



Citation: *AB v Canada Employment Insurance Commission*, 2022 SST 430

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

# **Decision**

**Appellant:** A. B.

**Respondent:** Canada Employment Insurance Commission

---

**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (443946) dated December 20, 2021 (issued by Service Canada)

---

**Tribunal member:** Catherine Shaw

**Type of hearing:** Teleconference

**Hearing date:** February 24, 2022

**Hearing participant:** Appellant

**Decision date:** February 24, 2022

**File number:** GE-22-261

## Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

[2] The Canada Employment Insurance Commission (Commission) correctly calculated the Claimant's weekly benefit rate as \$573.

[3] The Claimant must repay the overpayment of benefits she received when the Commission paid her at a higher benefit rate.

## Overview

[4] The Claimant received EI benefits from September 2020 to September 2021. After her benefits ended, the Commission recalculated her rate of weekly benefits in error. It initially calculated her rate of weekly benefits as \$573, then changed her rate to \$595. It sent the Claimant an additional \$638 based on the difference between the two benefit rates.

[5] Now the Commission is asking the Claimant to repay this \$638, because it was paid to her as a result of its error. The Claimant disagrees that she should have to repay this overpayment of benefits because it was the Commission's fault she received it.

## Issues

[6] Did the Commission correctly calculate the Claimant's weekly benefit rate?

[7] Does the Claimant have to repay the overpayment of benefits?

## Analysis

### **The Commission correctly calculated the weekly benefit rate**

[8] The weekly rate of benefits is the maximum amount you may be paid for each week of unemployment in your benefit period. The benefit rate is 55% of your weekly insurable earnings.<sup>1</sup>

---

<sup>1</sup> See section 14(1.1) of the *Employment Insurance Act*.

[9] The benefit rate is calculated using the highest or “best weeks” of insurable earnings in your qualifying period.<sup>2</sup>

[10] The Commission provided detailed submissions outlining their calculation of the Claimant’s benefit rate.<sup>3</sup> It shows that the Claimant’s weekly insurable earnings of \$1,042.00 were multiplied by the benefit rate of 55%, which results in a weekly benefit rate of \$573.

[11] I find the Commission has correctly calculated the Claimant’s weekly benefit rate as \$573.

[12] At the hearing, the Claimant agreed that the calculation of her benefit rate appeared correct. This is not the true issue that she is appealing. Rather, she is appealing that the Commission is requiring her to repay an overpayment of benefits that was solely the Commission’s fault.

[13] The Commission submitted that the overpayment of benefits was due to its error in recalculating the Claimant’s benefits in September 2021. Specifically, it recalculated the Claimant’s rate of weekly benefits as \$595, instead of \$573. It then paid her the difference between those weekly benefit rates for 29 weeks of her benefit period. The result was a \$638 overpayment.

[14] I recognize the Claimant’s argument that she was not at fault for the overpayment of benefits. It is unfortunate that the Commission made this error and put the Claimant into a position of having to repay these benefits. At the Claimant’s request, I have looked at whether she is obliged to repay this overpayment.

### **Does the Claimant have to repay the overpayment of benefits?**

[15] Yes. The Claimant has to repay the \$638 in benefits that she wasn’t entitled to receive.

---

<sup>2</sup> The number of weeks used for this calculation is variable, dependent on the unemployment rate in the Claimant’s EI economic region. See sections 8 and 14 of the *Employment Insurance Act*.

<sup>3</sup> See GD4-5.

[16] The Claimant said that it was the Commission's error that she was paid benefits the higher rate of benefits. It is not her fault that the Commission made this error. And repaying these benefits would be very difficult, especially since she is still out of work.

[17] The law says that you are required to repay any amount paid to you as benefits by the Commission to which you were not entitled to receive.<sup>4</sup>

[18] I understand that the Claimant was paid benefits that she wasn't entitled to receive because of the Commission's error in recalculating her rate of weekly benefits. Unfortunately, regardless of whether the Commission is solely at fault for the Claimant receiving these benefits, she is liable to repay the amount she received.

[19] I have no authority to waive or write-off the overpayment or to direct the Commission to do so. That authority rests with the Commission.<sup>5</sup> The Commission says it cannot waive or write-off the overpayment.<sup>6</sup>

[20] Although I cannot direct the Commission, I would recommend that the Commission reconsider whether it can write-off the overpayment, given the Claimant's circumstances.

[21] The Claimant can appeal the Commission's refusal to write-off her overpayment to the Federal Court. And if repayment will cause the Claimant financial hardship, she can contact the Debt Management Call Centre of the Canada Revenue Agency and ask about applying for debt relief.

## **Conclusion**

[22] The appeal is dismissed.

Catherine Shaw  
Member, General Division – Employment Insurance Section

---

<sup>4</sup> See section 43(b) of the EI Act.

<sup>5</sup> See sections 112.1 and 113 of the EI Act.

<sup>6</sup> See GD4-5.