



[TRANSLATION]

Citation: *RS v Canada Employment Insurance Commission*, 2021 SST 814

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

Decision

Appellant: R. S.

Respondent: Canada Employment Insurance Commission
Representative: Jessica Grant
Observers: Martin Kreuser
Isabelle Thiffault

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (427720) dated August 24,
2021 (issued by Service Canada)

Tribunal member: Charline Bourque

Type of hearing: Teleconference
Hearing date: December 1, 2021
Hearing participants: Appellant
Respondent
Respondent's representative
Respondent's observers

Decision date: December 9, 2021
File number: GE-21-1727

Decision

[1] The appeal is allowed.

[2] The Claimant is eligible for the Employment Insurance (EI) Emergency Response Benefit for the period from March 29 to April 11, 2020. The Claimant is ineligible for the EI Emergency Response Benefit from April 12, 2020.

Overview

[3] The Claimant stopped working on March 24, 2020, because of the pandemic and the government-imposed closure of non-essential businesses. As a result, a claim for the EI Emergency Response Benefit was established effective March 29, 2020.

[4] The Commission decided that the Claimant was not eligible for the EI Emergency Response Benefit from March 29, 2020, to August 15, 2020, because he had earnings exceeding \$1,000 over a period of four weeks.

[5] The Claimant disagrees with this decision. The Claimant is of the view that he is entitled to EI benefits for the period from March 26 to April 14, 2020, when he was unemployed and without earnings.

Issue

[6] Was the Claimant eligible for the EI Emergency Response Benefit from March 26 to April 14, 2020?

[7] Was the Claimant entitled to EI regular benefits from March 26 to April 14, 2020?

Analysis

Issue 1: Was the Claimant entitled to EI regular benefits from March 26 to April 14, 2020?

[8] The Claimant indicates that he should be entitled to EI regular benefits. He indicates that he applied for regular benefits but automatically got EI regular benefits [*sic*]. The Claimant explains that he did not work for a dozen days, from

March 26 to April 14, 2020, after his employer shut down. He says he is entitled to EI benefits for that period.

[9] To meet Canadians' needs as a result of the COVID-19 pandemic, the Government of Canada made changes to the *Employment Insurance Act* (Act). For example, it created the EI Emergency Response Benefit.

[10] So, for the period beginning on March 15, 2020, and ending on September 26, 2020, no benefit period is to be established with respect to regular or sickness benefits, among other things.¹ This means that the benefits granted during that period are those under the EI Emergency Response Benefit. As a result, the Act gives claimants no choice as to the type of benefits they get between EI regular benefits and the EI Emergency Response Benefit. They get the EI Emergency Response Benefit.

[11] The Record of Employment confirms that the Claimant's last day worked was March 24, 2020. So, the Claimant established an initial claim effective March 29, 2020. As a result, he received the EI Emergency Response Benefit as of that date in accordance with the Act, which gives no discretion on this point. This means that he could not get EI regular benefits.

[12] For this reason, I am of the view that I cannot interfere with the decision on the type of benefits granted to the Claimant. Since the claim for EI benefits was established on March 29, 2020, the Claimant is eligible only for the EI Emergency Response Benefit.

[13] Because of this, I find that the Claimant could not get EI regular benefits, since his claim was made after March 15, 2020. He had no choice but to get the EI Emergency Response Benefit.² So, in my view, the Claimant cannot change the type of EI benefits. The Act is clear on this point, and I have no discretion on the matter.

¹ See section 153.8(5) of the *Employment Insurance Act* (Act).

² See section 153.5(2)(b) of the Act.

Issue 2: Was the Claimant eligible for the EI Emergency Response Benefit from March 26 to April 14, 2020?

[14] The Commission says that the Claimant was not eligible for the EI Emergency Response Benefit because he had earnings exceeding \$1,000 over a period of four weeks.

