



Citation: *MB v Canada Employment Insurance Commission*, 2021 SST 824

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant:

M. B.

Respondent:

Canada Employment Insurance Commission

Decision under appeal:

Canada Employment Insurance Commission
reconsideration decision (439146) dated November 15,
2021 (issued by Service Canada)

Tribunal member:

Linda Bell

Type of hearing:

Videoconference

Hearing date:

December 29, 2021

Hearing participant:

Appellant (Claimant)

Decision date:

December 31, 2021

File number:

GE-21-2395

Decision

[1] I am dismissing the appeal.

[2] This means that I am not writing off or reducing the overpayment of Employment Insurance (EI) benefits that resulted from the Commission's use of an interim Record of Employment (ROE).

Overview

[3] On September 29, 2020, the Claimant applied for regular EI benefits. When his employer failed to issue his ROE, the Claimant provided the Commission with his hours and annual salary information on October 3, 2020.¹ The Commission created an interim ROE and determined that his benefit rate was \$573.00 per week, starting on September 27, 2020.

[4] The Claimant's employer issued an electronic ROE on October 27, 2020. Three days later, the Commission received a test ROE in the mail.² Eleven months later, on September 23, 2021, the Commission recalculated the Claimant's benefit rate using the electronic ROE issued by the employer. This recalculation reduced the Claimant's benefit rate from \$573.00 to \$500.00 per week resulting in a \$949.00 overpayment of benefits.

[5] The Commission upheld their decision upon reconsideration. The Claimant appeals to the Social Security Tribunal (Tribunal). He argues that he should not be responsible for the agent's mistake when creating the interim ROE. He asks that the Tribunal waive the overpayment due to his financial circumstances.

Issues

[6] Is the Claimant responsible to repay an overpayment of EI benefits resulting from the Commission's error?

¹ See page GD3-19.

² See page GD3-31. The Claimant says it was his employer who submitted the test ROE.

[7] Can I write off or reduce the overpayment of EI benefits?

Analysis

Overpayment resulting from Commission's error

[8] The Federal Court of Appeal has held that in cases where the Commission's errors result in an overpayment of benefits, their decision is to remain if there is no prejudice to the claimant.³

[9] I find that in this case, the Commission's error doesn't cause the Claimant any prejudice. This is because the error didn't prevent him from appealing the reconsideration decision to the Tribunal.

[10] The *Employment Insurance Act* (Act) clearly states that a claimant is liable (responsible) to repay any amount paid to him as EI benefits to which he is not entitled.⁴

[11] The Act also states that the Commission may reconsider a claim for benefits within 36 months after the benefits have been paid or would have been payable.⁵

[12] The Federal Court of Appeal recognizes that the Commission can't review changes to claims at the exact time they happen. It is precisely for that reason that the Act allows the Commission time to rescind or amend any decision given in any particular claim for EI benefits.⁶

[13] There is no dispute that the Claimant reported his earnings accurately to the Commission. Nor is there any dispute that, based on the temporary measures and actual ROE information, the Claimant's correct benefit rate is \$500.00 per week.

[14] The Commission received the actual ROE on October 27, 2020, but waited 11 months before recalculating the claims. The Claimant was upfront and honest about his

³ In *Desrosiers v Canada (AG)*, A-128-89, the judicial review relating to CUB 16233 was dismissed. In that case, the Federal Court of Appeal upheld the Umpire's determination that an error, which does not cause prejudice, is not fatal to the decision under appeal, so the decision is to be maintained.

⁴ See paragraph 43(b) of the Act.

⁵ See section 52 of the Act.

⁶ *Canada (Attorney General) v Landry*, A-532-98.

hours and earnings so this error was not his fault. He contacted the Commission after his claim was set up to verify whether his employer had submitted his ROE. He also asked whether there would be any changes to his benefits.

[15] This is truly an unfortunate situation. I recognize that it took the Commission 11 months to review the ROE. This lengthy delay created a large overpayment. The Claimant did his due diligence in contacting the Commission to question whether the ROE would change his benefits. The Commission didn't tell him there was a possibility he would have to repay a portion of these benefits. Instead, it simply continued to pay him the benefits for 11 more months before recalculating his claims. Any person would reasonably assume in these circumstances that they were entitled to the benefits they were receiving.

[16] The Commission conducted its assessment in accordance with the law so the overpayment is valid. The claim for benefits started September 27, 2020. The Commission completed its review, amending the benefit rate, 12 months later, on September 23, 2021. This is within the allowable 36-month time limit.

Write off or reduce the overpayment

[17] I do not have any authority to waive the overpayment of benefits.⁷ That authority rests with the Commission.

[18] I also don't have any authority to order the Commission to waive an overpayment. This said, I would ask that the Commission consider waiving the overpayment in this case, given the lengthy delay in reconsidering the claims. Some delay is reasonable. However, even when considering the pandemic circumstances, a delay of 11 months is not reasonable. The overpayment would likely not have been as large as it is, had the Commission made its decision earlier.

[19] The law states that only the Federal Court of Canada has the jurisdiction to hear an appeal relating to a write-off issue.⁸ This means that if the Commission refuses to

⁷ See sections 112.1 and 113 of the Act.

⁸ *Bernatchez v. Canada (Attorney General)*, 2013 FC 111.

waive or write-off the overpayment, the Claimant is at liberty to appeal to the Federal Court of Canada.

Conclusion

[20] The appeal is dismissed.

[21] I don't have the authority to write off or reduce an overpayment of benefits.

Linda Bell

Member, General Division – Employment Insurance Section