



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *RP v Canada Employment Insurance Commission*, 2021 SST 211

Tribunal File Number: GE-20-2409

BETWEEN:

R. P.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Charlotte McQuade

HEARD ON: March 30, 2021

DATE OF DECISION: March 30, 2021

DECISION

[1] I am dismissing the appeal. This means the Canada Employment Insurance Commission (the “Commission”) correctly established R. P.’s (the “Claimant’s”) claim as an EI Emergency Response Benefit (“EI ERB”) claim and correctly determined his weekly benefit rate to be \$500.00.

OVERVIEW

[2] The Claimant applied for EI regular benefits on March 25, 2020 after being laid off on March 24, 2020. There were amendments to the EI Act due to the pandemic. A new benefit called the EI ERB was created effective March 15, 2020. Claimants who could have had a benefit period established for EI regular or EI sickness benefits between March 15, 2020 and September 26, 2020, were required by the law to have their benefit periods established as an EI ERB claim, rather than as a claim for regular or sickness EI benefits. The Commission says that because the Claimant could have had a benefit period for EI regular benefits established on March 29, 2020 his claim had to be established as an EI ERB claim with a weekly benefit rate of \$500.00.

[3] The Claimant disagrees with the Commission’s decision to pay him EI ERB benefits. The Claimant says he did not stop work due for reasons related to Covid-19 and he applied for EI regular benefits, not EI ERB benefits so his claim should have been established as a regular EI claim at a higher net weekly benefit rate of \$567.00. The Claimant also says that EI benefits are an insurance scheme and the premiums that claimants pay are based on their salary. In light of that, he says it is unfair that higher wage earners end up being penalized by the \$500.00 weekly benefit rate whereas lower wage earners end up benefitting by the \$500.00 weekly benefit rate. The Claimant also questions why, if he was paid the EI “Emergency Response Benefit”, it took six weeks for the payment to begin.

PRELIMINARY MATTERS

[4] At the initial hearing of this matter on January 25, 2021, the Claimant expressed an intention to raise a Charter argument in his appeal. The hearing was adjourned so the Tribunal’s Charter process could be explained to the Claimant. A pre-hearing conference was held on

February 10, 2021 to explain that process. The Claimant was advised that if he intended to pursue a constitutional challenge as part of his appeal, he was required to file a notice of constitutional issue¹ with the Tribunal by March 12, 2021. A letter was sent to the Claimant on February 10, 2021 confirming that requirement. As the Claimant did not submit the required notice to the Tribunal, on March 16, 2021 the Tribunal sent the Claimant a letter confirming that Charter arguments would not be addressed as part of his appeal and his appeal would return to the regular process. At the start of this hearing, the Claimant confirmed that he did not send in the required notice as he had decided not to pursue a Charter challenge. I confirmed to the Claimant that I would not be considering a Charter argument as part of his appeal.

ISSUE

[5] The issue in this appeal is whether the Claimant should have been paid EI ERB benefits at the weekly benefit rate of \$500.00 or whether he should have been paid regular EI benefits, with his weekly benefit rate calculated at 55% of his weekly insurable earnings.

ANALYSIS

[6] To respond to the COVID-19 pandemic, some changes were made to the *Employment Insurance Act* (EI Act). This included the creation of a new temporary benefit, which came into effect on March 15, 2020, called the EI ERB.² The EI ERB is payable to eligible claimants for two-week periods that fall between March 15, 2020 and October 3, 2020.

[7] The EI Act defines EI ERB “claimants” for different reasons. “Claimants” are not just those who have stopped working for reasons related to COVID-19.

[8] The law says that claimants who could have established a benefit for regular EI or EI sickness benefits on or after March 15, 2020 are considered to be claimants for the purposes of the EI ERB.³ This is the case even if they did not apply for EI ERB benefits. The law says that

¹ This notice is required by paragraph 20(1)(a) of the *Social Security Tribunal Regulations* to raise a Charter issue before the Tribunal.

² This new EI benefit is provided in Part VIII.4 of the *Employment Insurance Act*.

³ See paragraphs 153.5(2)(b) and 153.5(3)(a) of the *Employment Insurance Act*.

no benefit period can be established for regular EI benefits or EI sickness benefits for the period from March 15, 2020 to September 26, 2020.⁴

[9] This means that claimants who could have started a benefit period for regular EI benefits between March 15, 2020 and September 26, 2020 cannot chose between claiming regular EI benefits or the EI ERB benefits. They can only start a benefit period for EI ERB benefits.

[10] To be eligible for EI ERB benefits, you also have to show that you had no work or earnings for seven consecutive days during the two-week period for which you are claiming benefits.⁵

[11] The EI ERB pays eligible claimants \$500.00 per week for a maximum of 24 weeks, minus any weeks for which the claimant receives benefits under the *Canada Emergency Response Benefit Act* or the *Canada Emergency Student Benefit Act*. The rate is the same for all EI ERB claimants.⁶

[12] For regular EI benefits, the benefit rate is 55% of a claimant's weekly insurable earnings, up to a maximum. Depending on a claimant's earnings, this might be higher or lower than \$500.00 per week.⁷The maximum weekly benefit rate for regular benefits in 2020 was \$573.00.

[13] The Commission says the Claimant could have established a benefit period for regular benefits on March 29, 2020 so he is an EI ERB claimant and his weekly benefit rate is \$500.00.

[14] The Claimant says he was not laid off for reasons related to Covid-19. He testified that he had been working from home for eight months and his employer bought another company in December 2019. His employer started to lay off employees for reasons of cost cutting and reorganizing. The Claimant said he was one of the first laid off. The Claimant also says he applied for regular EI benefits, not EI ERB benefits. He testified that the Commission initially established his claim as a regular EI benefit claim and then on their own changed it the next day

⁴ See paragraph 153.5(3)(a) and subsection 153.8(5) of the *Employment Insurance Act*.

