



[TRANSLATION]

Citation: *VT v Canada Employment Insurance Commission*, 2022 SST 765

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

## Decision

**Appellant:** V. T.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (441634) dated March 15, 2022 (issued by Service Canada)

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**Tribunal member:** Josée Langlois  
**Type of hearing:** Teleconference  
**Hearing date:** June 10, 2022  
**Hearing participant:** Appellant  
**Decision date:** June 13, 2022  
**File number:** GE-22-1067

## Decision

[1] The appeal is dismissed.

[2] The Appellant has to pay back the \$2,000 advance payment.

## Overview

[3] The Appellant stopped working because of the COVID-19 pandemic.

[4] She applied for benefits on April 9, 2020. The Canada Employment Insurance Commission (Commission) established a benefit period for the Emergency Response Benefit (ERB).<sup>1</sup> The Appellant received an advance payment of \$2,000 on April 13, 2020.

[5] On February 25, 2022, the Commission issued a reconsideration decision saying that the Appellant had to pay back the advance payment of \$2,000 that was made to her when her benefit period was established.

[6] The Appellant says it isn't fair that she has to pay back this amount, because if she hadn't gone back to work, she would not have to repay it.

[7] I have to decide whether the Appellant has to pay back the ERB advance payment of \$2,000.

## Issue

[8] Does the Appellant have to pay back the \$2,000 advance payment?

## Analysis

### **Does the Appellant have to pay back the \$2,000 advance payment?**

[9] Section 153.8(5) of the *Employment Insurance Act* (Act) says that, between March 15, 2020, and September 26, 2020, benefit periods for the ERB have to be

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<sup>1</sup> Sections 153.8(5) and 157(1.1) of the *Employment Insurance Act* (Act).

established except in the exceptional cases set out in section 153.5(3) of the Act.<sup>2</sup> In other words, no claim is to be established for regular benefits between March 15, 2020, and September 26, 2020, with some exceptions.

[10] Under the temporary measures introduced during the COVID-19 pandemic, the Commission can pay the ERB ahead of time. When it does, it makes an advance payment.<sup>3</sup>

[11] The ERB isn't paid automatically. A claimant has three weeks to submit their claimant report for a given week.<sup>4</sup>

[12] According to sections 153.7(1) and 153.8(1) of the Act, to be entitled to the ERB, a claimant has to make a claim and show that they are eligible.

[13] The Appellant didn't apply for benefits after May 23, 2020, because she had gone back to work full-time on that date.

[14] The Commission says that the Appellant isn't entitled to the \$2,000 advance payment. It says that this advance was the equivalent of four weeks of benefits and that, because the Appellant went back to work on May 23, 2020, she received benefits that she wasn't entitled to.

[15] As the Commission says, the payment of \$2,000 to facilitate access to benefits is an advance that corresponds to payments that will be made later. So, a claimant must be entitled to benefits during the period when the payments should have been made.

[16] In her case, the Appellant received eight payments of \$500 between March 29, 2020, and May 23, 2020, for a total of \$4,000. She went back to work on May 23, 2020, and she received earnings of more than \$1,000 for each four-week period after that date.

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<sup>2</sup> Section 153.1310 of the Act.

<sup>3</sup> Section 153.7(1.1) of the Act.

<sup>4</sup> Section 26(1) of the *Employment Insurance Regulations*.

[17] The Commission rightly found that the Appellant had to pay back the \$2,000 advance payment that she received at the start of her benefit period for the ERB.

[18] The Appellant received a \$2,000 advance payment and then \$500 per week in benefits. The amount paid in advance was ultimately not applied to any of the weeks of her benefit period for the ERB. From May 23, 2020, she received earnings from her job of more than \$1,000 for each of the following four-week periods. She isn't entitled to the ERB as of May 23, 2020.

[19] Under sections 43 and 44 of the Act, a claimant who received benefits they weren't entitled to has to pay back the amount paid.

[20] The Appellant is disappointed to have to pay back this amount and she says that, had she known, she would have asked the employer to give her a Record of Employment indicating a shortage of work until July 2020 instead of making the effort to go back to work, since she was ultimately penalized. As I explained at the hearing, unfortunately, the Tribunal doesn't have jurisdiction to hear requests for write-off related to an overpayment of benefits, but the Appellant can make such a request to the Commission.

[21] I find that the Appellant has to pay back the \$2,000 advance payment.

## **Conclusion**

[22] The appeal is dismissed.

Josée Langlois  
Member, General Division – Employment Insurance Section