



Citation: *GZ v Canada Employment Insurance Commission*, 2023 SST 2034

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: G. Z.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (596228) dated June 27, 2023
(issued by Service Canada)

Tribunal member: Raelene R. Thomas

Type of hearing: Teleconference

Hearing date: September 22, 2023

Hearing participant: Appellant

Decision date: November 9, 2023

File number: GE-23-2102

Decision

[1] The appeal is dismissed. The Tribunal does not agree with the Appellant.¹

[2] The money the Appellant received when he returned to work is earnings and must be allocated to (deducted from) the EI parental benefits the Appellant received at the same time.

[3] The Commission correctly allocated the Appellant's earnings to the right weeks. This means the Appellant received EI parental benefits that he was not entitled to receive, and so, by law, he must repay those benefits.

Overview

[4] The Appellant applied for 35 weeks of parental EI benefits.² He asked to be exempted from completing the bi-weekly claim reports. The Appellant returned to work before the 35 weeks had passed. The Commission continued to pay him parental EI benefits while he was working. In all, the Appellant received \$7,800 of benefits which the Commission says he must repay because he was not entitled to receive those benefits.

[5] The Appellant disagrees. He says he initially applied for EI benefits in December 2022 when his son was born. The Appellant says he told the Commission when he returned to work. He says the Commission knew he was back to work but continued to pay him benefits. The Appellant said he first received EI benefits in March 2023. He thought the amount was for the time he was off work and he did not have to do anything because the Commission knew he had returned to work.

¹ A person who applies for and receives employment insurance benefits is called a "Claimant." A person who appeals a decision of the Commission is called an "Appellant."

² As found below, the application for EI parental benefits was made on January 14, 2023.

Matter I considered first

I am accepting documents received after the hearing

[6] Before the hearing the Appellant submitted screen shots from his cell phone showing the heading “EI Application” and a list of calls by date, time of day and duration. At the hearing he testified the calls were made to Service Canada about his application for EI benefits. I noted there was no telephone number listed on the screen shots. The Appellant resubmitted the screen shots showing the outgoing calls he made were to 1-800-206-7218, which is the toll-free number for the EI Telephone Information Service. I am admitting this document into evidence because it is relevant to the Appellant’s evidence that he contacted Service Canada about his benefits.

[7] At the hearing, the Appellant testified he applied for EI benefits in December 2022. He said he received a letter from Service Canada about the application. The appeal file has an application for EI benefits that shows it was completed on January 14, 2023. Because of this testimony I asked the Commission to provide all records of applications, correspondence and conversations it had with the Appellant. I also asked it to provide any Records of Employment for the Appellant issued in 2022 and 2023 and for the Full Text Screens Payments showing when the benefits the Appellant received were processed.

[8] The Commission submitted there was no record showing the Appellant applied for EI benefits in December 2022. It maintained the Appellant’s initial application for EI benefits was made on January 14, 2023. The Commission also provided all the documents I requested. I am admitting these documents into evidence as they are relevant to the issue before me of whether the Appellant had earnings while receiving EI benefits and, if so, does he have to repay those EI benefits.

Issues

[9] 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 Claimant received earnings?

[10] Yes, the money the Appellant received is earnings. Here are my reasons for deciding the money is earnings.

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

[12] **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 (Include this next sentence if the case is about severance pay.) Case law says that severance pay is earnings.⁵

[13] **Employment** is any work that you did or will do under any kind of service or work agreement.⁶

[14] The Appellant returned to work on January 23, 2023. He told a Service Canada officer he worked 40 hours a week in each of the weeks from January 22 to March 18, 2023, the week of March 26 to April 1, 2023 and the week of April 9 to 15, 2023. During each of those weeks he was paid \$1,100 by his employer. He also worked 32 hours in the weeks of March 19 to April 8, 2023 and his employer paid him \$720 for each of those weeks.⁷

[15] At the hearing, the Appellant confirmed the dates he worked and the amounts he was paid were correct. The Appellant testified he received this money from his employer because he was working for them. I see no evidence to contradict this. This means the money the Appellant received is income because it arose from his

³ See section 35(2) of the Employment Insurance Regulations (EI Regulations). This is how I refer to the law that applies to this appeal.

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

⁵ See *Blais v Canada (Attorney General)*, 2011 FCA 320. This is how I refer to the courts’ decisions that apply to the circumstances of this appeal.

⁶ See section 35(1) of the EI Regulations.

