



[TRANSLATION]

Citation: *RG v Canada Employment Insurance Commission*, 2022 SST 248

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

Decision

Appellant: R. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (444235) dated February 7, 2022 (issued by Service Canada)

Tribunal member: Josée Langlois

Type of hearing: Teleconference

Hearing date: March 21, 2022

Hearing participant: Appellant

Decision date: March 21, 2022

File number: GE-22-577

Decision

[1] The appeal is dismissed.

[2] The Appellant isn't eligible for the Employment Insurance Emergency Response Benefit (ERB) between March 15, 2020, and May 9, 2020, under section 153.9(4) of the *Employment Insurance Act* (Act).

Overview

[3] The Appellant stopped working for reasons related to the COVID-19 pandemic.

[4] On March 16, 2020, he applied for benefits. The Canada Employment Insurance Commission (Commission) established a benefit period for the ERB starting March 15, 2020.

[5] On February 7, 2020, the Commission issued a reconsideration decision saying that it could not pay the Appellant the ERB between March 15, 2020, and May 9, 2020, because, during that period, he had received income from employment of more than \$1,000 for two periods of four consecutive weeks.

[6] The Appellant says that he received earnings from his employer between March 15, 2020, and April 19, 2020. But, he argues that he doesn't know why the employer continued paying him and that he had sometimes reported his income to the Commission. He also argues that he applied for sickness benefits, not the ERB.

[7] I have to decide whether the Appellant is eligible for the ERB or sickness benefits between March 15, 2020, and May 9, 2020.

Issue

[8] Is the Appellant eligible for the ERB or sickness benefits between March 15, 2020, and May 9, 2020?

Analysis

Is the Appellant eligible for the ERB or sickness benefits between March 15, 2020, and May 9, 2020?

[9] The Commission argues that the Appellant could not choose between sickness benefits and the ERB, since all benefit periods established between March 15, 2020, and October 3, 2020, were established as ERB.

[10] Through temporary measures introduced to simplify the payment of benefits during the COVID-19 pandemic, claims made between March 15, 2020, and September 26, 2020, were established as ERB.¹

[11] I agree with the Commission. The Appellant could not get Employment Insurance regular benefits because he applied for benefits on March 16, 2020. A benefit period for the ERB was rightly established.

[12] The Appellant isn't entitled to receive regular benefits between March 15, 2020, and May 9, 2020. I have to decide whether he is eligible for the ERB for that period.

[13] To be eligible for the ERB, a claimant has to meet the eligibility criteria.²

[14] Section 153.9(4) of the Act says that a claimant is eligible for the ERB if they receive income from employment the total of which doesn't exceed \$1,000 over a period of four weeks that succeed each other in chronological order but not necessarily consecutively.

[15] The Commission argues that the Appellant received income from employment of more than \$1,000 during both periods of four weeks that succeeded each other between March 15, 2020, and May 9, 2020.

[16] On January 20, 2021, the Appellant told the Commission he received earnings from his employer between March 15, 2020, and April 25, 2020, for each week from

¹ See sections 152.03 and 153.8(5) of the *Employment Insurance Act* (Act).

² See section 153.9 of the Act.

March 15, 2022, to April 26, 2022 [*sic*]. He said that he doesn't understand why he isn't eligible for the ERB when he reported his earnings.

[17] At the hearing, he argued that the Commission paid him benefits and that it made an error. He says that he doesn't have to pay back this amount and that he won't do it.

[18] Section 153.9(4) of the Act, introduced on a temporary basis, has to be applied strictly. In other words, a claimant is still eligible for the ERB if they receive income from employment the total of which doesn't exceed \$1,000 over a period of four weeks. A claimant isn't eligible for the ERB if they receive income from employment of more than \$1,000 over a period of four weeks that succeed each other.

[19] This is the case for the Appellant. The facts show that he received more than \$1,000 during two periods of four weeks that succeeded each other in chronological order, between March 15, 2020, and May 9, 2020.

[20] During that period, the Appellant was receiving earnings and benefits. Like the claimant reports show, the Appellant also admitted at the hearing that he didn't report all of the income he had received from his employer during that period.

[21] But, on January 20, 2021, the Appellant confirmed to a Commission agent the amounts he had received, and no penalty was imposed in the file.

[22] The Appellant received earnings from employment of more than \$1,000 over a period of four weeks that succeeded each other between March 15, 2020, and May 9, 2020. He isn't eligible for the ERB for that period.

[23] As the Commission explains, a claimant is still eligible for the ERB as long as the income they receive from employment is less than \$1,000.

[24] The Appellant isn't eligible for the ERB for that period, since he had income from employment exceeding what is allowed to qualify. While the Appellant says he doesn't have to pay back this amount because the Commission should pay for the error it made, the facts show that he didn't report all of the earnings he had received from his employer during that period. He was receiving income and benefits at the same time.

[25] The Appellant is responsible for reporting all of the employment income he receives to the Commission. Also, during that period, the Commission simplified the payment of benefits with the possibility of checking benefit periods later on.

[26] I am making this decision on a balance of probabilities. This means that the Appellant can't get the ERB if it is more likely than not that he received income from employment the total of which exceeded \$1,000 in each of the two periods of four weeks that succeeded each other between March 15, 2020, and May 9, 2020.

[27] In his case, the Appellant continued to receive earnings from his employer while receiving benefits. The Appellant agrees that he received over \$1,000 for each period of four weeks that succeeded each other between March 15, 2020, and May 9, 2020.³

[28] Even though I understand the Appellant's disappointment and that he stopped working because of the COVID-19 pandemic, the fact is that, during that period, he received earnings from his employment. This means that he isn't eligible for the ERB for both of these periods of four weeks that succeeded each other.

[29] The Appellant has to pay back the ERB payments he received between March 15, 2020, and May 9, 2020.⁴

Conclusion

[30] The Appellant isn't eligible to receive the ERB between March 15, 2020, and May 9, 2020, because he received earnings from employment of more than \$1,000 during those two periods of four weeks that succeeded each other in chronological order.

[31] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section

³ GD3-60.

⁴ Section 153.1303(1) of the Act.