



Citation: *CG v Canada Employment Insurance Commission*, 2021 SST 254

**Social Security Tribunal of Canada  
General Division – Employment Insurance Section**

**Decision**

**Appellant:**

C. G.

**Respondent:**

Canada Employment Insurance Commission

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**Decision under appeal:**

Canada Employment Insurance Commission  
reconsideration decision (415844) dated March 18, 2021  
(issued by Service Canada)

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**Tribunal member:**

Linda Bell

**Type of hearing:**

Videoconference

**Hearing date:**

May 26, 2021

**Hearing participant:**

Appellant (the Claimant)

**Decision date:**

May 31, 2021

**File number:**

GE-21-673

## Decision

[1] I am dismissing the appeal. This means the Claimant cannot change his benefits to sickness Employment Insurance (EI) benefits. His benefit rate remains at \$500.00 per week.

## Overview

[2] The Claimant stopped working for medical reasons as of March 20, 2020. He submitted an application for EI sickness benefits and established a benefit period (claim), effective March 22, 2020. The Commission set up his claim to pay him the EI Emergency Response Benefit (EI-ERB), which falls under part VIII.4 of the *Employment Insurance Act* (EI Act).

[3] The Claimant disagrees with the Commission's decision to pay him the EI-ERB. He states his illness is not due to COVID-19. He says his claim should be set up under Part I of the EI Act to pay him sickness EI benefits. Upon reconsideration, the Commission maintained their decision to pay him the EI-ERB.

[4] The Claimant appeals to the Social Security Tribunal. He states that the Commission ought to have paid him sickness EI benefits at the higher benefit rate. He argues that the government's decision to process all claims under the EI-ERB has lowered his benefit rate and put him at risk of having an overpayment of benefits. He feels he is at a disadvantage by the government's decision to treat all applicants the same.

## Preliminary Issue

[5] At the outset of the hearing, the Claimant argued that the temporary measures that require all claims to be set up under the EI-ERB is discriminatory because it treats all claimants the same. Upon further clarification of the charter appeal process, the Claimant said he is not making a charter argument. He states that he wants his appeal to proceed through the regular appeal process.

## Issues

[6] Can the Claimant change his claim to receive sickness EI benefits instead of the EI-ERB?

[7] If so, can he receive a higher benefit rate?

## Analysis

[8] In early March 2020, the government announced that they were making changes to the EI Act in response to the global COVID-19 pandemic.<sup>1</sup> The Minister made several orders to amend the EI Act. These orders were effective retroactively as of March 15, 2020. One of the orders added a new temporary benefit called the EI-ERB.<sup>2</sup>

[9] The temporary provisions say that claimants who would otherwise have established a claim for regular or sickness EI benefits between March 15, 2020, and September 26, 2020, are claimants of the EI-ERB. The law says that a claim for regular or sickness EI benefits cannot start during this time.<sup>3</sup> Claimants do not get to choose between the EI-ERB and sickness EI benefits.

[10] The benefit rate for the EI-ERB is \$500 per week for all claimants.<sup>4</sup> By contrast, regular and sickness EI benefits are set at a rate of 55% of a claimant's normal weekly earnings, up to a maximum. The maximum weekly benefit rate for regular and sickness EI benefits in 2020 is \$573.

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<sup>1</sup> The *COVID-19 Emergency Response Act* was passed into law on March 25, 2020. This gave the Minister legal authority to amend the EI Act. Part VIII.4 was added to the EI Act. Section 153.3 of the EI Act allows the Minister of Employment and Social Development to make temporary orders amending the EI Act. Section 153.3(8) of the EI Act says that these interim orders prevail to the extent of any conflict with the EI Act or any regulation made under it.

<sup>2</sup> See Part VIII.4 of the EI Act.

<sup>3</sup> Section 153.8 of the EI Act says that no benefit period can be established with respect to any of the benefits referred to in paragraph 153.5(3)(a) of the Act. Paragraph 153.5(2)(b) states that a claimant means a person who could have had a benefit period established on or after March 15, 2020. Paragraph 153.5(3)(a) clarifies that the benefits referred to in paragraph 153.5(2)(b) include benefits under Part 1 of the EI Act. Part 1 includes regular and sickness EI benefits.

<sup>4</sup> The \$500 per week benefit rate is set out in subsection 153.10(1) of the EI Act.