⁷ See pages GD3-20 and GD3-22 in the appeal file.

employment. As a result, I find the Appellant's income from his employment is earnings for the purposes of the EI Act.

The Appellant applied for EI benefits on January 14, 2023

[16] The Appellant says he stopped working at the end of November 2022. He received some vacation pay from his employer but he said it was only about 70% of what he usually made. He testified he applied for EI benefits in mid-December 2022. The Appellant argues that he was given EI benefits to cover the period when he was not working, that is from the end of November 2022 to January 23, 2023.

[17] I find the Appellant applied for EI parental benefits on January 14, 2023. The appeal file has an application for EI parental benefits that was received on January 14, 2023 at 2:19 p.m. (Atlantic time).⁸ I see no evidence to contradict this. The reasons for my finding follow.

[18] The Appellant testified he applied for EI parental benefits in mid-December 2023. He said he received a paper from Service Canada about his application. His child was born on December X, 2022. The Appellant said he stopped working on November 28, 2022. He left work then to look after his baby and wife. The Appellant said he had a payment from his employer and he was paid vacation pay.

[19] The Appellant said he called Service Canada on January 14, 2023 to say he was returning to work. So, he says it would be impossible for him to have applied for EI benefits on the same day as he told Service Canada he was returning to work.

[20] I asked the Commission if there was any other application for EI benefits from the Appellant and I asked for the Record of Employment (ROE) that was used to establish the Appellant's claim for EI benefits.

[21] The Commission responded there was only the one application for benefits from the Appellant and it was made on January 14, 2023.

⁸ See page GD3-15 in the appeal file. The Appellant lives in the Eastern Time Zone which would make his application received at 1:19 p.m. (Eastern Time) on January 14, 2023.

[22] The Appellant says he would not have applied for EI benefits on January 14, 2023 because that was the same day he called Service Canada to tell them he was going back to work.

[23] I think the Appellant applied for EI parental benefits on January 14, 2023. I do not think he called Service Canada on January 14, 2023 to report he was returning to work in the following week. I think he called Service Canada on February 3, 2023 to report he had returned to work on January 23, 2023. The reasons for my finding follow.

[24] The phone record submitted by the Appellant shows a telephone call was made to Service Canada on January 14, 2023 at 1:47 p.m. The call lasted 2:02 minutes. There is no record in the appeal file of the conversation during that call in the appeal file. That does not mean the call did not happen, it just means the Commission did not make a record of the call.

[25] In contrast, the Commission did make a record of two telephone conversations with the Appellant that happened on February 3, 2023.

[26] The appeal file has a record of a telephone call from the Appellant on February 3, 2023. The record of the telephone call was submitted on February 3, 2023 at 2:38 p.m.⁹ That call was about birthday pay he received from his employer. The phone record submitted by the Appellant shows a telephone call was made to Service Canada on February 3, 2023 at 9:08 a.m. which lasted 14.25 minutes.

[27] The appeal file shows the Appellant again contacted Service Canada on February 3, 2023 to tell them he returned to work on January 1, 2023. The record of the second telephone call on that date call was submitted on February 3, 2023 at 2:49 p.m.¹⁰ The phone record submitted by the Appellant shows a telephone call was made to Service Canada on February 3, 2023 at 12:58 p.m. which lasted 2 hours and 4.3 minutes.

⁹ See page GD12-4 in the appeal file.

¹⁰ See page GD3-18 in the appeal file.

[28] I think the Appellant called Service Canada on February 3, 2023 to tell them he had returned to work on January 23, 2023. I think this because the Appellant's phone records of the calls he made to Service Canada on February 3, 2023 and the records of the conversations during those calls show the calls were all made on February 3, 2023. I do not see any evidence to contradict this. As a result, I find, on a balance of probabilities, the Appellant notified Service Canada on February 3, 2023 that he had returned to work on January 23, 2023. This also means he did not call Service Canada on January 14, 2023 for the purpose of reporting he was returning to work the following week.

[29] In reaching my finding that the Appellant did apply for EI benefits on January 14, 2023, I am relying on the Record of Employment (ROE) issued for the Appellant by his employer on January 11, 2023.

