

## **CONSENT OF THE COMMISSION**

### ***Issue(s) under appeal:***

The claimant is appealing the Commission's decision resulting from her request for reconsideration under section 112 of the Employment Insurance Act (the Act) regarding an allocation of earnings pursuant to sections 35 and 36 of the *Employment Insurance Regulations (the Regulations)*. The relevant sections of the legislation are attached.

### ***Consent:***

As a result of the Commission's review of the claimant's appeal, the Commission has decided to concede the issue (***with modification***) before the Tribunal.

The claimant had applied for benefits when her employment had ended on January 2, 2024 and established a claim beginning January 7, 2024 (GD3-3 to GD3-19, GD3-20 to GD3-21).

For the issue in dispute, only the relevant pages of the application for benefits have been included in the reconsideration file.

Information was provided by the claimant who stated that she received a payment of \$9,533.00 for wrongful dismissal (GD3-23).

The employer stated the claimant was paid \$9,533.33 as severance pay and \$3,935.50 as vacation pay for a total of \$13,468.83 in monies paid due to separation (GD3-124).

The Commission determined that the full amount of \$13,468.83 was earnings to be allocated to the claim from January 7, 2024 to February 10, 2024 with a balance of \$1,510.00 in the week of February 11, 2024 (GD3-125 to GD3-126).

The claimant argued at the time of the formal reconsideration that the \$9,533.33 she received was not earnings because she received this money as "hush money" to compensate her for damages resulting from a harassment claim against her employer (GD3-129 to GD3-138).

The claimant had provided several pages of documents regarding her reason for separation and chronology of events that led to the employer decision to dismiss her (GD3-24 to GD3-123, GD3-133 to GD3-138). However, the information from the employer (GD3-124, GD3-147) and the direct deposit pay record (GD2-18) indicate that this money was paid to the claimant as severance pay.

After the formal reconsideration process, the Commission maintained the decision that the separation monies in the amount of \$13,468.83 was considered earnings and would be applied against the claim (GD3-150).

[REDACTED]

The claimant appeals to the Tribunal, maintaining her arguments that the amount of \$9,533.33 is not severance pay and that the employer had falsely labelled this “hush money” as severance pay (GD3-2-10 to GD2-17)

A thorough examination of the documents contained within the reconsideration file and the notice of appeal reveals there is a termination letter dated January 2, 2024, as well as a "Release" document that the claimant signed on January 9, 2024 that contain information not previously considered.

The termination letter indicates that the employer was prepared to pay the claimant “[...on a without prejudice and purely gratuitous basis, an additional payment in the total gross amount of \$9,533.33 less the required statutory deductions. In exchange for that amount, you are required to return the fully executed Release that is attached to this letter...]” (GD2-19 to GD2-20, GD3-135 to GD3-136).

The Release document indicates “[...In consideration of the contribution of \$9,533.33, less applicable statutory deductions and withholdings, paid by the Releasee on behalf of the Releasor as legal fees...]”. This document subsequently details the stipulations that the claimant must adhere to upon agreeing to and signing the release (GD2-21 to GD2-22, GD3-122 to GD3-123 & GD3-137 to GD3-138).

This information along with the credible statements from the claimant support that it is more probable than not that she received \$9,533.33 as compensation for the damages resulting from the alleged harassment she experienced and to protect the employer against any potential claims for additional compensation or legal actions initiated by the claimant.

The Commission asserts that the amount of \$9,533.33 is not earnings for benefit purposes. Both the *Termination letter* and the *Release document* are adequate proof that the money was paid to compensate the claimant for something other than the loss of employment income and benefits.

Therefore, the Commission is conceding the appeal on the issue of the allocation of \$9,533.33 monies as identified above, and recommends a modification to the allocation of earnings as follows:

Based upon the facts on file, the \$3,935.50 the claimant received as vacation pay is considered earnings pursuant to subsection 35(2) of the Regulations because the payment was made by reason of her separation from employment. Consequently, the vacation pay is allocated pursuant to subsection 36(9) of the Regulations, according to her normal weekly earnings of \$2,268.14 from January 7, 2024 to January 13, 2024 with the remaining balance of \$1,667.36 in the week of January 14, 2024.