



Citation: *DM v Canada Employment Insurance Commission*, 2022 SST 794

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

Decision

Appellant: D. M.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (452787) dated February 28, 2022
(issued by Service Canada)

Tribunal member: Gary Conrad
Decision date: May 13, 2022
File number: GE-22-1035

Introduction

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

[2] Claimants who could have had a benefit period established for regular or sickness EI benefits between March 15, 2020, and September 26, 2020, got ERB instead, as no claim could be established for benefits other than ERB benefits when it comes to regular and sickness benefits.¹

[3] The Claimant's claim was established on March 29, 2020, which means her claim was established as an ERB claim.

[4] The law states that the Commission may pay ERB in advance of the customary time for paying it.²

[5] The Commission says they did this, paying the Claimant a \$2,000 advance on April 6, 2020.³

[6] The Commission says they would normally recoup that advance by withholding four weeks of ERB benefits over the course of the benefit period, but they say the Claimant went back to work before they could do this.

[7] The Commission is now asking the Claimant to pay back the \$2,000 advance as they say it represent weeks of benefits for which she was not eligible.

[8] The Claimant says she never applied for the ERB, she applied for EI, which she was entitled to, and the government, without her consent, advanced her ERB money.

[9] The Claimant wants her debt written off as it came about through no fault of her own and repaying it would cause her undue hardship.

¹ See section 153.8(5) of the *Employment Insurance Act* (Act)

² Paragraph 153.7(1.1) of the Act

³ GD03-15

Issue

[10] I must decide whether the appeal should be summarily dismissed.

The law

[11] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[12] Section 22 of the *Social Security Tribunal Regulations* states that before summarily dismissing an appeal, I must give notice in writing to the Claimant and allow her a reasonable period of time to make submissions.

[13] I received the Claimant's submissions⁴ on why I should not summarily dismiss her appeal, and considered them, but they have not changed my decision that her appeal has no reasonable chance of success.

Analysis

[14] I understand the Claimant's argument that she never directly applied for ERB, and instead applied for EI. But, her claim was effective March 29, 2020, and the law is clear that any claim for regular or sickness benefits established between March 15, 2020, and September 26, 2020, must be ERB, as no claim could be established for sickness or regular benefits other than ERB.⁵

[15] So, since her claim had to be ERB, the fact she did not want ERB is irrelevant, there was no other option.

[16] The Claimant was paid ERB from March 29, 2020, to May 23, 2020,⁶ but not for any weeks after that as she returned to work.

⁴ GD08

⁵ See section 153.8(5) of the *Employment Insurance Act*

⁶ GD03-17

[17] The law⁷ 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, which means the Claimant was no longer eligible when she returned to work on May 22, 2020.

[18] Since the Claimant was paid ERB from March 29, 2020, to May 23, 2020, which is all the weeks she was eligible for and was also advanced \$2,000,⁸ which represents an additional four weeks of ERB, that would mean she was paid four extra weeks of ERB she was not eligible for.⁹

[19] The law states the Claimant must repay any ERB she got to which she was not entitled.¹⁰

[20] This means she must repay the \$2,000 advance as she was not entitled to it.

[21] The Claimant has asked me to write off her overpayment, but I cannot do that. The power to do that rests solely with the Commission.

[22] The Commission says they reviewed the Claimant's request for an overpayment write-off and denied it.¹¹

[23] The law¹² says I cannot review the decision of the Commission to deny a request to write off a debt.

[24] So, since the law says that the Claimant must repay and ERB she got to which she was not entitled, and she was not entitled to the \$2,000 advance and I cannot

⁷ Paragraph 153.9(1)(b) of the Act

⁸ Paragraph 153.7(1.1) of the Act allows the Commission to do this. GD03-15 supports they made the advance on April 6, 2020.

⁹ To make this clearer, the Claimant was eligible for 8 weeks at \$500, but if the Claimant got to keep the \$2,000 that would be like she was paid for 12 weeks at \$500, which would be four more weeks than she was eligible for. Payment information shows the Claimant got \$531 per week but the extra \$31 was a family supplement. See GD06.

¹⁰ 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.

¹¹ GD3-28

¹² See section 153.1307 of the Act adaptation of section 112.1 of the Act which states that a decision of the Commission under section 153.1306 about writing off a debt is not reviewable.

review the decision of the Commission to deny the Claimant's write-off request, her appeal has no chance of success, and I must summarily dismiss it.

Conclusion

[25] I find the Claimant's appeal has no reasonable chance of success; therefore the appeal is summarily dismissed.

Gary Conrad

Member, General Division – Employment Insurance Section