



Citation: *GH v Canada Employment Insurance Commission*, 2022 SST 888

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

Decision

Appellant: G. H.
Representative: A. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (459001) dated March 18, 2022
(issued by Service Canada)

Tribunal member: Lilian Klein

Type of hearing: Teleconference

Hearing date: July 13, 2022

Hearing participants: Appellant
Appellant's representative

Decision date: July 29, 2022

File number: GE-22-1422

Decision

[1] I am dismissing the Claimant's appeal. This decision explains why.

[2] The Claimant was overpaid \$2,000 in Employment Insurance Emergency Response Benefits (EI ERB). The law requires her to repay this overpayment.

Overview

[3] This appeal looks at how the Canada Employment Insurance Commission (Commission) paid EI ERB to the Claimant and why it is now asking her to repay some of those benefits.

[4] The Claimant applied for unemployment Insurance (EI) on March 29, 2020. She established a claim for EI ERB starting on March 15, 2020.

[5] The Commission issued her a \$2,000 advance payment of EI ERB. It also paid her four weeks of EI ERB between March 15, 2020, and April 11, 2020.

[6] The Commission asked the Claimant to repay the full \$2,000 EI-ERB advance payment. It says the \$2,000 was an advance for four weeks of EI ERB to be paid later in her claim if she was still receiving benefits.

[7] The Claimant says she should not have to repay any EI ERB because the Commission did not communicate with her about it. She says she never applied for EI-ERB and had only been looking for EI benefits for a short period.

The Issue I must decide

[8] Does the Claimant have to repay the advance payment of her EI ERB?

Analysis

[9] To help Canadians after COVID-19 began, the government offered a temporary benefit called EI ERB.

[10] Everyone who applied for Employment Insurance (EI) benefits between March 15 and October 3, 2020, and qualified for benefits automatically received EI ERB instead of EI.¹ There was no regular EI at the time.

[11] Claimants had to make an initial claim and then submit claims for any two-week period between March 15, 2020, and October 3, 2020. Everyone got the same weekly rate: \$500.²

[12] Usually, when you claim EI benefits, you get them *after* you file your biweekly claimant reports.³ But with EI ERB, the Commission paid claimants four weeks *in advance* for specific weeks later in a claim. These were the 13th, 14th, 20th and 21st weeks.⁴ This procedure was meant to help people get the assistance they needed when COVID-19 first hit. The Commission did not then pay EI ERB for those four weeks since it had already paid claimants for them through the \$2,000 advance payment.

[13] This way of applying the advance payment only worked for claimants who were unemployed for at least 21 weeks. For those who returned to work earlier, the Commission had to recoup all or part of the advance payment. So, if claimants only needed benefits for a few weeks, they would have to repay the full advance payment.

[14] If claimants received more EI ERB benefits than they were entitled to, the law says they have to repay the overpayment.⁵

[15] On March 29, 2020, the Claimant applied for regular benefits. A claim for EI ERB—the only EI available at the time—was established starting on March 15, 2020. The Commission says it paid her a \$2,000 advance payment of EI ERB on April 6, 2020.⁶ The evidence supports this and the Claimant does not dispute receiving the payment so I accept it as fact.

¹ S 153.5(2) of the *Employment Insurance Act* (EI Act).

² S 153.10(1) of the EI Act.

³ S 26 of the *Employment Insurance Regulations* (EI Regulations).

⁴ S 153.7(1.1) of the EI Act gave the Commission the authority to make advance payments.

⁵ The liability to repay an overpayment of EI ERB is set out in s 153.6(1)(a) and s 153.1301 of the EI Act.

⁶ See Attestation Certificate at GD3-15.

[16] The Full Text Screens in the Commission's evidence show that it paid the Claimant four weeks of EI ERB to cover her from March 15, 2020, to April 11, 2020.⁷

[17] Since she returned to work, the Claimant was no longer claiming EI ERB for what would have been the 13th, 14th, 20th and 21st weeks of her claim. But she had already been paid for those weeks through the \$2,000 advance payment that she got.

[18] This accounts for the overpayment of \$2,000 (\$500 for each of those weeks).

[19] For the above reasons, I find that the Commission correctly calculated that the \$2,000 advance payment of the Claimant's EI ERB was an overpayment of benefits.

[20] The Claimant argues that she should not have to repay this money since she never applied for EI-ERB and the Commission failed to communicate with her on the issue. But the law says you must repay benefits that you were not entitled to receive. I do not have the power to change that law.⁸

Conclusion.

[21] The Claimant was not entitled to the \$2,000 advance payment of her EI ERB. The law requires her to repay this overpayment.

[22] This means that I am dismissing the Claimant's appeal.

Lilian Klein

Member, General Division – Employment Insurance Section

⁷ See Full Text Screens at GD3-17.

⁸ *Canada (Attorney General) v Knee*, 2011 FCA 301.