⁵ Paragraph 153.9(1)(a)(iv) and paragraph 153.9(1)(a)(v) of the *Employment Insurance Act*.

⁶ Subsection 153.10(1) of the *Employment Insurance Act* and Subsection 153.11 of the *Employment Insurance Act*.

⁷ Subsection 14(1) of the *Employment Insurance Act*.

to EI ERB benefits. The Claimant says he was told he was being paid “CERB” benefits and it was not until he started the appeal process that he realized he had been paid EI ERB benefits.

[15] The Claimant argues that EI is an insurance scheme, not a social benefit scheme. He says it is unfair that the EI ERB benefit is paid at a fixed rate. He said that that claimants pay premiums based on a percentage of salary. However, those paying higher premiums through a higher salary are penalized by the \$500.00 EI ERB weekly benefit rate while those that have lower wages are benefiting from the \$500.00 weekly benefit rate. The Claimant questions how the government can amend the legislation to a standard weekly benefit rate of \$500.00 when EI is an insurance scheme based on premiums. The Claimant also questions why, if he was paid EI ERB benefits, it took the Commission six weeks to provide him his first payment when claimants for CERB benefits were paid the next day.

[16] I accept the Claimant’s testimony that he applied for EI regular benefits and that he was not laid off for reasons related to Covid-19. However, despite those facts, he is still considered to be an EI ERB claimant if he could have established a benefit period for regular EI benefits between March 15, 2020 and September 26, 2020. So, I have to decide if the Claimant could have established a benefit period for regular benefits during this period.

[17] There is no dispute that the Claimant applied for EI regular benefits on March 25, 2020 after being laid off on March 24, 2020.

[18] The law says that a benefit period begins on the later of the Sunday in the week in which the interruption of earnings occurs, and the Sunday of the week in which the initial claim for benefits is made.⁸

[19] The Commission says that the Claimant’s interruption of earnings occurred on March 24, 2020 and he made a claim for benefits on March 25, 2020 so his benefit period could have been established on March 22, 2020. The Commission says, however, the Claimant had earnings in that week that would have been deducted pursuant to section 19 of the EI Act so the benefit period was established effective March 29, 2020, as that was the most advantageous to the

⁸ Subsection 10(1) of the *Employment Insurance Act*.

Claimant's situation.

[20] The Claimant testified initially that the Commission had explained to him why the start date of the benefit period would be March 29, 2020 and he did not dispute that. The Claimant later suggested in his testimony that the benefit period could have begun on March 15, 2020 as he was allowed to have earnings of \$1000.00 per month while on EI ERB. Towards the end of the hearing, he confirmed that he did not dispute the start date of his benefit period as March 29, 2020.

[21] I find the Claimant could have established a benefit period for regular benefits after March 15, 2020. The Claimant could have established a benefit period on March 22, 2020⁹ but the Commission established the Claimant's benefit period on March 29, 2020 as this was to his advantage. The Claimant agreed with this start date to his benefit period so I accept March 29, 2020 as the start of his benefit period. Either way, the Claimant's benefit period for regular benefits could have been established after March 15, 2020. His benefit period could not have begun on March 15, 2020. The Claimant was still working until March 24, 2020 and did not apply for benefits until March 25, 2020. Since the Claimant could have established a claim for regular benefits after March 15, 2020 and prior to September 26, 2020, I find he is a claimant for EI ERB benefits.

[22] The law also says that no benefit period for sickness or regular EI benefits can be established between March 15, 2020 and September 26, 2020 so the Claimant could not have established a claim for EI regular benefits.¹⁰

[23] The Commission says the Claimant is also "eligible" for EI ERB benefits, as he had no income from employment for at least seven consecutive days within the two-week period in respect of which he claimed the benefit.¹¹ I see no evidence to contradict this so I accept the Claimant was eligible for EI ERB benefits from March 29, 2020.

⁹ As per subsection 10(1) of the *Employment Insurance Act*.

¹⁰ Paragraph 153.5(3)(a) and subsection 153.8(5) of the *Employment Insurance Act*

¹¹ Subsection 153.9 (1) of the EI Act provides: A claimant is eligible for the employment insurance emergency response benefit (b) if they are a claimant referred to in paragraph 153.5(2)(b) and they have no income from employment or self-employment for at least seven consecutive days within the two-week period in respect of which they claimed the benefit.

[24] I find the Claimant is entitled to EI ERB benefits, paid at the rate of \$500.00 per week.¹²

[25] I acknowledge the Claimant's position that the EI legislation is an insurance scheme. However, the amendments to the EI Act provide that the EI ERB benefit is to be paid at a fixed rate of \$500.00 and I must apply the law.

[26] There is no doubt the Claimant is a hardworking individual who worked and paid into the EI system with the expectation that his EI benefits would be paid at a certain rate. Instead, he ended up being paid a lower fixed amount of \$500.00 per week. For other claimants the \$500.00 EI ERB amount may have been higher than their weekly benefit rate would have been if their claim had been established as a regular EI benefit claim. I can see how this seems unfair to the Claimant. I also acknowledge his frustration with the delay he experienced in receiving what are termed "emergency benefits". However, while I sympathize with the Claimant's situation, I have no discretion to step outside the law, no matter how compelling the circumstances.¹³

CONCLUSION

[27] The appeal is dismissed. The Commission correctly determined the Claimant's weekly benefit rate to be \$500.00.

Charlotte McQuade

Member, General Division - Employment Insurance Section

HEARD ON:	March 30, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. P., Appellant

¹² Subsection 153.10(1) of the *Employment Insurance Act*.

¹³ *Canada (Attorney General) v Kneé*, 2011 FCA 301.