



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *MF v Canada Employment Insurance Commission*, 2021 SST 258

Tribunal File Number: GE-21-100

BETWEEN:

**M. F.**

Appellant / Claimant

and

**Canada Employment Insurance Commission**

Respondent / Commission

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Raelene R. Thomas

HEARD ON: February 9, 2021

DATE OF DECISION: February 12, 2021

## **Decision**

[1] The appeal is dismissed. This means the Claimant's Employment Insurance Emergency Response Benefits (EI ERB) cannot be changed to regular employment insurance (EI) benefits.

[2] I do not have the authority to write off the \$2,000.00 EI ERB advance the Claimant received. The Claimant can contact the Commission to request the write-off.

## **Overview**

[3] The Claimant stopped working on March 24, 2020, when he was laid off. He applied for regular EI benefits on March 24, 2020, and his benefit period was established effective March 22, 2020. The Commission decided that the Claimant should receive the EI ERB. He received a lump sum of \$2,000.00 at the start of his benefit period as an "advance" of four weeks of the EI ERB and he received 10 weeks of EI ERB. The Claimant returned to work under a work sharing program in early June 2020 and his claim was converted to EI-Work Sharing Benefits. The Commission says an overpayment of \$2,000.00 was created when the Claimant's EI ERB benefits ended before 26 weeks elapsed. It says the \$2,000.00 advance was to put money in his pocket as soon as possible and would have been recovered from his last four weeks of EI ERB.

[4] The Claimant says that he is entitled to regular EI benefits. That is the program that he paid into, that is the benefit that he applied for and he was not told at the time of his application that he would be receiving EI ERB. He says that he should not be subject to EI ERB legislation because it was not posted on the Service Canada website when he applied. The Claimant appeals to the Social Security Tribunal.

## **Issue**

[5] I must decide if the Claimant is entitled to regular EI benefits instead of the EI ERB benefit.

## **Analysis**

[6] In March 2020, the government changed the *Employment Insurance Act* to allow the Minister to make temporary orders to mitigate the economic effects of the COVID-19

pandemic.<sup>1</sup> The Minister made several orders to amend the *Employment Insurance Act*, effective March 15, 2020, one of which added a new temporary benefit to the *Employment Insurance Act*, called the Employment Insurance Emergency Response Benefit (EI ERB).

[7] The new provisions say that claimants who would otherwise have established a benefit period for regular EI benefits between March 15, 2020, and September 26, 2020, are instead claimants for the purposes of the EI-ERB. The law says that a benefit period for regular benefits cannot start during that time.<sup>2</sup> Claimants do not get to choose between regular EI benefits and the EI ERB.

[8] The benefit rate for the EI ERB is \$500 per week for all claimants.<sup>3</sup> By contrast, regular 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 2020 is \$573.00.

***Can the Claimant receive regular EI benefits instead of benefits under the EI ERB?***

[9] The Claimant testified his boss called him on March 24, 2020, to tell him he was laid off, and go home to apply for EI. The Claimant filled out his application for EI benefits that day on-line with the help of his adult child. The Claimant said there was no mention of the EI ERB on the website. He requested regular EI benefits and there was no mention of the EI ERB on his application. Using the website's on-line benefit calculator, the Claimant calculated his weekly benefit would be \$576.00.

[10] The Claimant does not dispute that he received the \$2,000.00 lump sum or the \$500.00 EI ERB for 10 weeks. He says that he was not given any information that the \$2,000.00 was an advance that had to be paid back at the end. It was simply deposited to his bank account. He tried to find out why that amount was deposited but could not get through to Service Canada.

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<sup>1</sup> The *COVID-19 Emergency Response Act* added section 153.3 to the *Employment Insurance Act*, which allows the Minister of Employment and Social Development to make temporary orders amending the *Employment Insurance Act*. Subsection 153(8) of the *Employment Insurance Act* says that these interim orders prevail to the extent of any conflict with the *Employment Insurance Act* or any regulation made under it.

<sup>2</sup> Section 153.8 of the *Employment Insurance 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 *Employment Insurance 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 *Employment Insurance Act*. Part 1 includes regular EI benefits.

<sup>3</sup> The \$500 per week benefit rate is set out in subsection 153.10(1) of the *Employment Insurance Act*.

The Claimant argues that he should have received regular EI benefits at the higher weekly rate than he received for EI ERB. The Claimant argues that he should not be subject to the EI ERB requirements because no notice of the changes to the legislation was on the Commission's website when he applied for regular EI benefits. He says he is entitled to \$573.00 a week. He has been paying into the EI program for over 30 years and should receive the full benefits of the program. Had the website been updated, he would have known that he was applying for EI ERB. He says it is the same as reaching an agreement to buy an expensive car and getting a less expensive car delivered.