## **Can the Claimant change his claim to receive sickness EI benefits instead of the EI-ERB?**

[11] No, the Claimant cannot change his claim to receive sickness EI benefits. In this case, the Claimant states he stopped working as of March 20, 2020, due to an illness unrelated to COVID-19.<sup>5</sup> He submitted his application for sickness EI benefits on March 24, 2020.<sup>6</sup> On April 6, 2020, the Claimant received an advance payment of \$2,000.00 for the EI-ERB.<sup>7</sup> He also received \$500.00 for each week from March 22, 2020, to September 5, 2020.<sup>8</sup>

[12] The Claimant gradually returned to work during the period he was collecting the EI-ERB. He says he earned more than \$1,000.00 in the weeks from July 26, 2020, to August 22, 2020. He argues that if his claim was set up for sickness EI benefits he would be able to keep 50 cents of every dollar he earned up to 90% of his weekly insurable earnings. He argues that his claim should be for sickness EI benefits because when he submitted his application on March 24, 2020, the interim orders creating the EI-ERB were not yet in effect.

[13] The Claimant states that the Commission's integrity department contacted him to say he may have to repay some of the EI-ERB he received. This is because the EI Act states that you cannot earn more than \$1,000.00 in any four-week period.<sup>9</sup> He says the Commission has not yet told him the outcome of that investigation. He is requesting that his claim be changed to sickness EI benefits to prevent a potential overpayment.

[14] The Commission submits that they have not issued a decision regarding a potential overpayment of the EI-ERB. So, the matter of an overpayment is not an issue before the Tribunal. The Claimant does not dispute this but still wants to change his claim to a sickness EI claim to increase his weekly benefit rate.

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<sup>5</sup> See the medical letters at pages GD7-2 to GD7-9.

<sup>6</sup> See pages GD3-3 to March 24, 2020.

<sup>7</sup> See the Full Text Screen at page GD3-20.

<sup>8</sup> See page GD4-1.

<sup>9</sup> Parliament added Paragraph 153.9(4) to the EI Act as of April 16, 2020. This paragraph sets out how a claimant is deemed to meet the requirements to be a claimant of the EI-ERB if they receive an income that does not exceed \$1,000.00 in a four-week period.

[15] The Commission submits that there is no legislation that permits them to retroactively convert a claim from the EI-ERB to sickness EI benefits. Rather, they argue that the legislation deems all claimants who applied for regular or sickness EI benefits from March 15, 2020, and ending on October 3, 2020, to be claimants of the EI-ERB.

[16] I find that the Claimant cannot change his claim to sickness EI benefits. He makes a compelling argument when he states that the government had not created the temporary measures as of March 24, 2020, the date he submitted his application for sickness EI benefits. However, his claim was made effective March 22, 2020, and the law clearly states that all claims set up as of March 15, 2020, and ending October 3, 2020, are claims for the EI-ERB. The fact that he did not stop work due to an illness relating to COVID-19, or that he may incur an overpayment of the EI-ERB, are not relevant to deciding the type of benefits he can receive as of March 22, 2020. This means he cannot change his claim from the EI-ERB to sickness EI benefits.

### **Can the Claimant receive a higher benefit rate?**

[17] No, the Claimant cannot receive a higher benefit rate. As set out above, the weekly rate for the EI-ERB is \$500.00 per week. This is the same for all claimants.

[18] The Claimant does not dispute that he received the correct weekly benefit rate while collecting the EI-ERB. I acknowledge his concern that based on his earnings he may have to repay some of the EI-ERB. However, I do not have jurisdiction to consider this matter at this time. This is because the Commission has not yet rendered a decision or reconsidered the matter relating to an overpayment of the EI-ERB.

[19] I recognize that the Claimant may be disappointed with this outcome. Particularly given how many times the legislation changed due to the unprecedented circumstances caused by the global COVID-19 pandemic. This said my decision is not discretionary. I have to apply the law as written. I cannot interpret or rewrite the law in a

manner that is contrary to its plain meaning, even in the interest of compassion.<sup>10</sup> This means the Claimant cannot receive a higher benefit rate.

## **Conclusion**

[20] The Claimant cannot change his claim from the EI-ERB to sickness EI benefits. His benefit rate remains at \$500.00 per week. This means I am dismissing the appeal.

Linda Bell

Member, General Division – Employment Insurance Section

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<sup>10</sup> *Canada (Attorney General) v Knee*, 2011 FCA 301.