



Citation: *CC v Canada Employment Insurance Commission*, 2021 SST 675

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

**Decision**

**Appellant:**

C. C.

**Respondent:**

Canada Employment Insurance Commission

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**Decision under appeal:**

Canada Employment Insurance Commission  
reconsideration decision (428288) dated August 3, 2021  
(issued by Service Canada)

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**Tribunal member:**

Charlotte McQuade

**Type of hearing:**

Videoconference

**Hearing date:**

September 22, 2021

**Hearing participants:**

Appellant

**Decision date:**

October 4, 2021

**File number:**

GE-21-1543

## Decision

[1] The appeal is dismissed. C. C. (Claimant) was overpaid Employment Insurance Emergency Response Benefits (EI ERB) in the amount of \$4000.00.

## Overview

[2] The Claimant received 16 weeks of EI ERB benefits from the week of March 15, 2020 to the week ending July 18, 2020. The Claimant also received Canada Emergency Response Benefits (CERB) from the Canada Revenue Agency (CRA) from March 15, 2020 to April 11, 2020. The Canada Employment Insurance Commission (Commission) says the Claimant was not eligible for EI ERB benefits while receiving the CERB <sup>1</sup>so he incurred an overpayment of the \$2000.00 in EI ERB paid for the period from March 15, 2020 to April 11, 2020.

[3] The Commission says the Claimant also incurred an additional \$2000.00 overpayment as a result of his earnings. The Commission says that claimants are permitted to receive income, from employment or self-employment, provided it does not exceed \$1000.00 over a four-week period for which they are claiming benefits. The four weeks must succeed each other chronologically, but do not necessarily need to be consecutive weeks. <sup>2</sup> The Commission says the Claimant received over \$1000.00 in income over the four-week period from June 7, 2020 to June 28, 2020 and then over another four-week period starting from July 5, 2020. Because his income was in excess of \$1000.00 for those four-week periods, the Commission says the Claimant was overpaid a total of \$2000.00 for the weeks of June 21, 2020 to July 12, 2020.

[4] The Claimant does not dispute he was overpaid. However, he does not think he should have to pay back the overpayment. The Claimant says he reported his earnings on his biweekly claimant reports and then called the Commission to enquire if he was still eligible for EI ERB benefits. He was told that he was eligible and he would be sent an email in a few weeks if he had been overpaid. That email never came. So, in reliance

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<sup>1</sup> See subsection 153.9(2.1) of the *Employment Insurance Act (Act)*.

<sup>2</sup> See subsection 153.9(4) of the Act.

on the agent's assurance and the fact he never received the email, the Claimant spent the benefits he had received. The Claimant maintains it is inequitable to ask for the money back, a year later, in those circumstances. The Claimant also says the income limit of \$1000.00 over four weeks is not enough to live on. He maintains the law should be interpreted on a case-by-case basis. He says he is only \$314.00 over the \$1000.00 income limit.

## Issue

[5] Was the Claimant overpaid EI ERB benefits?

## Analysis

[6] In March 2020, the government amended the Act to allow temporary orders to respond to the impact of the COVID-19 pandemic.<sup>3</sup>

[7] One of those changes was the creation of a new temporary benefit, called the EI ERB.<sup>4</sup> The EI ERB is payable to eligible claimants for two-week periods that fall between March 15, 2020 and October 3, 2020. The EI ERB pays eligible claimants \$500.00 per week for a maximum of 24 weeks.

[8] Eligibility for EI ERB benefits is determined in two-week periods.

[9] To be eligible for EI ERB benefits as a claimant who could have established a benefit period for regular or sickness benefits on or after March 15, 2020, a claimant must 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.<sup>5</sup>

[10] However, if a claimant has income from employment or self-employment of less than \$1000.00 over a period of four successive chronological weeks (but not

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<sup>3</sup> The *COVID-19 Emergency Response Act* added section 153.3 to the EI Act, which allows temporary orders to amend the Act.

<sup>4</sup> This new EI benefit is provided in Part VIII.4 of the Act.

<sup>5</sup> See paragraph 153.9(1)(b) of the Act.

necessarily consecutive) and in respect of which the EI ERB is paid, the claimant is deemed to meet the income eligibility requirement.<sup>6</sup>

[11] A claimant can become ineligible for EI ERB benefits.<sup>7</sup> There are specific reasons for this. A claimant is not eligible if (a) they receive a benefit under the EI Act other than the employment insurance emergency response benefit; (b) they receive allowances, money or other benefits paid under a provincial plan (i) because of pregnancy, or (ii) because the claimant is caring for one or more of their new-born children, or one or more children placed with them for the purpose of adoption; (c) they receive an income support payment under the Canada Emergency Response Benefit Act; or (d) they receive a Canada emergency student benefit under the *Canada Emergency Student Benefit Act*.