[30] The ROE shows the appellant was paid weekly. The table below shows the hours worked (or he was paid if not working, for example vacation pay) and the amounts the Appellant was paid in December 2022:

Pay Period End Date	Hours Worked	Amount Paid
December 4, 2022	8	\$220
December 11, 2022	40	\$1,100
December 18, 2022	40	\$1,100
December 25, 2022	30	\$940.98
January 1, 2022	60	\$1,650

[31] The ROE says the reason for issuing was "Parental." The ROE also says the last day for which the Appellant was paid was January 1, 2023. This evidence tells me the Appellant continued to be employed with his employer up to and including January 1, 2023. As a result, I think it is more likely than not the Appellant did not apply for EI benefits in December 2022 because he was still being paid by his employer up to January 1, 2023. Accordingly, I find, on a balance of probabilities, the Appellant applied for EI parental benefits on January 14, 2023.

Did the Commission allocate the earnings correctly?

[32] Yes, the Commission did allocate the earnings correctly because it deducted the earnings from the weeks from January 22, 2023 to April 15, 2023. Here are my reasons this decision.

[33] The law says that earnings have to be allocated to (deducted from) certain weeks. The weeks the earnings are allocated to depends on why you received the earnings.¹¹

[34] Claimants are allowed to work and receive income while they are receiving EI benefits. When this happens, the earnings are deducted from the claimant's weekly EI benefits at a set rate.

[35] The Appellant's claim for EI benefits began on January 8, 2023. He was receiving extended EI parental benefits and opted not to complete claim reports while receiving benefits. In making that selection, he agreed to notify the Commission if he received any money or worked.

[36] The Appellant served a one-week waiting period from January 8 to 14, 2023 during which no EI benefits were paid. The Appellant was then paid 13 weeks of EI benefits from January 15 to April 15, 2023.

[37] The law says that money received from employment must be allocated to (deducted from) any EI benefits that are received at the same time.¹²

[38] The appeal file shows and I have found the Appellant had earnings from full-time employment from January 23 to April 15, 2023. The Appellant does not dispute the earnings that he received or when he received those earnings.

[39] The Commission initially said the overpayment was \$7,800.¹³ In its submissions to the Tribunal it said it made an error in creating the overpayment and the actual

¹¹ See section 36 of the EI Regulations.

¹² See section 19(2) of the Employment Insurance Act (EI Act).

¹³ See page GD3-24 for the notice of debt issued to the Appellant on April 22, 2023

overpayment should be \$6,400.¹⁴ The Commission provided a copy of the overpayment breakdown in the appeal file.¹⁵ I have reviewed the calculations to show how it arrived at the amount of \$6,400 for the overpayment.

[40] The law says if you have earnings while receiving parental EI benefits those earnings are deducted from your EI benefits at the rate of 50 cents for every dollar earned up to a maximum of 90% of your weekly insurable earnings.¹⁶ Amounts earned above the 90% threshold are deducted dollar for dollar from your EI benefits.¹⁷

[41] The Appellant's weekly EI benefit rate was \$650. The benefit rate was 55% of his weekly insurable earnings.¹⁸ This means the Claimant's weekly insurable earnings used to calculate his rate of EI benefits was \$1182.¹⁹

[42] Thus, the Appellant's earnings, while working on claim, should be deducted from the EI benefits he received at the rate of 50¢ for each dollar earned up to \$1,064 and at dollar for dollar for any amount earned over \$1,064.²⁰

[43] If the Appellant earned more than \$1,182 in a week, no EI benefits would be payable.²¹

[44] The Claimant earned \$1,100 weekly for 10 of the weeks while he was receiving \$650 of weekly EI parental benefits and he earned \$720 weekly for 2 of the weeks while he was receiving \$650 weekly EI parental benefits. The allocation of the Appellant's earnings to that period means that he should have received \$82 in EI parental benefits

¹⁴ See page GD4-3 in the appeal file.

¹⁵ See page GD3-32 in the appeal file.

¹⁶ Weekly insurable earnings are the amounts you make while working before you apply for EI benefits. In 2023 the maximum weekly insurable earnings is 55% of the maximum yearly insurable earnings divided by 52 (See section 17 of the EI Act). In 2023 the maximum yearly insurable earnings is \$61,500.

¹⁷ See section 19(2) of the EI Act.

¹⁸ The Claimant was receiving standard parental EI benefits which are paid at 55% of insurable earnings.

¹⁹ $\$650 \div .55 = \$1,181.82$

²⁰ $\$1,181.82 \times .90 = \$1,063.64$. Section 36(2) of the EI Regulations says that for the purposes of allocation, a fraction a dollar that is equal to a greater than one half shall be taken as a dollar and a fraction that is less than one half shall be disregarded.

