



[TRANSLATION]

Citation: *JF v Canada Employment Insurance Commission*, 2022 SST 253

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

**Decision**

**Appellant:** J. F.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (445128) dated January 25, 2022 (issued by Service Canada)

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**Tribunal member:** Josée Langlois  
**Type of hearing:** Teleconference  
**Hearing date:** March 29, 2022  
**Hearing participant:** Appellant  
**Decision date:** March 30, 2022  
**File number:** GE-22-612

## Decision

[1] The appeal is dismissed.

[2] The Appellant has to pay back the \$2,000 advance payment.

## Overview

[3] The Appellant stopped working because of an injury.

[4] On June 7, 2020, he applied for sickness benefits. The Canada Employment Insurance Commission (Commission) established a benefit period for the Emergency Response Benefit (ERB).<sup>1</sup> The Appellant received an advance payment of \$2,000 and received the ERB from June 7, 2020, to October 3, 2020.

[5] On January 25, 2022, the Commission issued a reconsideration decision saying that the Appellant had to pay back an advance payment of \$2,000 that was made to him when his benefit period was established.

[6] The Appellant says that he was honest by reporting his situation every step of the way. He argues that it isn't fair that he has to pay back this amount because he can't afford to at the moment.

[7] I have to decide whether the Appellant has to pay back the ERB advance payment of \$2,000 he received from the Commission.

## Issue

[8] Does the Appellant have to pay back the \$2,000 advance payment?

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<sup>1</sup> Sections 153.8(5) and 157(1.1) of the *Employment Insurance Act* (Act).

## Analysis

### **Does the Appellant have to pay back the \$2,000 advance payment?**

[9] Section 153.8(5) of the *Employment Insurance Act* (Act) says that, between March 15, 2020, and September 26, 2020, benefit periods for the ERB have to be established except in the exceptional cases set out in section 153.5(3) of the Act. In other words, no claim is to be established for regular or sickness benefits between March 15, 2020, and September 26, 2020, with some exceptions.

[10] The Commission explains that, in his case, the Appellant applied for sickness benefits from the start of his benefit period, and his claim was established as Employment Insurance (EI) ERB for the period from June 7, 2020, to August 15, 2020, in accordance with the Act.

[11] However, one of the exceptions involves parental benefits. Section 23(1) of the Act says that parental benefits are payable to a claimant to care for one or more newborn children of the claimant or one or more children placed with the claimant for the purpose of adoption under the laws governing adoption in the province in which the claimant resides.

[12] According to the Commission, since the Appellant had mentioned receiving parental insurance benefits under the provincial Québec Parental Insurance Plan (QPIP) program, it converted his benefit period for the ERB to regular benefits effective August 16, 2020, because parental benefits are an exception under section 153.5(3)(a) of the Act. In other words, the Appellant's benefit period for the ERB ended on August 15, 2020, and a new benefit period for regular benefits was established effective August 16, 2020.

[13] The Commission also explains that ERB claimants whose claim was finalized before June 15, 2020, received an advance payment of \$2,000 right after their benefit period was established. Section 153.7(1.1) of the Act permitted the Commission to pay the ERB in advance of the usual time for paying it. This advance was the equivalent of four weeks of ERB payments that should have been made later in the claims process.

This advance payment was issued earlier to facilitate the payment of benefits. The Commission indicates that, following the \$2,000 advance payment, the \$500 weekly payments were made in arrears when the Claimant completed his reports for each two-week period, as set out in section 153.8(1) of the Act.

[14] The Commission argues that the Appellant is entitled to the EI ERB for a total of 10 weeks, from June 7, 2020, to August 15, 2020. It says that, after the type of benefits changed, the Appellant wasn't entitled to the \$2,000 advance payment anymore because his benefit period ended before he could reach the number of weeks established for recovering this amount. It explains that, starting August 16, 2020, the Appellant received EI regular benefits for the weeks he was entitled to them based on the wage loss amounts declared and for the weeks he didn't receive QPIP benefits.

[15] Under the temporary measures introduced during the COVID-19 pandemic, the Commission may pay the ERB ahead of time. When it does, it makes an advance payment.<sup>2</sup>

[16] The ERB isn't paid automatically. A claimant has three weeks to submit their claimant report for a given week.<sup>3</sup>

[17] According to sections 153.7(1) and 153.8(1) of the Act, to be entitled to the ERB, a claimant has to make a claim and show that they are eligible.

[18] In his case, the Appellant told the Commission that he started getting QPIP parental benefits on August 17, 2020.

[19] The Appellant says that he should not have to pay back the \$2,000 given that he properly reported his situation and that the Commission is the one who made a mistake.

[20] The Appellant told the Commission that he started receiving QPIP benefits on August 16, 2020. The Appellant was eligible for the ERB for the period from June 7,

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<sup>2</sup> Section 153.7(1.1) of the Act.

<sup>3</sup> Section 26(1) of the *Employment Insurance Regulations*.

2020, to August 15, 2020, or 10 weeks at \$500, for a total of \$5,000. He wasn't entitled to more EI ERB because he started claiming parental benefits on August 16, 2020.

[21] Parental benefits are an exception under sections 153.8(5) and 153.5(3)(a) of the Act.

[22] The Commission rightly found that the Appellant had to pay back the \$2,000 advance payment he received at the start of his benefit period for the ERB. Under sections 43 and 44 of the Act, a claimant who received benefits they weren't entitled to has to pay back the amount paid.

[23] The Appellant received \$500 every week between June 8, 2020, and August 15, 2020, and the \$2,000 advance payment wasn't applied to any of the weeks of his benefit period for the ERB.

[24] The Appellant explains that he is struggling to pay back the overpayment the Commission is asking him to repay. He argues that he doesn't have that kind of money anymore because of his family situation. The Tribunal doesn't have jurisdiction to hear requests for write-off related to an overpayment of benefits, but the Appellant can make such a request to the Commission.

[25] I find that the Appellant has to pay back the \$2,000 advance payment.

## **Conclusion**

[26] The appeal is dismissed.

Josée Langlois

Member, General Division – Employment Insurance Section