



Citation: *KE v Canada Employment Insurance Commission*, 2022 SST 735

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

Decision

Appellant: K. E.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (441244) dated January 11, 2022 (issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Teleconference

Hearing date: April 5, 2022

Hearing participant: Appellant

Decision date: April 6, 2022

File number: GE-22-698

Decision

[1] The appeal is dismissed, the Claimant is not entitled to the \$2,000 advance payment of Employment Insurance Emergency Response Benefits (ERB), so she must pay it back.

Overview

[2] Due to the COVID-19 pandemic the Government amended the *Employment Insurance Act* to create a new benefit, the ERB. The ERB is effective March 15, 2020.

[3] Claimants who could have had a benefit period established for regular EI benefits between March 15, 2020, and October 3, 2020, got ERB instead.

[4] The Claimant applied for employment insurance benefits on March 19, 2020, and her benefit period was established starting March 22, 2020. The Claimant was paid ERB benefits until she went back to work on June 9, 2020. She was also advanced \$2,000 worth of ERB payments.

[5] The Commission says that normally, in the course of paying out ERB they would withhold four weeks of benefits down the line, which is equal to \$2,000, in order to balance out the advance. However, the Claimant went back to work before they could do that, so they say she has a \$2,000 overpayment as she needs to repay the advance.

[6] The Claimant agrees that she got the \$2,000 advance and went back to work on June 9, 2020, but says she spoke to someone at the Commission in May 2020, about the \$2,000, and they told her it was money she was entitled to.

[7] The Claimant says that since the Commission told her everything was fine in relation to the \$2,000 advance it is not her fault that she used it and she should not have to pay it back.

Issue

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

Analysis

[9] Yes, the Claimant does have to pay back the \$2,000 advance as she is not entitled to it and the law says she must repay any ERB she received to which she was not entitled.

[10] The law states that the Commission may pay ERB in advance of the customary time for paying it.¹

[11] The law² states that a claimant is eligible for ERB if they have no income from employment for at least seven consecutive days within the two week period of which they claimed the benefit.

[12] I find this means that once the Claimant returned to work on June 9, 2020, she was no longer eligible for ERB after that week.

[13] I note the Claimant does not dispute that she was paid ERB from the week of March 22, 2020, to the week ending June 13, 2020.

[14] I note the Claimant agrees that she received the \$2,000 advance and returned to work on June 9, 2020.

[15] The Commission says that normally the \$2,000 advance is recouped by not paying the claimant benefits for four weeks.³

[16] The Commission says that the Claimant returned to work before they could recoup the advance.

[17] The Commission submits that since they paid the Claimant 12 weeks of benefits, the \$2,000 advance represents an additional four weeks of benefits beyond what she was entitled to, and this she needs to pay it back.

¹ Paragraph 153.7(1.1) of the *Employment Insurance Act*

² Paragraph 153.9(1)(b) of the *Employment Insurance Act*

³ The benefit rate of ERB is \$500 a week so withholding four weeks would equal \$2,000.

[18] I find that I agree with the submission of the Commission.

[19] I find that, as the Claimant was paid for all the weeks from March 22, 2020, to the week ending June 13, 2020, and she was working after this week, she received all the ERB she was entitled to, as once she started working again she was no longer entitled to ERB.

[20] This means that the \$2,000 advance, which represents four weeks of ERB, is money which the Claimant is not entitled to, as it would represent the Claimant continuing to get paid ERB for another four weeks beyond the week ending June 13, 2020, if she got to keep it.

[21] I find, that since the Claimant is not entitled to that extra \$2,000 she must repay it, as the law states that a claimant must repay any ERB they got to which they were not entitled.⁴

[22] I understand the frustration of the Claimant, as she did her due diligence, calling right away when she saw the \$2,000 advance payment in her account as she was worried she was not entitled to that money and was worried about the exact situation happening that she now finds herself in, having to repay that money at a later date.

[23] It is very unfortunate that the person she spoke to did not explain to her exactly how the advance worked. Despite this, I cannot change the law, regardless of what the Commission may have told her, and the law says she needs to repay the ERB she was not entitled to.

Conclusion

[24] The appeal is dismissed. I find the Claimant is not entitled to the \$2,000 advance so she must repay it.

Gary Conrad

Member, General Division – Employment Insurance Section

⁴ See section 153.1301 of the Act adaptation of section 44 of the Act saying that a claimant must repay any ERB they received to which they were not eligible or any amount over what they were eligible for.