



[TRANSLATION]

Citation: *RC v Canada Employment Insurance Commission*, 2022 SST 607

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

Decision

Appellant: R. C.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (441896) dated December 9, 2021 (issued by Service Canada)

Tribunal member: Normand Morin
Type of hearing: Teleconference
Hearing date: June 14, 2022
Hearing participant: Appellant
Decision date: June 24, 2022
File number: GE-22-948

Decision

[1] The appeal is dismissed. I find that the Appellant is not entitled to Employment Insurance (EI) benefits under the EI Emergency Response Benefit (EI ERB) for the period from September 13, 2020, to October 3, 2020.¹ The Appellant has to pay back the amount of money he was overpaid in EI benefits (overpayment).²

Overview

[2] From September 11, 2019, to November 1, 2019, the Appellant worked as a boilermaker for the employer X. He stopped working for it because of a shortage of work.

[3] On June 25, 2020, he made an initial claim for EI benefits (regular benefits). A benefit period was established effective June 21, 2020, so that the Appellant could receive the EI ERB.

[4] From September 25 to 30, 2020, the Appellant worked as a boilermaker for the employer X. He stopped working for that employer because of a shortage of work.³

[5] On October 19, 2021, Employment and Social Development Canada sent the Appellant a notice of debt.⁴

[6] On November 12, 2021, the Appellant submitted a request for reconsideration of an EI decision related to the notice of debt sent to him on October 19, 2021.⁵

[7] On December 9, 2021, after reconsideration, the Commission informed him that a new decision had replaced the October 19, 2021, decision. It told him that, according to that new decision, he was entitled to the EI ERB for the weeks of August 30, 2020, to

¹ See section 153.9 of Part VIII.4 of the *Employment Insurance Act* (Act).

² See sections 43, 44, 52, and 153.6(1)(a) of the Act.

³ See GD3-15 and GD3-16.

⁴ See the document entitled "Notice of Debt / *Avis de dette*" issued by Employment and Social Development Canada / *Emploi et Développement social Canada*—GD3-23 and GD3-31 to GD3-33.

⁵ See GD3-21 and GD3-22. Even though it is not a letter sent by the Commission, I find that the notice of debt sent to the Appellant serves as the initial decision.

September 12, 2020, based on the earnings he had declared.⁶ In its arguments, the Commission explains that the reconsideration decision should also say that the Appellant was not entitled to the EI ERB for the period from September 13, 2020, to October 3, 2020, since his total earnings for that three-week period exceeded \$1,000.⁷

[8] According to the Appellant, the Commission decided that he was not entitled to the EI ERB for the three-week period from September 13, 2020, to October 3, 2020, even though he worked for only two weeks during that period—the week of September 20 to 26, 2020, and the week of September 27, 2020, to October 3, 2020. He says he should not have to pay back what he was paid in EI ERB during the week of September 13 to 19, 2020, since he did not work or receive any earnings that week. On March 15, 2022, the Appellant challenged the Commission’s reconsideration decision before the Tribunal. That decision is now being appealed to the Tribunal.

Issues

[9] I have to decide whether the Appellant was entitled to the EI ERB for the period from September 13, 2020, to October 3, 2020, for which he received this type of benefit.⁸

[10] I also have to decide whether the Appellant should pay back the benefits he was overpaid.⁹

Analysis

Payment of the EI ERB to the Appellant

[11] Because of COVID-19,¹⁰ changes were made to the *Employment Insurance Act* (Act). For example, the EI ERB was introduced. People can become EI ERB claimants

⁶ See GD2-10, GD3-26, and GD3-27.

⁷ See GD4-2.

⁸ See section 153.9 of Part VIII.4 of the Act.

⁹ See sections 43, 44, 52, and 153.6(1)(a) of the Act.

¹⁰ Coronavirus disease 2019.

for different reasons. This type of benefit is not just for those who have stopped working for reasons related to COVID-19.

