Appellant because she had the opportunity to appeal the Commission's decisions to the Tribunal.

[52] This is truly an unfortunate situation. But the Commission reconsidered the claims properly based on the information the Appellant told them, and within the

¹⁸ See section 36(9) of the EI Regulations.

¹⁹ See section 13 of the EI Act.

²⁰ See section 44 of the EI Act.

required 36-month time limit. The Appellant had already been paid EI benefits on this claim before she told the Commission about the payout of her RRSP/pension money. The Appellant has now presented new evidence that changes the allocation and may also change (reduce) the amount of the overpayment. This means the overpayment is valid.

[53] I understand the Appellant does not want to have to repay an overpayment. But as stated above, the law says a claimant is required to repay the benefits they were not entitled to receive.²¹

[54] I acknowledge that this may not be the result the Appellant 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 cannot interpret or rewrite the EI Act in a manner that is contrary to its plain meaning, even in the interest of compassion.²²

Conclusion

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

[56] This matter is returned to the Commission to adjust the allocation of earnings and overpayment amount, as set out in paragraph [46] above.

Linda Bell

Member, General Division – Employment Insurance Section

²¹ See section 44 of the EI Act.

²² *Canada (Attorney General) v Knee*, 2011 FCA 301