



Citation: *KE v Canada Employment Insurance Commission*, 2022 SST 823

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

## Decision

**Appellant:** K. E.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (457264) dated March 7, 2022 (issued by Service Canada)

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**Tribunal member:** John Noonan

**Type of hearing:** In person

**Hearing date:** June 10, 2022

**Hearing participants:** Appellant

**Decision date:** June 17, 2022

**File number:** GE-22-1123

## Decision

[1] The appeal is dismissed.

## Overview

[2] The Appellant, K. E., was upon reconsideration by the Commission, notified that it had calculated an overpayment of Employment Insurance Emergency Response Benefits (EI ERB) paid to him. The Appellant asserts that he was already on an insurance claim and did not need CERB. The Tribunal must decide if the Appellant had been paid more benefits than the amount for which he had been eligible.

## Issue

[3] Issue # 1: Did the Appellant receive EI ERB benefits to which he was not entitled and if so, was there an overpayment incurred?

## Analysis

[4] The relevant legislative provisions are reproduced at GD4.

[5] In March 2020, the government changed the Employment Insurance Act (EI Act) to allow the Minister to make interim orders to mitigate the economic effects of the COVID-19 pandemic.<sup>1</sup> The Minister made several orders to amend the EI Act, one of which added a new temporary benefit, called the EI-ERB.<sup>2</sup> This temporary law was effective on March 15, 2020. Claimants who applied for regular benefits between March 15, 2020, and September 26, 2020, were considered to have applied under the EI-ERB.

[6] Issue 1: **Did the Appellant receive EI ERB benefits to which he was not entitled and if so, was there an overpayment incurred?**

[7] Yes.

[8] Upon his application it was determined, as per paragraph 5 above, the Appellant was eligible for the EI ERB. He received an initial \$2,000 advance payment once the claim was established. This payment was issued to him on April 6, 2020 (GD3-16). The

\$2,000 payment is an advance, equivalent to 4 weeks of EI Emergency Response Benefit payments to be paid later on the claim. The Appellant also received 5 weeks of EI ERB from March 22, 2020 to April 25, 2020 (GD3-35-42).

[9] Pursuant to section 153.11 of the Act, the maximum number of weeks a claimant could be paid EI ERB was 28 weeks. As a result, and to avoid causing claimants financial hardship, a procedural disentitlement was imposed to offset the initial \$2,000 advance payment. The disentitlement was imposed for two weeks at a time to prevent payments in order to apply the advanced payment to specific weeks of the EI ERB. The first two week disentitlement was imposed after the 12th week of paid benefits, and the second and final two-week disentitlement was imposed after the 17th week of paid benefits.

[10] A reconciliation of the EI ERB payments in the system automatically imposed a two week disentitlement following the 12th and 17th weeks of a claim. In this case the Appellant, having returned to work, was not eligible to receive benefits after having received \$500 per week from March 22, 2020 through to April 26, 2020. GD3-18

[11] The Appellant was not receiving benefits in the 12th week nor the 17th week, therefore the Commission was not able to offset the advance payment of \$2000 issued April 6, 2020.

[12] The Appellant argues that he was already on EI and did not request the advance payment the government just sent it to him (GD2-4).

[13] However, the Commission has shown that he was not on EI prior to his application for benefits March 21, 2020 and that due to the pandemic and temporary measures put in place, the only benefits payable to him from March 15, 2020 to September 26, 2020, were EI Emergency Response Benefits (EI ERB).

[14] At his hearing, the Appellant testified that he does not deny owing the \$2,000 but is adamant in his belief that the "government" did not do its due diligence when it failed to determine whether he needed or wanted the advance payment. There were no details of the clawback provisions given at the time the payment was made.

[15] Since the time of the claim and subsequent overpayment, he has become permanently disabled and would find repayment at this time very difficult financially.

[16] If he had established a claim for EI prior to March 15, 2020, he would not have been paid EI ERB and would not have been sent the advance payment of \$2000.00.

[17] Upon review, I can find no errors in the Commission's calculations.

[18] Because of the advance payment not being able to be recouped, the Appellant received four more weeks of EI-ERB than he was entitled to.

[19] I can see where the confusion comes from as the Commission states he was not eligible for the \$2000 advance payment. The \$2000.00 advance payment was issued to Canadians who requested and qualified for the EI Emergency Response Benefits and Canadian Emergency Response Benefits paid through Canada Revenue Agency in an effort to provide necessary funding at a very difficult time. In the claimant's case, he was able to return to work before the 12th and 17th weeks occurred where the monies would have been recovered.

[20] In fact he and all others who applied within the given timeframes and were eligible to receive benefits were eligible for the advance payment, The "problem" in this case is that the Commission was not able to recoup the advance as the Appellant had returned to work after just five weeks of eligibility for EI-ERB.

[21] This means that he is required to repay the equivalent of the advance payment of EI-ERB payments that he received, in the amount of \$2000.

[22] Regarding the Appellant's request that the overpayment be waived, this is a decision that can only be made by the Commission, the Tribunal has no jurisdiction in this matter.

[23] It is the Commission who holds the authority to reduce or write-off an overpayment but this is not automatic, application must be made to the Commission. One must outline the details that having such a debt would have and is having on the claimant's finances, stress related to the debt and what caused the debt.

[24] The Commission's decision regarding same is not appealable to the Tribunal. Only the Commission decision that caused the overpayment is subject to the reconsideration under section 112 of the Employment Insurance Act (the Act). The claimant's responsibility to repay an overpayment and the interest charged on an overpayment is not subject to reconsideration because these are not decisions of the Commission, and the claimant's liability is as a "debtor" as opposed to a "claimant". The claimant's recourse regarding these issues is to seek judicial review with the Federal Court of Canada.

[25] **This process must be initiated by the Appellant, he must apply to the Commission to have the debt written off,**

[26] I do not have the authority to reduce or write off the overpayment. The Tribunal does not have the jurisdiction to decide on matters relating to debt reduction or write off.

[27] The Appellant requests that the overpayment be erased. I agree with the stated position of the Commission and I note that the law states that their decision regarding writing off an amount owed can't be appealed to the Social Security Tribunal. This means that I cannot determine matters relating to a request for a write-off or reduction of an overpayment.

[28] The Federal Court of Canada has the jurisdiction to hear an appeal relating to a write-off issue. This means that if the Claimant wishes to pursue an appeal regarding her request to write off the overpayment, she needs to do so through the Federal Court of Canada.

[29] As a final matter, I cannot see any evidence in the file that the Commission advised the Appellant about the debt forgiveness program through Canada Revenue Agency (CRA). If immediate repayment of the overpayment pursuant to section 44 of the EI Act will cause him financial hardship, he can call the **Debt Management Call Centre of CRA at 1-866-864-5823**. He may be able to make alternative repayment arrangements based on his individual financial circumstances

[30] I understand the Appellant's frustrations and that he has paid into the employment insurance program that there should be consideration to the extenuating circumstances. However, while I sympathize with the Appellant I must consider the facts and apply the statutory requirements and cannot ignore, refashion, circumvent or rewrite the Act, even in the interest of compassion (**Canada (Attorney General) v. Knee, 2011 FCA 301**).

[31] Neither the Tribunal or the Commission have any discretion or authority to override clear statutory provisions and conditions imposed by the Act or the Regulations on the basis of fairness, compassion, financial or extenuating circumstances. .

## **Conclusion**

[32] The appeal is dismissed.

John Noonan  
Member, General Division – Employment Insurance Section