[12] A claimant can receive the EI ERB if, for example, their benefit period could have been established during the period from March 15, 2020, to October 3, 2020, inclusive, to receive EI regular benefits, among other things.¹¹ However, during that period, no benefit period is to be established for EI regular benefits.¹²

[13] To be eligible for the EI ERB, the claimant must meet the eligibility requirements set out in the Act.¹³

[14] For example, the claimant, whether employed or self-employed, must have stopped working for at least seven consecutive days within the two-week period for which they claimed the EI ERB.¹⁴

[15] The Act also provides an exception saying that, if a claimant received employment income the total of which did not exceed \$1,000 over a period of four weeks that succeeded each other in chronological order but not necessarily consecutively and for which the EI ERB was paid, then the claimant is deemed to meet several of the requirements to receive the EI ERB.¹⁵

[16] In this case, I find that the Appellant was not entitled to the EI ERB for the period from September 13, 2020, to October 3, 2020, because he did not meet all the requirements under the Act to receive it.

[17] The Commission argues as follows:

- a) A claimant is allowed to receive earnings, whether from employment or self-employment, as long as they do not exceed \$1,000 over a four-week

¹¹ See section 153.5(2)(b) of Part VIII.4 of the Act.

¹² See sections 153.5(3)(a) and 153.8(5) of Part VIII.4 of the Act.

¹³ See section 153.9(1) of Part VIII.4 of the Act.

¹⁴ See section 153.9(1)(iv) of Part VIII.4 of the Act.

¹⁵ See section 153.9(4) of Part VIII.4 of the Act.

period during which the EI ERB is paid. Once the claimant has been paid for a period of four weeks, another four-week period begins.¹⁶

- b) The Appellant received the EI ERB for the 15-week period from June 21, 2020, to October 3, 2020.¹⁷ An overpayment breakdown table shows the four-week periods established by the Commission starting with the week beginning June 21, 2020.¹⁸
- c) The Appellant did not receive any earnings for the week of September 13 to 19, 2020. He received total earnings of \$3,510¹⁹ for the weeks of September 20 to 26, 2020, and September 27, 2020, to October 3, 2020. So, given the provisions of the Act, the Appellant was not entitled to the EI ERB for the three-week period from September 13, 2020, to October 3, 2020.²⁰
- d) The Appellant's earnings were deducted in accordance with the provisions set out in section 153.9(4) of the Act.²¹

[18] The Appellant's testimony and statements indicate the following:

- a) He did not make his claim for benefits to receive the EI ERB. When he made his claim, he would normally have been entitled to EI regular benefits, given the insurable hours he had accumulated. He had no choice but to receive the EI ERB, since it was the only type of benefit he could get.²²
- b) He told the Commission that he had worked during the week of September 20 to 26, 2020, specifically on September 25 and 26, 2020, and during the week of September 27, 2020, to October 3, 2020, specifically on September 29 and 30, 2020, earning a total of \$3,509.16 over four days (\$2,069.56 on

¹⁶ See GD4-3.

¹⁷ See GD3-20, GD4-1, GD10A-1, GD10B-1, GD10C-1, and GD10D-1.

¹⁸ See GD10D-1.

¹⁹ Amount rounded to the nearest dollar.

²⁰ See GD4-3, GD10-1, GD10A-1, and GD10B-1.

²¹ See GD4-3.

²² See GD5-1.

September 25 and 26, 2020, and \$1,439.60 on September 29 and 30, 2020).²³

- c) He received a notice of debt saying that he would have to pay back \$2,500—the equivalent of five weeks of benefits.²⁴
- d) The Commission later decided that he could not get the EI ERB for the three-week period from September 13, 2020, to October 3, 2020. He was told that he would have to pay back \$1,500, which is what he was paid in benefits for the three weeks in question.²⁵
- e) He says that he should be entitled to the EI ERB for the week of September 13 to 19, 2020, since he did not work that week or receive any earnings.
- f) He feels he should be “penalized” only for the two weeks he worked: the weeks of September 20 to 26, 2020, and September 27, 2020, to October 3, 2020. He says that, if that were to happen, he [translation] “could live with that.” However, he was never told that he would be penalized for his benefits if he worked.
- g) Being penalized for a week of benefits when he did not work—as was the case for the week of September 13 to 19, 2020—amounts to a lot of money, given the current cost of living and the fact that he has to support himself and his family.²⁶
- h) Although he filed his appeal with the Tribunal on March 15, 2022, he noticed that deductions had been made, without warning, from his tax returns filed in

²³ See GD2-1 to GD2-11, GD3-17 to GD3-19, GD3-25, GD3-29, and GD5-1.

