



Citation: *TL v Canada Employment Insurance Commission*, 2024 SST 1489

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

## Decision

**Appellant:** T. L.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (675281) dated August 22, 2024  
(issued by Service Canada)

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**Tribunal member:** Audrey Mitchell

**Type of hearing:** Videoconference

**Hearing date:** October 28, 2024

**Hearing participant:** Appellant

**Decision date:** November 4, 2024

**File number:** GE-24-3215

## Decision

[1] The appeal is allowed. The General Division agrees with the Appellant.

[2] The Appellant experienced an interruption of earnings, and his claim was properly established on October 8, 2023.

## Overview

[3] The Appellant was laid off from his job. So, he applied for employment insurance (EI) benefits. The Commission re-examined his claim for benefits. It decided that the Appellant didn't experience an interruption of earnings, so it cancelled his benefit period.

[4] The Commission says the Appellant continued to receive insurable earnings up to January 10, 2024, as if he was performing his regular duties. So, it says the benefit period was established contrary to the law.

[5] The Appellant says he didn't get any money from his employer until he threatened action about his vacation pay.

## Matters I have to consider first

### **The Appellant didn't send the Commission's reconsideration decision**

[6] You have to send the Tribunal a copy of the Commission's reconsideration decision or the date of the reconsideration with your notice of appeal.<sup>1</sup> The Appellant didn't do so. I have a copy of the Commission's reconsideration file that has this decision. So, I don't need the Appellant to send it.<sup>2</sup>

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<sup>1</sup> See section 24(1)(e) of the *Social Security Tribunal Rules of Procedure*.

<sup>2</sup> See section 8(4) of the *Social Security Tribunal Rules of Procedure*.

## **Did the Commission make a decision on the issue of allocation of earnings?**

[7] In its notice of reconsideration decision sent to the Appellant, the Commission identified allocation of earnings as an issue. It said it was maintaining its decision on this issue.

[8] Despite what the notice of reconsideration decision says, I don't find that the Commission made decision on whether the Appellant had earnings that had to be allocated. The Commission confirms this in its submissions. It says that "arguably there was not a decision made regarding an allocation of earnings". This is because the Commission decided the money the Appellant received was regular insurable earnings.

[9] In light of the above, I don't find that the Commission reconsidered the issue of earnings. And without a reconsideration decision on this issue, I don't have the authority to consider whether the Appellant had earnings that need to be allocated.<sup>3</sup>

## **Issue**

[10] Did the Appellant have an interruption of earnings?

## **Analysis**

### **Did the Appellant have an interruption of earnings?**

[11] Yes, the Appellant had an interruption of earnings.

[12] An interruption of earnings can occur when a claimant is laid off, doesn't work for the employer for at least seven days, and has no earnings from that employment.<sup>4</sup> But earnings resulting from a lay-off or separation from employment aren't taken into account for the purpose of an interruption of earnings.<sup>5</sup>

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<sup>3</sup> See section 113 of the *Employment Insurance Act* (Act).

<sup>4</sup> See section 14(1) of the *Employment Insurance Regulations* (Regulations).

<sup>5</sup> See section 35(6) of the Regulations.

[13] The Appellant says he was laid off from his job without pay. He said it wasn't until he threatened his employer with legal action over his vacation pay that it paid him any money.

[14] The Commission says the Appellant didn't have an interruption of earnings. It says this because he continued to receive insurable earnings as if he was performing regular duties, until January 10, 2024.

[15] I find that the Appellant experienced an interruption of earnings on October 3, 2023, for reasons that follow.

[16] The Appellant was laid off from his job. In his application for benefits, he said his last day of work was October 3, 2023. So, he applied for EI benefits.

[17] The Appellant's former employer issued a record of employment (ROE) that listed shortage of work/end of contract or season as the reason it was issued. It shows the last day the Appellant was paid for was January 10, 2024.

[18] The Commission spoke to the Appellant's former employer. It said that the Appellant was paid a salary continuance up to January 10, 2024.

[19] The Appellant testified that when he was laid off, there was no talk about any severance pay, so he applied for EI benefits. The Appellant testified that he got his last paycheque on October 11, 2023, for work he performed up to October 3, 2023. He said that it wasn't until after the fact that he got documents from the employer saying that he would be getting a severance package.

[20] I found the Appellant to be clear and detailed in his testimony. And his testimony is consistent with what he told the Commission. So, I accept his evidence noted above as fact.

[21] The Appellant's employer used the term "salary continuance" when it spoke to the Commission. But I find that the earnings it paid him from October 3, 2023, to January 10, 2024, constitute severance pay. I find that the employer paid the Appellant this money by reason of his layoff.

[22] Based on the above, I find that the Appellant experienced an interruption of earnings on October 3, 2023. So, it is now up to the Commission to determine if the money is earnings that needs to be allocated.

## **Conclusion**

[23] The appeal is allowed. The Appellant experienced an interruption of earnings. So, the Commission should not have cancelled his benefit period.

Audrey Mitchell

Member, General Division – Employment Insurance Section