



[TRANSLATION]

Citation: *SL v Commission de l'assurance-emploi du Canada*, 2022 SST 344

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

Decision

Appellant: S. L.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (450289) dated January 15, 2022 (issued by Service Canada)

Tribunal member: Josée Langlois
Type of hearing: Teleconference
Hearing date: April 20, 2022
Hearing participant: Appellant
Decision date: April 20, 2022
File number: GE-22-679

Decision

[1] The appeal is dismissed.

[2] The Appellant isn't eligible to receive the Employment Insurance (EI) Emergency Response Benefit (ERB) between July 19, 2020, and August 1, 2020, in accordance with section 153.9(4) of the *Employment Insurance Act* (Act).

Overview

[3] The Appellant stopped working because of a shortage of work during the construction holiday period.

[4] On July 18, 2020, he applied for benefits. The Canada Employment Insurance Commission (Commission) established a benefit period for the ERB starting July 19, 2020.

[5] On January 15, 2022, the Commission issued a reconsideration decision saying that it wasn't able to pay the Appellant the ERB between July 19, 2020, and August 1, 2020, because he had received earnings from employment of more than \$1,000 over four consecutive weeks starting July 19, 2020.

[6] The Appellant admits that he received earnings from employment of more than \$1,000 over this four-week period. But, he argues that he always claims benefits for his construction holiday period and that the measures taken during the pandemic penalize him. He also argues that neither the Commission nor his union told him about the rules. The Appellant says he acted in good faith.

[7] I have to decide whether the Appellant is eligible to receive the ERB or regular benefits between July 19, 2020, and August 1, 2020.

Issue

[8] Is the Appellant eligible to receive the ERB or regular benefits between July 19, 2020, and August 1, 2020?

Analysis

Is the Appellant eligible to receive the ERB or regular benefits from July 19, 2020, to August 1, 2020?

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

[10] Section 153.8(5) of the Act says that no benefit period is to be established for regular benefits between March 15, 2020, and September 26, 2020.

[11] I agree with the Commission: Since he made his claim for benefits on July 18, 2020, the Appellant could not get regular benefits. A benefit period for the ERB was rightly established.

[12] The Appellant isn't entitled to receive regular benefits between July 19, 2020, and August 1, 2020. I have to decide whether he is eligible for the ERB for that period.

[13] To be eligible to receive the ERB, a claimant has to meet the eligibility criteria.¹

[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 started working again during the four-week period following his EI claim. It says that, according to the Record of Employment from the employer, the Appellant received earnings of \$1,239 in the week of August 3, 2020, and \$1,738 in the week of August 10, 2020. So, he received more than \$1,000 in income from employment for a period of four weeks that succeeded each other from July 19, 2020, to August 16, 2020.

¹ Section 153.9 of the *Employment Insurance Act* (Act).

[16] The Appellant explains that he acted in good faith and didn't intend to defraud. He argues that neither the Commission nor his union told him that he would not be able to receive benefits if he received earnings of more than \$1,000 over a four-week period and that he usually receives EI benefits during his vacation period.

[17] The Appellant explains that, even though he receives vacation pay during the construction holidays, he still gets EI benefits during that period.

[18] On January 15, 2022, the Appellant paid back \$1,000 to the Commission, and he doesn't understand why he owes an additional amount.

[19] In accordance with section 153.9(4) of the Act, which was introduced on a temporary basis, if a claimant has income from employment totalling \$1,000 or less over a period of four weeks, they are still eligible to receive the ERB. If a claimant receives more than \$1,000 in income from employment over a period of four weeks, they aren't eligible for the ERB.

[20] This is the case for the Appellant. The facts show that he received earnings of \$1,239 in the week of August 3, 2020, and \$1,738 in the week of August 10, 2020. Between July 19, 2020, and August 16, 2020, over a period of four weeks that succeeded each other in chronological order, the Appellant received more than \$1,000 in earnings from employment. The Appellant agrees.

[21] The Appellant received more than \$1,000 over that period, and he isn't eligible for the ERB.

[22] The Commission isn't asking him to repay \$1,000. It is asking him to pay back the benefits he received for that four-week 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] Also, I am not assessing the fact that the Appellant receives EI while on vacation and while receiving vacation pay. But, as it is designed right now, the EI program is

meant to compensate claimants who have stopped working and are actively looking for work.

[25] The Appellant isn't eligible for the ERB between July 19, 2020, and August 1, 2020, since he had income from employment exceeding what is allowed to qualify.

[26] While I understand the Appellant's disappointment and that he didn't receive the benefits he expected to receive, he isn't eligible for the ERB for the period of four weeks that succeeded each other.

[27] The Appellant has to pay back the ERB payments he received between July 19, 2020, and August 1, 2020.²

Conclusion

[28] The Appellant isn't eligible to receive the ERB between July 19, 2020, and August 1, 2020, because he received income from employment of more than \$1,000 over a period of four weeks that succeeded each other.

[29] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section

² Section 153.1303(1) of the Act.