[15] The Claimant disagrees with this decision. He indicates that he should be entitled to EI benefits. He did not work from March 26 to April 14, 2020, because his employer had to shut down. He did not have any earnings and did not know when he could go back to work. He should be entitled to benefits for that period.

[16] So, I have to decide whether the Claimant met the eligibility criteria to get the EI Emergency Response Benefit.

[17] To do so, I first have to decide whether the Claimant met the eligibility criteria to get the EI Emergency Response Benefit. Next, the Act sets out ineligibility criteria. So, I have to make sure that the Claimant is not ineligible for the EI Emergency Response Benefit because of these additional criteria. Lastly, the Act sets out exceptions that could allow a claimant to be eligible for the benefit; these exceptions must apply when a claimant would not have been eligible under the previous eligibility criteria.

[18] More specifically, the Act sets out certain criteria for a claimant to be eligible for the EI Emergency Response Benefit.³ Among other things, a claimant must stop working for at least seven consecutive days within a two-week period and must have no income from employment for the consecutive days on which they stop working.⁴

[19] The Claimant confirms that he stopped working for seven consecutive days. The Claimant did not work from March 26 to April 14, 2020. He confirms that he had no income for those seven consecutive days when he stopped working.

³ See the eligibility criteria in section 153.9(1) of the Act.

⁴ See sections 153.9(iv) and (v) of the Act.

[20] So, based on the eligibility criteria⁵ set out in the Act, I am of the view that the Claimant is eligible for the EI Emergency Response Benefit.

[21] But, I also have to consider the ineligibility criteria set out in the Act.⁶ Meeting one of those criteria would make the Claimant ineligible for the EI Emergency Response Benefit.

[22] I find that the Claimant does not meet the ineligibility criteria set out in the Act and that, as a result, he is not ineligible for the EI Emergency Response Benefit.

[23] Because of this, I am of the view that I should not have to consider the issue of the exception set out in the Act that, in some situations, could allow a claimant to become eligible for the EI Emergency Response Benefit.⁷

[24] But, the Commission does not share this view. The Commission says that the Claimant is ineligible because of this same exception. The Commission says that the fact that he had earnings exceeding \$1,000 over a period of four weeks makes the Claimant ineligible for the EI Emergency Response Benefit. So, I will consider this issue.

[25] The Commission bases its arguments on the exception set out in section 153.9(4) of the Act.⁸ More specifically, the Commission [translation] “is of the view that sections 153.9(1) and 153.9(4) apply in a complementary way. This means that a claimant will remain eligible for the [EI Emergency Response Benefit] only if they meet the eligibility criteria in section 153.9(1) and if they earned less than \$1,000 over a period of four weeks in accordance with section 153.9(4).”⁹

⁵ See the eligibility criteria in section 153.9(1) of the Act.

⁶ See the ineligibility criteria in sections 153.9(2) and (2.1) of the Act.

⁷ See the exception in section 153.9(4) of the Act.

⁸ See section 153.9(4) of the Act.

⁹ See the Commission’s arguments to the Tribunal (GD4-10).

[26] To begin with, section 153.9(1) of the Act says that a claimant is eligible for the emergency benefit if they:

- (iv) whether employed or self-employed, cease working **for at least seven consecutive days within the two-week period** in respect of which they claimed the benefit, and
- (v) have no income from employment or self-employment in respect of the consecutive days on which they cease working [emphasis added]

[27] Considering the Claimant's situation, I am of the view that he meets these criteria. The Claimant stopped working for at least seven consecutive days within a two-week period. He had no income from employment for the consecutive days when he stopped working. The fact is that the Claimant stopped working from March 26 to April 14, 2020, which is more than seven consecutive days.