[12] A claimant is also not eligible for EI ERB benefits if a benefit period established for the claimant begins after the claimant received an EI ERB benefit or an income support payment under the *Canada Emergency Response Benefit Act*.<sup>8</sup>

### **Overpayment**

[13] The Commission says the Claimant has an overpayment of \$4000.00. The Commission says \$2000.00 of the overpayment relates to CERB payments the Claimant received for the same period he was receiving EI ERB payments. The other \$2000.00 overpayment relates to earnings in excess of the allowable amount.

### **Overpayment relating to CERB payments**

[14] The Commission says the Claimant received 16 weeks of EI ERB benefits from March 15, 2020 to the week ending July 18, 2020. The Commission says the Claimant also received CERB benefits from the CRA from March 15, 2020 to April 11, 2020. The Commission says the Claimant was not eligible for EI ERB of \$500.00 for each of the

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<sup>6</sup> See subsection 153.9(4) of the Act.

<sup>7</sup> See subsections 153.9(2) of the Act.

<sup>8</sup> See subsections 153.9(2.1) of the Act.

four weeks he also received the CERB<sup>9</sup> so the Claimant incurred an overpayment of \$2000.00 for the period from March 15, 2020 to April 11, 2020.

[15] The Claimant agrees he received both EI ERB payments and CERB payments for the period of March 15, 2020 to April 11, 2020. He does not dispute the \$2000.00 overpayment.

[16] I find the Claimant has an overpayment of \$2000.00 arising from the \$500.00 weekly EI ERB benefits received from March 15, 2020 to April 5, 2020, while he was also in receipt of the CERB. Claimants are not eligible for EI ERB benefits, while in receipt of the CERB.<sup>10</sup>

### **Excess earnings**

[17] The Commission says the Claimant reported the following earnings on his claimant reports:

\$126.00 for the week of June 7, 2020<sup>11</sup>

\$196.00 for the week of June 14, 2020<sup>12</sup>

\$697.00 for the week of June 21, 2020<sup>13</sup>

\$284.00 for the week of June 28, 2020<sup>14</sup>

\$587.00 for the week of July 5, 2020<sup>15</sup>

\$424.00 for the week of July 12, 2020<sup>16</sup>.

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<sup>9</sup> See subsection 153.9(2) of the Act.

<sup>10</sup> See subsection 153.9(2) of the Act.

<sup>11</sup> GD3-22.

<sup>12</sup> GD3-23.

<sup>13</sup> GD3-29.

<sup>14</sup> GD3-30.

<sup>15</sup> GD3-36.

<sup>16</sup> GD3-37.

[18] The Commission says that claimants are permitted to receive income, from employment or self-employment, provided it does not exceed \$1000.00 over a four-week period for which they are claiming benefits. The four weeks must succeed each other chronologically, but do not necessarily need to be consecutive weeks.

[19] The Commission maintains that because the Claimant received over \$1000.00 in income during the four weeks from June 7, 2020 to June 28, 2020, he was not entitled to the \$500.00 he was paid in the week of June 21, 2020 or the \$500.00 he was paid in the week of June 28, 2020.

[20] The Commission says the Claimant also received over \$1000.00 in income during the four weeks from July 5, 2020 to July 18, 2020, so he was not entitled to the \$500.00 he was paid in the week of July 5, 2020 or the \$500.00 he was paid in the week of July 12, 2020.<sup>17</sup>

[21] The Commission says that, even though the Claimant reported his earnings, as a result of the way in which the four weeks are counted (not consecutive weeks), it will often occur that claimants only know retrospectively that they become ineligible for EI ERB benefits and will be notified of any overpayments.

[22] The Claimant testified that his last day of work was March 16, 2020. He returned to work around June 5, 2020 but cannot recall the exact day. The work was part-time with no set schedule. The Claimant testified that he began some self-employment as a courier on June 22, 2020. His income increased over the second part of June as he was doing both employment and his self-employment. The Claimant testified that he agrees with the earnings he reported in his claimant reports.

[23] The Claimant confirmed that during the two-week period from June 21 to July 4, 2020, he did not have no income from employment or self-employment for at least seven consecutive days within the two-week period in respect of which he claimed the benefits. He confirmed he also did not have no income from employment or self-employment for seven consecutive days for the period from July 5, 2020 to July 18,

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<sup>17</sup> The Commission relies on subsection 153.9 (4) of the Act.

