



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SK v Canada Employment Insurance Commission*, 2021 SST 136

Tribunal File Number: GE-21-346

BETWEEN:

S. K.

Appellant (Claimant)

and

Canada Employment Insurance Commission

Respondent (Commission)

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Linda Bell

HEARD ON: March 15, 2021

DATE OF DECISION: March 22, 2021

DECISION

[1] I am dismissing the appeal. The Claimant is not entitled to the Employment Insurance Emergency Response Benefit (EI-ERB).

[2] The Claimant is at liberty to contact the Commission if he wishes to determine his entitlement to regular EI benefits for any claims made for weeks after December 9, 2020.

OVERVIEW

[3] On February 10, 2020, the Claimant voluntarily left his employment. On February 12, 2020, he left Canada for personal reasons. He says he was on vacation to be married on March 8, 2020. He did not have a return flight scheduled as he was waiting to hear when his new job would start. In March 2020, the global COVID-19 pandemic occurred so he decided to remain outside Canada until he felt it was safe to return.

[4] The Claimant remained outside Canada until November 30, 2020. While outside Canada, he submitted an online application for Employment Insurance (EI) Benefits on March 30, 2020. The Commission processed his application and set up his claim (benefit period) for the EI-ERB, effective March 29, 2020. The EI-ERB falls under the *Employment Insurance Act (EI Act)*. The Claimant completed his first biweekly reports for March 29, 2020, to April 11, 2020.

[5] The Claimant never received a payment for the EI-ERB. This is because when he completed his biweekly reports, he said that he was outside Canada. The Commission's automated claims system imposed two indefinite disentitlements effective March 29, 2020. The first disentitlement is because he is outside Canada. The second disentitlement is for non-availability.

[6] When the Claimant did not receive payment for the EI-ERB, he applied for the Canada Emergency Response Benefit (the CERB). The CERB falls under the *Canada Emergency Response Benefit Act*. The Canada Revenue Agency (CRA) manages claims for the CERB.

[7] The Claimant received \$2,000.00 for the CERB for the 4-week period from March 15, 2020, to April 11, 2020. He received another \$2,000.00 payment for the CERB for the 4 weeks from April 12, 2020, to May 9, 2020. The Claimant says he was worried that CRA may order

him to repay the \$4,000.00 he received as the CERB. So, he decided to repay the \$4,000.00 CERB to CRA. He says he did not attempt to contact CRA to clarify his entitlement until January 20, 2021. During that conversation, CRA told him to contact the Commission.

[8] The Claimant says he did not attempt to speak to the Commission about his March 30, 2020, application for the EI-ERB because he was still outside Canada and was receiving payments for the CERB. When he decided to repay the \$4,000.00 he received for CERB, he submitted a second application to the Commission on December 9, 2020, requesting retroactive payment for the EI-ERB, as of March 29, 2020.

[9] The Commission denied the Claimant's December 9, 2020, application for the EI-ERB. This is because they say he is not able to submit a claim for the EI-ERB after December 2, 2020. Upon reconsideration, the Commission maintained their decision that the Claimant cannot submit a late claim for the EI-ERB. They also determined that the Claimant is not entitled to the EI-ERB during the same period he received payment for the CERB.

[10] The Claimant disagrees with the Commission's decision to deny him the EI-ERB. He says he is eligible for the EI-ERB while outside Canada.

PRELIMINARY MATTERS

[11] Upon reconsideration, the Commission determined that the Claimant could not submit late reports for the EI-ERB, after December 2, 2020. However, the Claimant was also asking the Commission to reconsider their decision to deny him benefits on his March 29, 2020, benefit period.

[12] The Claimant states in his reconsideration request that he is requesting reconsideration of "Regular benefits applied on 29/03/2020." Further, the Commission documents how they commented that, "he was potentially payable for the EI-ERB while being outside Canada." However, he was not payable for regular EI benefits while he was on vacation outside Canada.

[13] My jurisdiction comes from the reconsideration decision that the Commission made under section 112 of the *EI Act*. I recognize that the Commission did not address the Claimant's

request for payment of benefits as of March 29, 2020, in their reconsideration decision letter. My authority to determine issues does not come from a decision letter.

[14] I find that the issues before me arose from the Commission's February 10, 2021, reconsideration decision made during their telephone conversation with the Claimant. The evidence supports that the Commission discussed the Claimant's request for benefits as of March 29, 2020. Therefore, I have jurisdiction to determine whether the Claimant is entitled to the payment of EI benefits on both claims (benefit periods). To clarify, he submitted his first application on March 30, 2020, and this benefit period was established effective March 29, 2020. He submitted his second application on December 9, 2020, and this benefit period was established effective December 6, 2020.

ISSUES

[15] Is the Claimant entitled to the payment of the EI-ERB on his March 29, 2020, benefit period?

[16] Is the Claimant entitled to retroactive payments of the EI-ERB on his December 6, 2020, benefit period?