[28] So, I have to consider whether section 153.9(4) of the Act makes the Claimant ineligible for EI benefits despite the fact that he stopped working for seven consecutive days within a two-week period and had an interruption of earnings during that same period as required.¹⁰

[29] Section 153.9(4) of the Act says the following:

If a claimant receives income, whether from employment or self-employment, the total of which does not exceed \$1,000 over a period of four weeks that succeed each other in chronological order but not necessarily consecutively **and in respect of which the employment insurance emergency response benefit is paid**, the claimant is deemed to meet the requirements of subparagraphs (1)(a)(iv) and (v), of paragraph (1)(b) or of subparagraph (1)(c)(iv), as the case may be. [emphasis added]

[30] I note that Parliament wanted to make this section an exception, as it indicates. So, I am of the view that this section was meant to make eligible a claimant who did not stop working for seven consecutive days or who had earnings that did not exceed \$1,000 over a period of four weeks.

¹⁰ See section 153.9(1) of the Act.

[31] I find that the Claimant is eligible for the EI Emergency Response Benefit for the period from March 29, 2020, to April 11, 2020. But, I find that the Claimant is not eligible for the emergency benefit from April 12, 2020.

[32] I am considering the Commission's argument at the hearing that a different interpretation would have the effect of allowing a claimant to earn [translation] "\$10,000" within a two-week period if no income cap were in place.

[33] To begin with, section 153.9(4) is not what makes the Claimant ineligible for benefits. It is more the fact that, from April 12, 2020, the Claimant no longer meets the criterion of stopping work for seven consecutive days within a two-week period.

[34] I cannot help but point out that the payment of EI benefits is related to a claimant's involuntary unemployment, not the pay they normally get. This is also the case for the payment of regular benefits. It is not a claimant's earnings that determine whether they are entitled to benefits; it is the fact that they are not working and not receiving earnings.

[35] I also find that, if Parliament had meant to exclude a claimant who had earnings exceeding \$1,000 over a period of four weeks, it would have indicated this in the eligibility or ineligibility conditions for the benefit.

[36] I cannot support the Commission's position that [translation] "[t]he [EI Emergency Response Benefit] is therefore not designed to provide additional income for workers who earn a substantial income and who still work on a regular basis."¹¹

[37] It is important to remember that the emergency benefit was introduced to help Canadians who were unemployed because of COVID-19, which was the Claimant's case. Despite the changes to the Act, the purpose of the EI program is still to help claimants who are involuntarily unemployed, regardless of their income. Even though he went back to work and earns—in the Commission's view—a [translation] "substantial income," the Claimant involuntarily lost his job and had an interruption of earnings. He is

¹¹ See the Commission's arguments to the Tribunal (GD4-13).

not entitled to emergency benefits when working, but he is eligible for them for the period when not working, since he meets the eligibility criteria for the benefit and does not meet the ineligibility criteria.

[38] In addition, I note that the Commission previously supported this same position, saying that a claimant would not have to repay an overpayment even though she had earnings exceeding \$1,000 over a period of four weeks, but she stopped working and receiving earnings for seven consecutive days by working only every other week. The Commission found that the claimant met the eligibility criteria.¹²

[39] Because of this, I find that the Claimant is eligible for the EI Emergency Response Benefit from March 29 to April 11, 2020. To begin with, the Claimant meets the eligibility conditions set out in section 153.9(1) of the Act. He is not ineligible under the criteria in section 153.9(2) of the Act. Lastly, the exception set out in section 153.9(4) of the Act does not apply in his case.

[40] The Claimant is no longer eligible for the EI Emergency Response Benefit from April 12, 2020, because he does not meet the eligibility criteria set out in section 153.9(1) of the Act anymore, since he no longer stopped working for seven days within a two-week period.

Conclusion

[41] The appeal is allowed.

[42] The Claimant is eligible for the EI Emergency Response Benefit for the period from March 29 to April 11, 2020. The Claimant is ineligible for the EI Emergency Response Benefit from April 12, 2020.

Charline Bourque
Member, General Division – Employment Insurance Section

¹² See *SB v Canada Employment Insurance Commission*, 2020 SST 976.