2020. So, I find the Claimant was not eligible for the EI ERB benefits for the period June 21, 2020 to July 4, 2020 or from July 5, 2020 to July 18, 2020 based on the eligibility criteria of having no income from employment or self-employment for at least seven consecutive days in these two-week periods. <sup>18</sup>

[24] I have considered whether the Claimant was deemed to have met the income eligibility requirements because he has income that did not exceed \$1000.00 over a period of four weeks that succeed each other in chronological order and in respect of which the EI ERB is paid. <sup>19</sup> I find the Claimant does not meet this requirement.

[25] As above, the Claimant was paid \$500.00 in EI ERB benefits for the weeks of June 21, 2020 June 28, 2020 July 5, 2020 and July 12, 2020. The Commission has looked at the Claimant's income in four-week blocks. The Commission says the first four-week block starts from June 7, 2020 and the second four-week block starts from July 5, 2020.

[26] The Claimant was not paid EI ERB benefits for the week of June 7, 2020 or the week of June 14, 2020, so it is unclear why the Commission started the first four-week block from June 7, 2020. However, whether the four-week blocks start from June 7, 2020 as the Commission has determined, or from June 21, 2020 (the first week benefits were paid in June 2020), the Claimant exceeds the \$1000.00 income limit. So, I find the Claimant cannot be deemed to meet the income eligibility requirements for the weeks of June 21, 2020, June 28, 2020, July 5, 2020 or July 12, 2020. I find therefore, that the Claimant has been overpaid a total of \$2000.00 for these weeks.

[27] The Claimant does not dispute that he does not meet the deemed income eligibility requirement. He says, however, he thought the purpose of the amendments were to allow claimants to return to work slowly and not have to live with part-time wages. He says he was slowly going back to work with his former employer. The Claimant maintains that \$1000.00 over 4 weeks is not enough for an individual to live on as it amounts to about \$250.00 per week. The Claimant says from June 7 to July 4,

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<sup>18</sup> See paragraph 153.9(1)(b) of the Act.

<sup>19</sup> See subsection 153.9(4) of the Act.

2020 he was only over the \$1000.00 amount by \$303.00 and from July 5 to July 18, 2020, he was only over by \$11.00. The Claimant says that for the sake of \$314.00, he has to pay back \$2000.00. The Claimant points out that someone who makes \$999.00 over each of the four-week periods, would remain eligible for the \$2000.00. But a person who earns \$1001.00 is ineligible. The Claimant agrees under a strict interpretation of the law, he is not eligible for benefits. However, he says the law should be interpreted on a case-by-case basis.

[28] The Claimant testified that he did what he was supposed to. He reported his earnings. He phoned the Commission to ask about his eligibility and asked if he was okay to spend the benefits he had received. He was told he was eligible and if he were not, he would receive an email in few weeks. However, that email never came. Therefore, he used the benefits. The Claimant thinks it is inequitable that the Commission is now asking for that money back.

[29] I believe the Claimant did his best to ensure that he complied with the eligibility criteria. He reported his earnings on his claimant reports. He also made an enquiry of the Commission concerning his eligibility. He was told he would be provided an email if he was not eligible within a few weeks, but that never came. The Claimant was advised of his ineligibility on June 14, 2021,<sup>20</sup> over a year later.

[30] I understand how the Claimant sees this situation as unfair. However, the Federal Court of Appeal has said that misinformation by the Commission is no basis for relief from the operation of the Act. It has also said the law has to be followed even if the Commission made a mistake.<sup>21</sup> I am bound by those rulings. The law requires that a person who received an EI ERB benefit for which they were not eligible must repay it.<sup>22</sup>

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<sup>20</sup> GD3-42.

<sup>21</sup> See *(Canada (Attorney General) v. Shaw*, 2002 FCA 325 and *Robinson v. Canada (Attorney General)*, 2013 FCA 255.

<sup>22</sup> See section 153.1301 of the Act.



[31] The Commission is within the allowable 36-month period to reconsider the claim<sup>23</sup> and the Tribunal has no jurisdiction to waive or write off the overpayment of \$4000.00 that has arisen. <sup>24</sup>

[32] The Claimant requests that the law be interpreted on a case-by-case basis. He points out he is only \$314.00 over the allowed amount to establish eligibility. He says \$1000.00 per month is too low a limit. It is not enough to live on. I am unable to exercise any discretion in this matter. The eligibility provisions are not discretionary. That means, whether the Claimant is over the income eligibility amount by a little or a lot, the outcome must be the same.

## **Conclusion**

[33] The appeal is dismissed.

Charlotte McQuade  
Member, General Division – Employment Insurance Section

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<sup>23</sup> See section 52 and subsection 153.6 (1) of the Act.

<sup>24</sup> See section 112.1 and 113 of the Act.