



[TRANSLATION]

Citation: *YT v Canada Employment Insurance Commission*, 2022 SST 896

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

Decision

Appellant: Y. T.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (443502) dated May 6, 2022
(issued by Service Canada)

Tribunal member: Josée Langlois
Type of hearing: Teleconference
Hearing date: August 18, 2022
Hearing participant: Appellant
Decision date: August 23, 2022
File number: GE-22-2092

Decision

[1] The appeal is dismissed.

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

Overview

[3] The Appellant stopped working temporarily during the COVID-19 pandemic.

[4] On May 2, 2020, he applied for benefits. The Canada Employment Insurance Commission (Commission) established a benefit period for the Emergency Response Benefit (ERB).¹ The Appellant got a \$2,000 advance payment on May 11, 2020.

[5] On May 6, 2022, the Commission issued a reconsideration decision saying that the Appellant had to pay back the \$2,000 advance payment that was made to him when his benefit period was established.

[6] The Appellant agrees with the facts of this case and confirms that he went back to work on June 1, 2020. But, he argues that the Commission and its employees are ill-intentioned and that they acted dishonestly by putting him in a difficult situation when they asked him to pay back that amount.² The Appellant also says that he wanted regular benefits and that the ERB wasn't right for him. In his notice of appeal, he asked for \$2,000 in damages for loss of enjoyment of life and other administrative costs.

[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?

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

² GD2-4.

Analysis

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

[10] The Appellant is disappointed that the Commission didn't tell him the rules about his eligibility for the ERB and the \$2,000 advance payment. He also says that the Commission didn't tell him about exceptions he could have taken advantage of and grounds for extending a benefit period.⁴

[11] He didn't know that he would have to pay back the \$2,000 advance payment if he wasn't eligible for the ERB at a later date. Also, he says that he would have applied for the family caregiver benefit for adults, had he known he could get it. This is why the Appellant believes that his previous claim could have been extended. He says that the Commission's decision was [translation] "botched" for these reasons.

[12] The Commission argues that the Appellant could not choose between regular benefits and the ERB, since all benefit periods established between March 15, 2020, and October 3, 2020, were established as ERB.

[13] At the hearing, the Appellant said that a previous benefit period had been established on April 29, 2019. When he made a claim for benefits on May 2, 2020, the 52-week period from his previous benefit period had ended. The Commission established a new benefit period. It established a benefit period for the ERB.

³ Section 153.1310 of the Act.

⁴ Section 8(2) of the Act. A qualifying period can be extended in cases of injury or pregnancy, for example.

[14] Through temporary measures introduced to facilitate the payment of benefits during the COVID-19 pandemic, claims made between March 15, 2020, and September 26, 2020, were established as ERB.⁵

[15] I agree with the Commission. Since he made a claim for benefits on May 5, 2020, the Appellant could not get Employment Insurance (EI) regular benefits. A benefit period for the ERB was rightly established.

[16] I understand the Appellant's explanations that he would have made different decisions about his claim had he been better informed. As I said at the hearing, a claimant can get benefits to care for or support a critically ill family member if a medical doctor or nurse practitioner has issued a medical certificate that states that the adult is critically ill and requires the care or support of one or more of their family members.⁶ The Appellant didn't provide this document when he made his claim on May 2, 2020, and the Commission correctly established a benefit period for the ERB.

[17] The Appellant isn't entitled to regular benefits as of May 3, 2020. Between March 15, 2020, and September 26, 2020, any claim submitted to the Commission was established as a benefit period for the ERB to facilitate the payment of benefits during the COVID-19 pandemic. These measures introduced during this period were temporary, and the Act was changed in response to an exceptional situation.

[18] 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.⁷

[19] 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.

[20] The Commission agrees that the Appellant is eligible for the ERB as of May 3, 2020. But, it still says that he has to pay back the \$2,000 advance payment. It says that

⁵ See sections 152.03 and 153.8(5) of the Act.

⁶ Section 23.3 of the Act.

⁷ Section 153.7(1.1) of the Act.

this advance was the equivalent of four weeks of benefits and that, because the Appellant stopped getting benefits on May 31, 2020, he got benefits he wasn't eligible for.

[21] The Appellant initially got a \$2,000 advance payment on May 11, 2020. He also got four weeks of the ERB from May 17, 2020, to May 31, 2020. He went back to work on June 1, 2020.

[22] 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 has to be entitled to benefits during the period when the payments should have been made.

[23] In his case, the Appellant got four payments of \$500 between May 17, 2020, and May 31, 2020, for a total of \$2,000.

[24] He went back to work on June 1, 2020, and earned more than \$1,000 for each four-week period after that date. He wasn't entitled to benefits between June 1, 2020, and October 3, 2020. So, the \$2,000 advance payment wasn't applied to any of his weeks of benefits. That amount was overpaid.

[25] The Commission rightly found that the Appellant had to pay back the \$2,000 advance payment he got at the start of his benefit period for the ERB.

[26] 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. The Appellant said he has already paid back this amount.

[27] The Appellant is disappointed that he has to pay back this amount. He is even asking the Commission for \$2,000 in damages and for loss of enjoyment of life and other administrative costs.⁸

[28] At the hearing, he talked about parts of the Commission's arguments and said that the phrasing was rude towards him. For example, the Commission recounted what

⁸ GD2-5.

the Appellant allegedly said when describing the Commission's incompetence. The phrasing [translation] "its incompetence" was confusing. The Appellant believes that the Commission wants to apply the Act at any cost and is calling him incompetent.

[29] The fact is, the Appellant indicated to the Commission in his request for reconsideration that he [translation] "doesn't have to tolerate its incompetence" and said that it was supposed to "help citizens, not impoverish them."⁹

[30] It isn't acceptable for either party to call the other incompetent. But, I understand the Appellant's explanations that he would have liked more help from the Commission and believes that it simply wants to close his file. Also, that the overpayment of \$2,000 is a large amount for him. He already paid it back, but it required sacrifice. He thinks the situation is [translation] "ridiculous."

[31] The EI plan is designed to give benefits to workers who meet the eligibility criteria. In that sense, the Act doesn't allow for the assessment of damages for financial compensation. The Tribunal has jurisdiction to decide on a dispute if an appeal is filed after the Commission has reconsidered a decision. It doesn't have jurisdiction to decide on a claim for damages.¹⁰

[32] The Appellant also says that the Commission didn't know how to manage the situation and that the end result is its fault. He repeats that he wasn't well informed by the Commission.

[33] I understand that the Appellant is upset he has to pay back the amount that was initially paid to him. Even though this argument won't change his entitlement to the \$2,000 advance payment, the Appellant could ask the Commission directly for the overpayment to be written off.

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

⁹ GD3-116.

¹⁰ Section 113 of the Act.

Conclusion

[35] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section