²⁴ See the document entitled “Notice of Debt / *Avis de dette*” issued by Employment and Social Development Canada / *Emploi et Développement social Canada* on October 19, 2021—GD3-23 and GD3-31 to GD3-33.

²⁵ See the document entitled “Notice of Debt / *Avis de dette*” issued by Employment and Social Development Canada / *Emploi et Développement social Canada* on October 19, 2021—GD3-34 to GD3-36.

²⁶ See GD5-1.

April 2022 for the 2021 tax year as reimbursement for the benefits he had been overpaid (overpayment) by the Commission. In addition, he was not notified in writing that the money he owed had been repaid.²⁷

[19] In this case, the Appellant's arguments focus on the fact that he disagrees with the decision disentitling him from receiving the EI ERB for the week of September 13 to 19, 2020, given that he did not work that week or receive any earnings.

[20] Since he made his claim for benefits on June 25, 2020, I find that the provisions in the Act relating to the COVID-19 pandemic do not make it possible for him to receive the EI ERB for the three-week period from September 13, 2020, to October 3, 2020.²⁸

[21] Although he says he did not make his claim for benefits to receive the EI ERB, the Appellant did not have the option of deciding the type of benefits he could receive when he made his claim.

[22] Claims for EI regular benefits and claims for special benefits (for example, sickness benefits) with benefit period commencement dates that fall in the period from March 15, 2020, to October 3, 2020, inclusive, are considered claims for the EI ERB or the Canada Emergency Response Benefit (CERB), whichever applies.²⁹

[23] The Appellant's benefit period was established effective June 21, 2020, so that he could receive the EI ERB.³⁰

[24] In my view, the Commission has shown that the Appellant was not entitled to the EI ERB for the three weeks in question, even though it agrees that he did not receive any earnings for the week of September 13 to 19, 2020.

[25] The Commission explains that the Appellant received the EI ERB for a period of 15 weeks that began when his benefit period started on June 21, 2020.³¹

²⁷ See GD5-1.

²⁸ See section 153.9 of Part VIII.4 of the Act.

²⁹ See Part VIII.4 of the Act.

³⁰ See GD4-1.

³¹ See GD3-20, GD4-1, and GD10D-1.

[26] For the week of September 13 to 19, 2020, the evidence on file shows that the Appellant, whether employed or self-employed, stopped working for at least seven consecutive days within the two-week period for which he claimed the EI ERB.³²

[27] On September 19, 2020, the Appellant claimed benefits for the two-week reporting period from September 6 to 19, 2020, indicating that he had not worked any hours or received any earnings during those two weeks.³³

[28] On October 8, 2020, he claimed benefits for the two-week reporting period from September 20, 2020, to October 3, 2020, indicating that he had worked a total of 47 hours during those two weeks and earned a total of \$3,330 ($\$2,070 + \$1,260 = \$3,330$).³⁴

[29] This means that the Appellant meets one of the requirements under the Act to receive the EI ERB for the weeks beginning September 6 and 12, 2020; for those two weeks, whether employed or self-employed, he stopped working for at least seven consecutive days within that two-week period for which he claimed benefits.³⁵

[30] However, the Appellant cannot rely on the exception under the Act saying that a claimant must not have received employment income totalling more than \$1,000 over a period of four weeks that succeeded each other in chronological order but not necessarily consecutively, to be able to receive the EI ERB.³⁶ The Appellant's total employment income exceeded \$1,000 for one such period, given his periods of employment during the weeks of September 20 to 26, 2020, and September 27, 2020, to October 3, 2020.

[31] In my view, since the Appellant received employment income totalling \$1,000 or more over a four-week period, according to the provisions of the Act,³⁷ he cannot rely on the exception to be deemed to meet the requirements to be entitled to the EI ERB for

³² See section 153.9(1)(iv) of Part VIII.4 of the Act.

³³ See GD10A-1 and GD10C-1.

³⁴ See GD10B-1 and GD10C-1.