²¹ $\$650 - ((50\% \times \$1,062) + \$118) = \0 . Where \$1,062 is the first 90% of the weekly insurable earnings and \$118 is earnings over 90% of the weekly insurable earnings. $\$1,062 + \$118 = \$1,182$.

for 10 weeks when he earned \$1,100 and \$290 for the two weeks when he earned \$720.²²

[45] From January 22 to April 15, 2023 the Appellant received a total of \$7,800 in EI benefits. During the same time period he had earnings of \$12,440.²³ The amount of earnings to be allocated during that time period equals \$6,400.²⁴ When the earnings he received during that time are allocated to (deducted from) his EI benefits the Appellant should only have received \$1,400.²⁵ This means the Appellant received \$6,400 in EI benefits that he should not have and must now repay that amount.

Other matters

– The Commission decided to treat the issue as earnings while on claim

[46] The Commission has chosen to treat the overpayment as an “earnings while on claim” issue instead of a “not unemployed” issue.²⁶

[47] The Appellant returned to full time work on January 23, 2023 and was paid EI benefits until April 15, 2023.

[48] Had the Commission determined the Appellant was not unemployed it would have been able to recover all the EI parental benefits the Appellant received after January 23, 2023. By treating the issue as earnings while on claim, the amount the Appellant is required to repay is less than what he would have to repay had the issue been treated as not unemployed.

[49] Since the Commission’s decision to determine the issue as earnings while on claim is more favourable to the Appellant, I too am prepared to accept and decide the matter as an earnings issue.²⁷

²² $\$650 - ((50\% \times \$1,062) + 36) = \$82$ and $\$650 - (50\% \times \$720) - \$290$

²³ $10 \text{ weeks} \times \$1,100 + 2 \text{ weeks} \times 720 = \$12,440.$

²⁴ $10 \text{ weeks} \times \$568 + 2 \text{ weeks} \times \$360 = \$6,400.$

²⁵ $\$7,800 - \$6,400 = \$1,400.$

²⁶ To receive EI benefits you must be unemployed. See section 11(1) of the EI Act.

²⁷ In reaching this decision I am persuaded by *N.W. v. Canada Employment Insurance Commission*, 2019 SST 613

– **The Appellant can ask the Commission to write off the debt**

[50] I do not have the jurisdiction to write off a debt.²⁸

[51] I recognize the Appellant did notify the Commission he had returned to work. The appeal file shows the Appellant contacted the Commission on February 3, 2023 to report he returned to work on January 23, 2023.²⁹ Despite this notification, on March 6, 2023 the Commission paid the Appellant 7 weeks of EI parental benefits for the period from January 15 to March 4, 2023.

[52] I also recognize the Commission had to be contacted a second time to stop the benefits being paid. The Commission continued to pay the Appellant benefits on a bi-weekly basis until April 15, 2023. The appeal file shows the Appellant again contacted the Commission on April 18, 2023 to report his earnings.

[53] The Appellant testified he thought the money he received in March 2023 was for the period when he was not working from November 28, 2022 to January 23, 2023. He has spent all the money he received to cover his child's needs. The Appellant says he cannot afford to repay the money.

[54] Nothing in my decision prevents the Appellant from writing the Commission directly to ask it to reduce or write off the debt in light of the Appellant's efforts to not have benefits paid to him, the Commission's error in paying those benefits to him and his financial circumstances. If he is not satisfied with the Commission's response to his request, he may appeal to the Federal Court of Appeal.

²⁸ See *Canada (Attorney General) v. Villeneuve* 2005 FCA440; *Buffone v. Canada (Minister of Human Resources Development)*, A-666-99.

²⁹ See page GD3-18.

Conclusion

[55] The law says a claimant (appellant) is liable to repay EI benefit money paid to him by the Commission to which he was not entitled.³⁰ The courts have upheld the principle that a claimant (appellant) who receives EI benefit money they were not entitled to receive must repay the amount.³¹

[56] As tempting as it may be in some cases (and this may well be one), I am not permitted to re-write the law or to interpret it in a manner that is contrary to its plain meaning.³² I must follow the law and render decisions based on the relevant legislation and precedents set by the courts.

[57] As a result, I must dismiss the Appellant's appeal.

Raelene R. Thomas
Member, General Division – Employment Insurance Section

³⁰ See section 43 of the EI Act.

³¹ See *Lanuzo v Canada (Attorney General)*, 2005 FCA 324.

³² *Canada (Attorney General) v. Knee*, 2011 FCA 301.