

Docket: 2021-202(IT)I

BETWEEN:

STEFFEN MANDERLA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

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Appeal heard on August 18, 2022, at Toronto, Ontario

Before: The Honourable Justice Réal Favreau

Appearances:

Agent for the Appellant: Natasha Vaney

Counsel for the Respondent: Christopher Bartlett  
Lalitha Ramachandran

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**JUDGMENT**

The Appellant’s appeal from the assessment dated June 17, 2019 made by the Minister of National Revenue by virtue of the *Income Tax Act* concerning his 2018 taxation year is dismissed without costs in accordance with the attached reasons for judgment.

Signed at Montreal, Quebec, this 19th day of December 2022.

“Réal Favreau”

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Favreau J.

Citation: 2022 TCC 162

Date: 20221219

Docket: 2021-202(IT)I

BETWEEN:

STEFFEN MANDERLA,

Appellant,

and

HIS MAJESTY THE KING,

Respondent.

### **REASONS FOR JUDGMENT**

Favreau J.

[1] This is an appeal from an assessment dated June 17, 2019 made by the Minister of National Revenue (the “Minister”) by virtue of the *Income Tax Act*, R.S.C. 1985, c. 1(5<sup>th</sup> supp.), as amended (the “Act”) concerning the 2018 taxation year of the Appellant.

[2] By virtue of the assessment dated June 17, 2019, the Minister initially assessed the Appellant’s 2018 taxation year as filed by the Appellant in his personal income tax return.

[3] In filing his personal income tax return for the 2018 taxation year, the Appellant reported \$19,707 in employment earnings and \$14,505 in Canada Pension Plan (“CPP”) disability benefits and claimed \$327.12 in employment insurance premiums paid and \$8,235 disability tax credit (“DTC”).

[4] The issues in this appeal are whether:

- a) the Minister has properly included in the Appellant’s income, the Appellant’s wage loss replacement plan (“WLRP”) income from the Toronto Transit Commission (“TTC”) in the 2018 taxation year?
- b) the employment insurance premiums were properly deducted from employment earnings in the 2018 taxation year?

[5] In determining the Appellant's tax liability for the 2018 taxation year, the Minister made the following assumptions of fact:

- a) the Appellant received \$14,505 in CPP disability benefits;
- b) the Appellant was an employee of TTC;
- c) the Appellant received \$19,707 in WLRP benefits from TTC;
- d) the WLRP benefits were paid under an Administrative Services Only ("ASO") plan;
- e) TCC withheld \$327.12 in employment insurance premiums from the WLRP benefits;
- f) the \$327.12 was allowed as a non-refundable tax credit; and
- g) the Appellant is eligible for the \$8,235 DTC.

[6] With respect to the facts alleged in the Notice of Appeal filed by the Appellant, the Attorney General of Canada (the "AGC") further admits that:

- a) the Appellant has been on long-term disability ("LTD") since 2001;
- b) the Appellant received WLRP benefits from the TCC in 2018;
- c) the Appellant received CPP disability benefits in the 2018 taxation year;
- d) the Appellant did not have withholding tax on CPP disability benefits;
- e) the Appellant filed a complaint with the Minister with request to the T4 slip issued by the TCC for the 2018 taxation year;
- f) the Appellant received WLRP benefits from Sun Life Assurance Company of Canada ("Sun Life") in the 2011 taxation year;
- g) the Appellant qualified for the DTC since the 2001 taxation year;
- h) the Appellant turned 65 in March 2021.

[7] However, the ACG denies that the T4 slip from TTC was issued in error for the 2018 taxation year and that the Minister believed that the Appellant returned to work in the 2018 taxation year.

[8] Mr. Manderla did not testify at the hearing due to his medical condition. His agent Ms. Natasha Vaney testified on his behalf. She explained that Mr. Manderla had been on LTD and CPP-D since 2001 when he lost his lower jaw to cancer. She

said that CPP-D reported the disability income on a T4A and that Sun Life was reporting the LTD correctly on T4A slips for the period of 2001 to 2011.

[9] In 2012, the TTC has apparently changed its practice concerning the way it reported the LTD and started issuing the LTD benefits on T4 slips in Box 14, as employment income, and not on T4A's as in the previous years. In 2012, the TTC also changed the administrator of the LTD plan. Sun Life was replaced by the Manulife Insurance Company pursuant to an Administrative Services Only ("ASO") agreement fully funded by the TTC. For taxation years 2012 to 2021, TTC issued T4's and not T4A's to report the LTC.

[10] The problem was discovered in 2018 by a CRA agent. The CRA agent sent a complaint form to the CRA Employee Complaint department on June 19, 2019 and asked that the matter be retroactively to 2012. The Employee Complaint department has only focused on the Appellant's 2018 taxation year and has failed to recognize that the TTC has been incorrectly reporting the LTD as employment income on T4 slips.

[11] The advantage of reporting the LTD benefits on a T4A, instead of on a T4, is that the LTD benefits would not be subject to EI premiums and CPP deductions. The Appellant was exempt from CPP contributions because he was collecting the CPP-D. To be eligible for the CPP-D, the taxpayer must first have exhausted his EI benefits and have a mental or physical disability that regularly stops him from doing any substantial gainful works. According to the Appellant, the LTD benefits are sick benefits and are not employment income.

[12] The first question to consider is whether the WLRP benefits received by the Appellant in 2018 were employment income?

[13] Paragraph 6(1)(f) of the Act requires that all amounts received by a taxpayer in a year that were payable to the taxpayer on a periodic basis in respect of the loss of all or any part of the taxpayer's income from an office or employment pursuant to a disability insurance plan to or under which the taxpayer's employer has made a contribution be included in the taxpayer's income employment insurance benefits.