³⁵ See section 153.9(1)(iv) of Part VIII.4 of the Act.

³⁶ See section 153.9(4) of Part VIII.4 of the Act.

³⁷ See section 153.9(4) of Part VIII.4 of the Act.

that four-week period.³⁸ If his total employment income had not exceeded \$1,000, he could have received benefits for that four-week period.

[32] Based on his benefit period commencement date of June 21, 2020, and the Commission's table,³⁹ the four-week periods—with the exception of the period from September 13, 2020, to October 3, 2020—for which he received benefits were established as follows:

- June 21, 2020, to July 18, 2020
- July 19, 2020, to August 15, 2020
- August 16, 2020, to September 12, 2020
- September 13, 2020, to October 3, 2020⁴⁰

[33] The two weeks the Appellant worked, specifically the weeks of September 20 to 26, 2020, and September 27, 2020, to October 3, 2020, fall in the three-week period that began with his 13th week of benefits, that is, the week beginning September 13, 2020.

[34] I would point out that, exceptionally, that period is only three weeks long, since the EI ERB was no longer available after October 3, 2020. Otherwise, that period would have been from September 13, 2020, to October 10, 2020.

[35] Since the Appellant worked during that last, three-week-long period and earned more than \$1,000 during the two-week period from September 20, 2020, to October 3, 2020, he cannot be entitled to the EI ERB for the three weeks in question.

³⁸ See section 153.9(4) of Part VIII.4 of the Act.

³⁹ See the overpayment breakdown table showing the start dates of the weeks in question—GD10D-1.

⁴⁰ This last period is only three weeks long, since the EI ERB was no longer available after October 3, 2020—GD10D-1.

[36] This is because the Appellant's total employment income exceeded \$1,000 for the period from September 13, 2020, to October 3, 2020.⁴¹

Repaying benefits that were overpaid

[37] The Appellant has to pay back the amount of money he was overpaid in benefits.

[38] If a person has received EI benefits—including the EI ERB—they were not entitled to or because [*sic*] they were disqualified from receiving those benefits, they have to repay those benefits or the resulting overpayment.⁴²

[39] The Commission has 36 months to reconsider a claim for benefits paid or payable to a claimant, including the EI ERB. The Commission has 72 months if, in its opinion, a false or misleading statement or representation has been made in connection with a claim.⁴³

[40] Even though he says that he takes issue with having to pay back benefits for the week he did not work—the week of September 13 to 19, 2020—and that this amounts to a lot of money, the fact is that the Appellant was not entitled to those benefits. He also was not entitled to benefits for the weeks of September 20 to 26, 2020, and September 27, 2020, to October 3, 2020.

[41] The Federal Court of Appeal (Court) tells us that the amount of an overpayment specified in a notice of debt becomes repayable on the date of the notification of the amount of the overpayment and that a person who receives an overpayment of benefits is required to return the amount of the overpayment without delay.⁴⁴

[42] The Appellant's situation cannot exempt him from paying back the overpayment he has to repay for benefits he was not entitled to.

⁴¹ See section 153.9(4) of Part VIII.4 of the Act.

⁴² See sections 43, 44, and 153.6(1)(a) of the Act.

⁴³ See sections 52 and 153.6(1)(a) of the Act.

⁴⁴ The Federal Court of Appeal (Court) established this principle in *Braga*, 2009 FCA 167. See also sections 43, 44, and 153.6(1)(a) of the Act.

[43] While I sympathize with the Appellant's case, the Court tells us that adjudicators, including the Tribunal, are not permitted to rewrite the Act or to interpret it in a manner that is contrary to its plain meaning.⁴⁵

[44] I find that the Commission is justified in asking the Appellant to pay back the overpayment. It is up to the Commission to consider how the Appellant should pay back the amount of money it is asking him to repay.

Conclusion

[45] I find that the Appellant is not entitled to the EI ERB for the period from September 13, 2020, to October 3, 2020.

[46] The Appellant has to pay back the amount of money that he was overpaid in benefits for the period in question and that the Commission is asking him to repay in the manner determined by the Commission.

[47] This means the appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section

⁴⁵ The Court established this principle in *Knee*, 2011 FCA 301.