[17] Can I determine whether the Claimant is entitled to EI benefits after December 6, 2020?

ANALYSIS

Is the Claimant entitled to the payment of the EI-ERB on his March 29, 2020, benefit period?

[18] No, the Claimant is not entitled to the EI-ERB on his March 29, 2020, benefit period.

[19] In March 2020, the government made amendments to the *EI Act*, in response to the COVID-19 pandemic.¹ The Minister made several orders to amend the *EI Act* that became effective March 15, 2020. One of the orders added a new temporary benefit called the EI-ERB.²

¹ Subsection 153.5 of the *EI Act*.

² See Part VIII.4 of the *EI Act*.

[20] The amendments to the *EI Act* say that a claimant is not eligible for the EI-ERB if they receive an income support payment under the *Canada Emergency Response Benefit Act*, referred to as the CERB.³

[21] In order to receive payment for the EI-ERB, a claimant must make a claim by completing biweekly reports. The *EI Act* stipulates that a claimant cannot make a claim for the EI-ERB after December 2, 2020.⁴

[22] The Commission states that the Claimant is not entitled to the EI-ERB on his March 29, 2020, benefit period because he received payment for the CERB. They submit a print out of the CERB payment screen showing the Claimant was paid CERB from March 15, 2020, to May 9, 2020.⁵

[23] The Claimant states that he initially applied for the EI-ERB. He completed his first set of biweekly reports but when he did not receive a payment for the EI-ERB, he applied for the CERB. He says did not complete additional biweekly reports because he was receiving payment for the CERB. He states he should receive the EI-ERB retroactively because he repaid the \$4,000 CERB to CRA when he became worried he was not entitled to it. He is asking for payment of the EI-ERB for the period from March 29, 2020, until December 3, 2020.

[24] After careful consideration of the evidence, I find that the Claimant is not entitled to payment for the EI-ERB on his March 29, 2020, benefit period. As stated above, the law says he is not eligible for the EI-ERB if he receives the CERB. The fact the Claimant made a payment to CRA to repay the CERB, does not change the fact that he received payment for the CERB from March 15, 2020, to May 9, 2020. Further, the Claimant waited until after December 2, 2020, to request a retroactive payment for the EI-ERB. The law clearly states that claims for the EI-ERB cannot be made after December 2, 2020. This means the Claimant is not entitled to the EI-ERB on his March 29, 2020, benefit period.

³ See paragraph 153.9(2)(c) of the *EI Act*.

⁴ Subsection 153.8(2) of the *EI Act*.

⁵ See page GD6-6.

Is the Claimant entitled to the payment of the EI-ERB on his December 6, 2020, benefit period?

[25] No. The Commission states the Claimant is not entitled to the EI-ERB on his December 6, 2020, benefit period. This is because he submitted this claim after the December 2, 2020, time limit.

[26] The Claimant states that he is seeking retroactive payment of the EI-ERB on his December 9, 2020. He wants to recover the \$4,000 he repaid to CRA plus any other benefits he may be entitled to receive since March 2020.

[27] As set out above, the Claimant cannot make a claim for the EI-ERB after December 2, 2020.⁶ This means the Claimant is not entitled to the EI-ERB on his December 6, 2020, benefit period.

Can I determine whether the Claimant is entitled to EI benefits after December 6, 2020?

[28] No. As set out above, my authority (jurisdiction) comes from the reconsideration decision that the Commission made under section 112 of the *EI Act*. There is no evidence that the Commission denied or reconsidered the Claimant's request for regular EI benefits for claims made after December 20, 2020.

[29] The Claimant testified that he returned to Canada on November 30, 2020, after securing a new job. His new employer paid him during his two-week isolation period from December 4, 2020, to December 17, 2020. He says he was concerned that he would not be working full-time so he submitted an application for regular EI benefits on December 9, 2020. The Claimant states that his first day worked was December 20, 2020. He began working full-time but his hours of work have reduced, so he is now requesting regular EI benefits.

[30] As explained during the hearing, my decision is based on the facts before me and the application of the EI law. I do not have authority to determine matters pertaining to the CERB as CRA manages that benefit. Further, I do not have authority to determine matters that the Commission has not reconsidered. There are no exceptions and no room for discretion. I cannot

⁶ Subsection 153.8(2) of the *EI Act*.

interpret or rewrite the *EI Act* in a manner that is contrary to its plain meaning, even in the interest of compassion.⁷

[31] The Claimant is at liberty to contact the Commission if he wishes to determine his entitlement for regular EI benefits, regarding claims for weeks after December 6, 2020.

CONCLUSION

[32] The Claimant is not entitled to retroactive payments of the EI-ERB. I cannot determine matters relating to the CERB or EI benefits that the Commission has not yet reconsidered. This means that I am dismissing the appeal.

Linda Bell

Member, General Division - Employment Insurance Section

HEARD ON:	March 15, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. K., Appellant (Claimant)

⁷ *Canada (Attorney General) v Knee*, 2011 FCA 301.