



Citation: *RH v Canada Employment Insurance Commission*, 2022 SST 478

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

## Decision

**Appellant:** R. H.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (441241) dated January 8, 2022 (issued by Service Canada)

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**Tribunal member:** Linda Bell

**Type of hearing:** Teleconference

**Hearing date:** April 20, 2022

**Hearing participant:** Appellant

**Decision date:** April 21, 2022

**File number:** GE-22-604

## Decision

[1] I am dismissing the appeal.

[2] The Commission paid the Claimant \$2,000 of the Employment Insurance Emergency Response Benefit (EI-ERB) he was not entitled to receive.

[3] The law says he is responsible (liable) to repay the overpayment of benefits. This means I am not reducing or writing off the overpayment.

## Overview

[4] The Claimant established a claim for the EI-ERB.<sup>1</sup> He received a \$2,000 advance payment issued on April 6, 2020.

[5] The Government of Canada issued the \$2,000 as an advance payment to ensure Canadians received money as quickly as possible during the global COVID-19 pandemic.<sup>2</sup> This payment is equal to 4 weeks of the EI-ERB (4 x \$500 = \$2,000).

[6] The Claimant stopped requesting payment of the EI-ERB after reporting that he returned to full-time work in June 2020. The Commission initially determined that they were able to recover \$1,000 of the advance payment. But several months later it determined there that was an error. Instead, the Commission determined it wasn't able to recover any of the \$2,000 advance payment of the EI-ERB.

[7] The Commission determined that the Claimant received payment for 16 weeks of the EI-ERB but only proved entitlement to 12 weeks, from March 15, 2020, to June 6, 2020. So, he was paid \$2,000 for 4 weeks of the EI-ERB he is not entitled to receive.

[8] The Claimant disagrees with the Commission. He appeals to the Social Security Tribunal (Tribunal). He confirms that he is appealing the \$2,000 overpayment and not \$1,000 as stated in his appeal form. He says that he should not have to repay any of the

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<sup>1</sup> In March 2020, the government made amendments to the *Act*, in response to the COVID-19 pandemic.<sup>1</sup> The Minister made several orders to amend the *Act* that were effective March 15, 2020. One of the orders added a new temporary benefit called the EI-ERB.

<sup>2</sup> Subsection 153.7(1.1) of the *Act* allowed the Commission to pay the EI-ERB in advance of the customary time for paying it.

overpayment. He also says that at the very least, the Commission should consider reducing the overpayment to \$1,000 due to its error.

## **Matters I must consider first**

### **Commission's system error**

[9] The Commission submits that there was an automated system error, which incorrectly determined the Claimant served the first 2-week disentitlement to recover \$1,000 of the advance payment.

[10] The Claimant received a Notice of Debt stating he had a \$1,000 overpayment of the EI-ERB. Several months later, the Commission corrected the error, which increased the overpayment of the EI-ERB to \$2,000.

[11] The Commission submits that it notified the Claimant of the system error on January 7, 2022. Specifically, it explained that the Claimant was not entitled to serve the two-week disentitlement from June 8, 2020, to June 19, 2020. This is because he returned to work full-time during this report period. So the overpayment amount is \$2,000.<sup>3</sup>

[12] The Claimant confirms that from October to February 2022, he received five notices of debt showing an amount owing of \$1,000. Then, "out of the blue," he received a notice of debt dated March 2, 2022, showing \$2,000 as the amount due.

[13] It is truly unfortunate that the Commission's system made the error when imposing the disentitlement. Fortunately, appeals before the Tribunal are *de novo*. This means the adjudication of the issue begins anew where the Claimant can present all relevant evidence. So, I find the system error did not cause prejudice to the Claimant because he was able to appeal the \$2,000 overpayment to the Tribunal.<sup>4</sup>

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<sup>3</sup> See GD3-25.

<sup>4</sup> In *Desrosiers v Canada (AG)*, A-128-89, the judicial review relating to CUB 16233 was dismissed. In that case, the Federal Court of Appeal upheld the Umpire's determination that an error, which does not cause prejudice, is not fatal to the decision under appeal, so the decision is to be maintained.

## **Request to attend a settlement conference**

[14] At the April 1, 2022, hearing, the Claimant said that, based on the Commission's admission of the mistake, he would like the Commission to consider settling the matter by agreeing to write off or remove the full \$2,000 overpayment. At the very least, the Commission should agree to write off the latest \$1,000, which is the direct result of the Commission's error.

[15] I adjourned the hearing, and wrote to the Commission.<sup>5</sup> I asked them to provide supplementary representations in response to the Claimant's request to settle the matter.

[16] The Commission replied and declined to write off the debt. It says that the Claimant had not previously requested a write off. It also says that no decision would be made while the appeal is before the Tribunal.<sup>6</sup>

[17] The Claimant says that he did ask the Commission to make the debt "go away," which is his way of asking the Commission for a write off. He requests that, in the interest of time and money, the parties settle these matters now, so he can move on with his life.

[18] In response to the Claimant's request for a speedy resolution, I invited both parties to attend a settlement conference on April 20, 2022. The Commission declined to attend.