[11] The Claimant submitted that he should not have to pay back the \$2,000.00. He cannot understand the legality of putting money into a person's account and then taking it back. He believes that the laws governing the EI ERB are null and void if they are not published on the website.

[12] In the alternative, the Claimant said he realizes that the maximum weekly amount for regular EI benefits is \$573.00. To that end, he is willing to repay the \$2,000.00 overpayment less the \$730.00 he should have received had his application for regular EI benefits been processed for that benefit.

[13] The Commission says that the interim order required that it establish all claims for benefits made under the *Employment Insurance Act* Part I as EI ERB with the applicable benefit rate without exception. In this case, it says, the Claimant is subject to the EI ERB legislation, which applies to all claims with a start date between March 15, 2020, and September 27, 2020. The Claimant's application for benefits was made on March 24, 2020 and his claim was made effective March 22, 2020. Furthermore, the Commission says because the Claimant's claim was established as an EI ERB claim, the weekly benefit rate was correctly calculated at \$500.00.

[14] The Commission says that when the Claimant became eligible for EI-Work Sharing Benefits, effective May 31, 2020, an overpayment was established for the four-week advance payment of the EI ERB made to him on April 6, 2020. It says the \$2,000.00 was paid as an advance for the four weeks falling after May 31, 2020, when he became eligible for EI-Work Sharing Benefits.

[15] The Claimant says that he is having financial difficulties because of the 18-week delay in processing his claim for EI-Work Sharing Benefits. He recently received a lump sum for those benefits but finds that he had to, and is continuing to rely, on his savings to meet his expenses.<sup>4</sup>

[16] While I appreciate the Claimant's frustration, I find that he cannot receive regular EI benefits because his benefit period was established on March 22, 2020. The law is very clear that the Claimant could not establish a benefit period for regular EI benefits on March 22, 2020, and the only benefits that he could receive are benefits under the EI ERB. As a result, I find that the Claimant received the benefits he was entitled to receive in accordance with the *Employment Insurance Act* and the *Employment Insurance Regulations*.

***The \$2,000.00 Advance / Overpayment***

[17] A claimant is liable to repay an amount paid by the Commission to the claimant as benefits for any period for which the claimant is disqualified or for which the claimant is not entitled to benefits.<sup>5</sup>

[18] The weekly rate of the EI ERB is set under the *Employment Insurance Act* to be the same for all claimants at \$500.00. The Claimant was eligible for and received 10 weeks of the EI ERB totalling \$5,000.00. He also received a \$2,000.00 EI ERB advance during those 10 weeks. Which means that the Claimant received more benefits than he was entitled to receive.

[19] It is not clear why the Commission chose to advance the Claimant \$2,000.00, representing 4 weeks' EI ERB, on April 6, 2020, when the appeal file shows that the first week of EI ERB was paid to the Claimant on March 22, 2020. The Claimant does not dispute that he received the \$2,000.00 advance. I accept the Claimant's testimony that it was also not made clear to him that the \$2,000.00 was an advance to be recovered at a later date, perhaps the last four weeks of the period when EI ERB was payable. Nonetheless, the Commission did advance the \$2,000.00 to the Claimant. That he was able to return to work on a work sharing arrangement which precluded the anticipated "recovery" of the advance during the last four weeks of the period when the EI ERB was payable does not negate the overpayment. The

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<sup>4</sup> The Claimant has not appealed any matters related to the EI Work-Sharing Benefits.

<sup>5</sup> *Employment Insurance Act* (EI Act), subsection 43(b)

Claimant received benefits which he was not entitled to receive. As a result, I find that he must repay the \$2,000.00 EI ERB advance.

[20] I am sympathetic to the financial issues the Claimant is facing as a result of the Commission's decisions. As tempting as it may be in such cases (and this may well be one), I am not permitted to re-write legislation or to interpret it in a manner that is contrary to its plain meaning.<sup>6</sup> I must follow the law and render decisions based on the relevant legislation, and precedents set by the courts.

[21] Unfortunately, I do not have the authority to "write-off" or forgive a debt owed to the Commission because that authority belongs solely to the Commission.<sup>7</sup> As such, the Claimant is free to contact the Commission to see if it is able to reduce or write off the debt.

### **Conclusion**

[22] The appeal is dismissed.

Raelene R. Thomas

Member, General Division - Employment Insurance Section

HEARD ON:	February 9, 2021
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. F., Appellant

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<sup>6</sup> *Canada (Attorney General) v. Knee*, 2011 FCA 301.

<sup>7</sup> *Canada (Attorney General) v. Villeneuve* 2005 FCA440; *Buffone v. Canada (Minister of Human Resources Development)*, A-666-99.