



Citation: *RS v Canada Employment Insurance Commission*, 2022 SST 351

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

Decision

Appellant: R. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (442799) dated January 20, 2022
(issued by Service Canada)

Tribunal member: Amanda Pezzutto

Type of hearing: Teleconference

Hearing date: April 5, 2022

Hearing participant: Appellant

Decision date: April 14, 2022

File number: GE-22-606

Decision

[1] R. S. is the Claimant. The Canada Employment Insurance Commission (Commission) is asking him to repay Employment Insurance Emergency Response Benefits (EI ERB). The Claimant is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I must dismiss the Claimant's appeal. I find that the Claimant received more EI ERB than he was entitled to receive. He must repay the extra benefits. I don't have the power to write off his debt because the law doesn't give me this power.

Overview

[3] The Claimant stopped work in March 2020. He applied for EI ERB. The Commission paid a \$2000 advance in early April 2020. Then the Claimant started doing biweekly reports and collected several weeks of EI ERB. He returned to full-time work in late June 2020.

[4] The Commission would have recovered the advance from the Claimant's EI ERB payments later in 2020. The Commission recovered one week of payment. But the Claimant returned to full-time work and stopped claiming EI ERB before the Commission could recover the rest of the advance.

[5] The Commission says that it paid the Claimant an advance, representing four weeks of benefits, as well as 12 weeks of EI ERB. So, the Commission says it paid the Claimant a total of 16 weeks of EI ERB. But the Commission says the Claimant was only ever entitled to 13 weeks of EI ERB. The Commission says the Claimant must repay \$1500 because it didn't finish recovering the advance.

[6] The Claimant is appealing the Commission's decision because he says he can't afford to repay the debt. He says that he has had a difficult year because his wife has been ill, family members have passed away, and he had to pay a large sum of money for his taxes last year.

Issues

[7] First, I am going to look at the advance. I will examine whether the Commission paid extra EI ERB benefits as an advance. Then, I will look at whether the Claimant has repaid any of the advance. Did he receive more benefits than he was entitled to receive?

[8] Then, I will look at whether I have any authority to write off the Claimant's debt to the Commission.

Analysis

[9] This appeal is about EI ERB and the way the Commission paid benefits to claimants. So, it is important to understand why the Commission is asking some people to repay an advance of EI ERB.

[10] Everyone who applied for Employment Insurance (EI) benefits between March 15 and October 3, 2020 automatically received EI ERB instead of EI benefits.¹ EI ERB was a simplified version of the EI program. Everyone got the same weekly rate: \$500 a week.²

[11] Usually, when you are collecting EI benefits, you get your EI benefits after you do your biweekly claimant reports. In other words, you have a week without work, you complete a claimant report, and then the Commission pays your EI benefits.³

[12] But with the EI ERB, the Commission paid many claimants four weeks of EI ERB in advance.⁴ In other words, the Commission paid \$2000 to many claimants before they ever completed their biweekly claimant reports.

¹ Subsection 153.5(2) of the *Employment Insurance Act*.

² Subsection 153.10(1) of the *Employment Insurance Act*.

³ See section 26 of the *Employment Insurance Regulation*.

⁴ Subsection 153.7(1.1) of the *Employment Insurance Act* gave the Commission the authority to make advance payments.

[13] For many claimants, the Commission recovered the four week EI ERB advance later on in their benefit period. The Commission withheld EI ERB benefits in the 13th, 14th, 20th, and 21st weeks to recover the advance.

[14] This is easiest to understand with an example. Imagine if you stopped working in March 2020 and you remained out of work until the end of September 2020. If you had applied for EI ERB in March 2020, the Commission would have paid you a four week advance at the very beginning of your EI ERB benefits. Then, you would have started completing your biweekly reports and collecting EI ERB.

