



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *MG v Canada Employment Insurance Commission*, 2021 SST 34

Tribunal File Number: GE-21-16

BETWEEN:

M. G.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Charline Bourque

HEARD ON: January 21, 2021

DATE OF DECISION: January 22, 2021

DECISION

[1] The appeal is dismissed. The Commission can ask for the recovery of the lump sum of \$2,000. Furthermore, the Tribunal does not have the jurisdiction to write off the resulting overpayment.

OVERVIEW

[2] The Appellant applied for Employment Insurance sickness benefits on April 15, 2020. The Commission established a claim for the Employment Insurance Emergency Response Benefit effective April 12, 2020, with a maximum of 28 weeks of benefits.

[3] On April 27, 2020, in accordance with the emergency benefit the Appellant received an advance payment of his four weeks of benefits, corresponding to \$2,000. The Commission provides for the recovery of the advance payment of benefits at benefit weeks 13 and 14, 20 and 21 to prevent claimants from having an overpayment to repay.

[4] Nevertheless, the Appellant requested an antedate to March 8, 2020. The Commission determined that the Appellant was not eligible for benefits on that date, but it granted an antedate to March 15, 2020. This change resulted in a change in dates for the recovery of the advance payment, and the Appellant therefore received payment for the weeks intended for recovery.

[5] In short, the Appellant received Employment Insurance benefits for 32 weeks of benefits, while the maximum number of weeks of benefits was 28. As a result, the Commission established an overpayment of \$2,000. The Appellant objects to the fact that he has to repay an overpayment related to an error by the Commission. He explains that the situation is difficult for him and that at no time did the Commission inform him that he might have money to repay.

ISSUES

[6] Can the Commission recover the lump-sum payment of \$2,000?

[7] Can the repayment amount be written off?

ANALYSIS

Issue 1: Can the Commission recover the lump-sum payment of \$2,000?

[8] First, as the Appellant is not eligible for Employment Insurance benefits before March 15, 2020, his claim was established on that date after his antedate request was accepted.

[9] To meet Canadians' needs as a result of the COVID-19 pandemic, the Government of Canada made changes to the *Employment Insurance Act*. For example, it created the Employment Insurance Emergency Response Benefit (EI ERB).

[10] Therefore, for the period beginning on March 15, 2020, and ending on September 26, 2020, no benefit period is to be established with respect to regular or sickness benefits, among other things.¹ This means that the benefits granted during that period are those under the Employment Insurance Emergency Response Benefit. As a result, the *Employment Insurance Act* gives claimants no choice as to the type of benefits they receive between Employment insurance benefits and the Employment Insurance Emergency Response Benefit. They get the EI ERB.

[11] Furthermore, the Act states that the maximum number of weeks for which the Employment Insurance Emergency Response Benefit can be paid is 28² at a rate of \$500 per week.³

[12] The Act also states that the Commission can pay the Employment Insurance Emergency Response Benefit in advance of the customary time for paying it.⁴

[13] The Appellant confirms that he received a lump sum of \$2,000 and 28 weeks of Employment Insurance benefits. The Appellant confirms that he received the Commission's explanations about the changes made to his file after his antedate request. He confirms that he received the equivalent of 32 weeks of Employment Insurance benefits.

¹ See section 153.8(5) of the *Employment Insurance Act* (Act).

² See section 153.11 of the Act.

³ See section 153.10(1) of the Act.

⁴ See section 153.7(1.1) of the Act.

[14] Nevertheless, the Appellant finds that he should not have to repay this amount because it was an error by the Commission, and the Commission did not inform him that he would have an amount to repay.

[15] Therefore, even though the Commission is silent on this point in its arguments, I have to ask myself whether the Commission can require the repayment of the lump sum of \$2,000.

[16] First, the Act states that section 52 of the Act applies in the case of a claim made for the Employment Insurance Emergency Response Benefit, subject to the adaptations set out.⁵

[17] The adaptation of section 52(2) of the Act states that, if the Commission decides that a person has received money by way of the Employment Insurance Emergency Response Benefit for which the person was not eligible, or has not received money for which the person was eligible, the Commission must calculate the amount of the money and notify the claimant of its decision.⁶

[18] Furthermore, the adaptation of section 44 of the Act states that a person who has received an Employment Insurance Emergency Response Benefit payment, in excess of the amount for which the person is eligible, must without delay return the excess amount.⁷

[19] Therefore, I am of the view that the Appellant was overpaid the Employment Insurance Emergency Response Benefit in the amount of \$2,000 because the Appellant was eligible for a maximum of 28 weeks of benefits under the Employment Insurance Emergency Response Benefit. The Appellant received 28 weeks of benefits as well as a lump sum of \$2,000.

[20] Despite the adaptations provided in the Act due to the Employment Insurance Emergency Response Benefit, the Act states that a person who has received an amount in excess has to repay it and that the Commission has to notify them of its decision, which is the case in this situation.

⁵ See section 153.6(1) of the Act.

⁶ See section 153.1303(1) of the Act.

⁷ See section 153.1301 of the Act.

[21] As a result, I am of the view that the Commission had to ask for the recovery of the \$2,000 that was overpaid to the Appellant.

[22] Nevertheless, I take into consideration the fact that the Appellant is asking that the amount be written off.

Issue 2: Can the repayment amount be written off?

[23] First, I note that the Appellant did not ask the Commission to write off that amount because no decision was made on this matter. Furthermore, I am of the view that I do not have the jurisdiction to decide on the issue of the write-off.

[24] A party who is dissatisfied with a reconsideration decision of the Commission can appeal the decision to the Social Security Tribunal.⁸

[25] A decision of the Commission made under the *Employment Insurance Regulations* respecting the writing off of any penalty owing, amount payable, or interest accrued on any penalty owing or amount payable is not subject to review.⁹

[26] Therefore, I am of the view that I have no jurisdiction to make a decision on the issue of the write-off, as requested by the Appellant, because the Act states that write-off issues cannot be subject to review. The Appellant must therefore apply to the Federal Court because it has jurisdiction to hear an appeal on this issue.

[27] I understand the Appellant's disappointment in this situation as well as the difficulties it has caused. However, my role is to apply the Act, and I cannot amend it simply to please the Claimant, who feels wronged. The Act establishes specific criteria that a claimant must meet to be eligible for benefits. Furthermore, ignorance of the Act, or not receiving information or receiving erroneous information from the Commission, cannot allow a claimant to avoid the Act.¹⁰

⁸ Section 113 of the *Employment Insurance Act* (Act).

⁹ See section 112.1 of the Act.

¹⁰ See *Granger v Commission (CEIC)*, FCA, A-684-85.

CONCLUSION

[28] The appeal is dismissed.

Charline Bourque
Member, General Division – Employment Insurance Section

HEARD ON:	January 21, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	M. G., Appellant