[19] As explained to the Claimant on April 20, 2022, I will now proceed with determining the merits of his appeal.

## **Issues**

[20] Does the Commission have the authority to calculate an overpayment of the EI-ERB?

[21] Did the Commission review the EI-ERB claims within the required time limit?

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<sup>5</sup> See GD8-1.

<sup>6</sup> See page GD12-1.

[22] Is the Claimant required to repay the overpayment of EI benefits?

## **Analysis**

### **Authority to calculate an overpayment of the EI-ERB**

[23] The law says that if the Commission determines that a claimant has received payment of the EI-ERB for which they are not eligible, it must calculate the overpayment amount and notify the claimant.<sup>7</sup>

[24] The Claimant agrees that he received the \$2,000 advance payment. But, he initially was told her was overpaid \$1,000.

[25] The Claimant doesn't dispute that on January 7, 2022, the Commission notified him the overpayment was increased to \$2,000. He says that when the agent called him on this day, he thought it was a prank call. This is because the Agent was difficult to deal with and wouldn't let him speak.

### **The time limit during which the Commission may review claims**

[26] The law states that the Commission has 36 months after paying benefits, to reconsider the claim.<sup>8</sup> This period is extended to 72 months in cases where, in the opinion of the Commission, a false or misleading statement or representation has been made in connection to a claim.<sup>9</sup>

[27] The Federal Court of Appeal recognizes that the Commission can't review changes to claims at the exact time they happen. It is precisely for that reason that the Act allows the Commission time to rescind or amend any decision given in any particular claim for EI benefits.<sup>10</sup>

[28] The Claimant doesn't dispute that he received the advance payment of \$2,000 for the EI-ERB. Nor does he dispute that he returned to work full-time in the week of

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<sup>7</sup> See section 153.1303 (2) of the Act.

<sup>8</sup> Section 52 of the Act.

<sup>9</sup> See subsection 52(5) of the Act.

<sup>10</sup> *Canada (Attorney General) v Landry*, A-532-98.

June 7, 2020. This means he was only entitled to twelve weeks of the EI-ERB from March 15, 2020, to June 6, 2020.

[29] The Claimant says he shouldn't have to repay the overpayment because it stems from payments he received two years ago. He shouldn't have to ensure he was correctly paid. He also says that he has already paid income tax on these benefits.

[30] I agree with the Commission that there is no assertion that the Claimant was required to verify he was correctly paid. Even though the Claimant may not have known of the advance payment, or he paid income tax on the benefits he received, doesn't change the fact he was overpaid benefits.

[31] I recognize that the Commission's error when determining the overpayment amount has caused additional stress and confusion for the Claimant. However, this doesn't change the fact that he was paid 4 weeks of the EI-ERB he is not entitled to receive. Nor does the Claimant's separation from employment in September 2020, or his choice not to claim additional benefits.

[32] In addition, benefits that the Claimant's wife made a choice not to claim, has no effect on the overpayment received by the Claimant. This is because a claimant's choice not to claim benefits, or their spouse's choice, does not prove his entitlement to the EI-ERB.

[33] I find that the Commission conducted its assessment in accordance with the law. This means the \$2,000 overpayment is valid. The Commission issued the \$2000 EI-ERB advance payment to the Claimant on April 6, 2020, which is 19 months from the date the Commission notified the Claimant of the \$1,000 overpayment decision. It is 21 months from January 7, 2022, which is the date the Commission notified the Claimant that the overpayment was \$2,000 and not \$1,000 as previously determined. So, the Commission's assessment was conducted within the required time limit.

## Repayment of an overpayment?

[34] The law states that a claimant is responsible (liable) to repay any EI-ERB that they are not entitled to receive.<sup>11</sup>

[35] This is truly an unfortunate situation. I recognize that the Commission's error and lengthy delay when reviewing the advance payment of the EI-ERB has created a large overpayment and additional stress and confusion for the Claimant.

[36] The Commission conducted its assessment in accordance with the law so the overpayment is valid. I don't have any authority to waive the overpayment.<sup>12</sup> That authority rests with the Commission.

[37] I also don't have any authority to order the Commission to waive or write off an overpayment. This said, I would ask that, in this case, the Commission consider writing off the overpayment or a portion thereof, when considering its calculation error.<sup>13</sup>

[38] I sympathize with the Claimant given the circumstances he presented. However, as explained during the hearing, my decision is not based on fairness or financial hardship. Instead, my decision is based on the facts before me and the application of the law. There are no exceptions and no room for discretion. I can't interpret or rewrite the Act in a manner that is contrary to its plain meaning, even in the interest of compassion.<sup>14</sup>

## Conclusion

[39] The appeal is dismissed.

Linda Bell

Member, General Division – Employment Insurance Section

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<sup>11</sup> See section 44 of the Act.

<sup>12</sup> See section 112.1 and 113 of the Act.

<sup>13</sup> The Commission created a policy to ensure a consistent and fair application of section 52 of the Act and creating debt when the claimant was overpaid through no fault of their own (section 17.3.3 the Digest of Benefit Entitlement Principles).

<sup>14</sup> *Canada (Attorney General) v Knee*, 2011 FCA 301.