[15] Then, in your 13th and 14th weeks of benefits, the Commission would have withheld two weeks of EI ERB to offset half of the advance. In other words, the Commission would withhold benefits for two weeks that you otherwise would have been entitled to EI ERB. The Commission would have withheld benefits again in the 20th and 21st weeks to recover the second half of the advance. In this way, you would receive all of the benefits you were entitled to receive, based on the number of weeks you went without any work.

[16] But this way of recovering the advance only worked for people who were out of work for at least 21 weeks. For anyone else who returned to work earlier, the Commission had to recover the \$2000 advance in another way.

[17] This appeal is about the advance. So, first I will look at whether the Commission paid the advance to the Claimant. Then, I will look at whether the Commission recovered the full amount of the advance from the Claimant's EI ERB.

Did the Commission pay a \$2000 advance to the Claimant?

[18] The Commission has given me evidence showing that it paid a \$2000 advance to the Claimant on April 6, 2020. The Claimant hasn't given me any information that makes me doubt the Commission's information about the advance.

[19] So, I find that the Commission paid a \$2000 advance to the Claimant.

Has the Claimant repaid the \$2000 advance?

[20] I find that the Claimant hasn't repaid the entire \$2000 advance. This is because the Commission only recovered one week of benefits before he returned to full-time work.

[21] The Commission says it would have recovered the Claimant's advance in the 13th and 14th weeks, and the 20th and 21st weeks of benefits. For the Claimant, this would be the weeks starting June 21, June 28, August 6, and August 16, 2020.

[22] This means that, if the Claimant had been out of work and making EI ERB claims for those weeks, the Commission could have recovered the entire advance from his benefits.

[23] But the Claimant returned to full-time work in the week of June 28, 2020. This means that he only made a claim for EI ERB in the week of June 21, 2020. So, the Commission says it could only recover one week (\$500) of the advance.

[24] To put it another way, the Commission says it paid the Claimant 16 weeks of EI ERB. This is four weeks of the advance, plus another 12 weeks of EI ERB. But, according to his claimant reports and the dates he was out of work, the Commission says the Claimant was only entitled to 13 weeks of EI ERB. So, the Commission says the Claimant received three more weeks of benefits than he was entitled to receive.

[25] The Claimant hasn't given me any information that makes me doubt the Commission's information about his EI ERB and the advance. I have reviewed the Commission's evidence, and I agree with the Commission. I find that the Claimant has only repaid one week of the advance. This means that he still owes the Commission for three weeks. The Claimant still has a debt of \$1500.

Do I have the authority to write off the Claimant's debt?

[26] At the hearing, the Claimant said he can't repay the debt. He says he had a large tax bill last year and he has only just finished repaying it. He said that his wife has been ill. His family members have passed away in the last year. He says it would be a

hardship to repay this debt. He wants the Commission to consider his circumstances and forgive the debt.

[27] I understand the Claimant's arguments and I am sympathetic to the fact that he has had a difficult time in the past few years. But the law says you have to repay benefits if you receive benefits you weren't entitled to receive.⁵

[28] In some situations, the Commission can write off an overpayment, but the law doesn't give Tribunal Members the same power. This is because it is up to the Commission to make its own decisions about its debts.

[29] I don't have the power to write off the Claimant's debt. And I don't have the power to order the Commission to write off the debt either.⁶

[30] But I can ask the Commission to look at the Claimant's circumstances and consider whether he meets the conditions to write off the debt. If the Commission refuses to write off the Claimant's debt, then the Claimant can ask the Federal Court to review that decision.

Conclusion

[31] I must dismiss the Claimant's appeal. He received more EI ERB than he was entitled to receive. The Commission didn't finish recovering the advance, so he must repay the extra benefits.

Amanda Pezzutto
Member, General Division – Employment Insurance Section

⁵ Section 43 of the *Employment Insurance Act*.

⁶ See *Canada (Attorney General) v. Buors*, 2002 FCA 372 and *Canada (Attorney General) v. Woods*, 2002 FCA 91.