[14] The WLRP benefit payments paid to an employee are considered to be employment income because they are paid in respect of an employment. The employees receive the benefits on a periodic basis for loss of employment income due to sickness, maternity or accident.

[15] When benefit payments are made by a third party, such as an insurance company in this case, who is not the actual employer, the third party is deemed to be the employer because the actual employer is the party liable to pay its employees.

[16] Pursuant to paragraph 153(1)a) of the Act, the person making the WLRP benefit payments is required to deduct or withhold from the payments the amount determined in accordance with prescribed rules for income tax purposes.

[17] Paragraph 200(2)f) of the *Income Tax Regulations* (C.R.C, ch.945), stipulates that every person who makes a payment described in subsection 153(1) of the Act shall make an information return in prescribed form in respect of the payment and subsection 200(2) of the *Regulations* requires from every person who makes a payment as or an account of, or who confers a benefit or allocates an amount that is in paragraph (f) an amount payable to a taxpayer on a periodic basis in respect of the loss of all or any part of his income from an office or employment, pursuant to (i) a sickness or accident insurance plan (ii) a disability insurance plan or (iii) an income maintenance insurance plan, to or under which his employer has made a contribution, to make an information return in prescribed form in respect of such payment or benefit.

[18] Considering the fact that the WLRP benefit payments paid to an employee by his employer or by a third party on behalf of his employer are considered to be employment income, they shall be reported on T4 slips by the employer. The fact that the WLRP benefit payments of the TTC were reported on T4A's in years prior to 2012 does not alter this conclusion.

[19] The second question to consider in this appeal is whether the WLRP benefit payments received by the Appellant in 2018 are "insurable earnings" for purposes of the *Employment Insurance Act*, S.C. 1996, c. 23, as amended (the "EIA") and if the employment insurance premiums were properly deducted from the WLRP benefit payments received by the Appellant.

[20] In the 2018 taxation year, the Appellant received \$19,707 in WLRP benefits from TTC and TTC withheld \$327.12 in employment insurance premiums from the WLRP benefits. The Appellant was allowed the amount of \$327.12 as a non-refundable tax credit pursuant to section 118.7 of the Act.

[21] The definitions of "Insurable earnings" and "Insurable employment" are found in subsection 2(1) of the EIA. "Insurable earnings" is defined to mean the total of the earnings, as determined in accordance with Part IV, that an insured person has

from an “Insurable employment”, which in turn has the meaning provided for by section 5 of the EIA.

[22] Paragraph 5(1)a) of the EIA reads as follows:

5(1) Subject to subsection (2), insurable employment is

(a) employment in Canada by one or more employers, under any express or implied contract of service or apprenticeship, written or oral, whether the earnings of the employed person are received from the employer or some other person and whether the earnings are calculated by time or by the piece, or partly by time and partly by the piece, or otherwise;

[23] Subsection 1(2) and paragraphs 2(1)a) and 2(3)d) of the Insurable Earnings and Collection of Premiums Regulations (the “IECPR”) are also relevant and they read as follows:

1 (2) For the purposes of Part IV of the Act and for the purposes of these Regulations, “employer” includes a person who pays or has paid earnings of an insured person for services performed in insurable employment.

2 (1) For the purposes of the definition of “insurable earnings” in subsection 2(1) of the Act and for the purposes of these Regulations, the total amount of earnings that an insured person has from insurable employment is

(a) the total of all amounts, whether wholly or partly pecuniary, received or enjoyed by the insured person that are paid to the person by the person’s employer in respect of that employment, and

(b) the amount of any gratuities that the insured person is required to declare to the person’s employer under provincial legislation.

2(3) For the purposes of subsections (1) and (2), “earnings” does not include

...

(d) a supplement paid to a person by the person’s employer to increase a wage loss indemnity payment made to the person by a party other than the employer under a wage loss indemnity plan;

[24] The scope of these statutory and regulatory provisions have been discussed in two cases decided by the Federal Court of Appeal: *Université Laval c. Ministre du Revenu national*, 2002 FCA, 171 and *Banque nationale du Canada c. Ministre du Revenu national*, 2003 FCA 242, and in two cases decided by the Tax Court of Canada: *Goodwin v. Minister of National Revenue*, 2004 TCC 359 and *Iljoic v.*

*Minister of National Revenue*, 2016 TCC 74. In each of these cases, the Court held that payments made under a wage-loss replacement plan funded by the employer were insurable earnings for purposes of the EIA.

[25] Based upon the facts of this case, I am convinced that the disability payments received by the Appellant under the TCC WLRP were paid to the Appellant by the TTC in respect of his insurable employment with the TTC and that consequently, the payments are “insurable earnings” for purposes of the EIA. The fact the employment insurance premiums were not deducted from the Appellant’s disability payments in years prior to 2012 does not alter this conclusion.

[26] For the foregoing reasons, the appeal is dismissed without costs.

Signed at Montreal, Quebec, this 19th day of December 2022.

“Réal Favreau”

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Favreau J.

CITATION: 2022 TCC 162  
COURT FILE NO.: 2021-202(IT)I  
STYLE OF CAUSE: STEFFEN MANDERLA  
AND HIS MAJESTY THE KING  
PLACE OF HEARING: Toronto, Ontario  
DATE OF HEARING: August 18, 2022  
REASONS FOR JUDGMENT BY: The Honourable Justice R  al Favreau  
DATE OF JUDGMENT: December 19, 2022

APPEARANCES:

Agent for the Appellant: Natasha Vaney  
Counsel for the Respondent: Christopher Bartlett  
Lalitha Ramachandran

COUNSEL OF RECORD:

For the Appellant:

Name: Natasha Vaney

Firm:

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