



Citation: *LK v Canada Employment Insurance Commission*, 2022 SST 923

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

## Decision

**Appellant:** L. K.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (456691) dated February 17, 2022  
(issued by Service Canada)

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**Tribunal member:** Teresa M. Day

**Type of hearing:** Teleconference

**Hearing date:** June 20, 2022

**Hearing participant:** Appellant

**Decision date:** June 21, 2022

**File number:** GE-22-1104

## Decision

[1] The appeal is dismissed.

[2] The Claimant has been overpaid \$2,000 in EI ERB<sup>1</sup> and must repay these funds.

## Overview

[3] The Claimant (who is the Appellant in this appeal) applied for regular Employment Insurance (EI) benefits on March 24, 2020<sup>2</sup>. The Respondent (Commission) approved his claim and, according to the Covid-19 pandemic emergency response measures in place at that time, it was processed as a claim for EI ERB<sup>3</sup>.

[4] On April 6, 2020, the Claimant received an initial payment of \$2,000. He also claimed and received EI ERB benefits for 4 weeks, from the week of March 22, 2020 to the week of April 18, 2020. He did not claim any further EI ERB benefits after that.

[5] On June 1, 2020, he returned to work full-time<sup>4</sup>.

[6] On November 27, 2021, he was issued a Notice of Debt for the \$2,000 initial payment<sup>5</sup>. The Commission explained that the initial amount of \$2,000 was an advance payment of 4 weeks of EI ERB benefits<sup>6</sup>. Since the Claimant did not claim EI ERB after April 18, 2020 and returned to work on June 1, 2020, the Commission was not able to recover the advance payment from subsequent weeks of EI ERB benefits paid to him. This meant he needed to repay the \$2,000.

[7] The Claimant asked the Commission to reconsider. He acknowledged receipt of the money, but thought he was receiving benefits from a different program. He told the

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<sup>1</sup> EI ERB refers to Employment Insurance Emergency Response Benefits. This the Canada Emergency Response Benefit (CERB) program that was administered through Service Canada to people who applied for EI benefits between March 15, 2020 and September 26, 2020. EI ERB was different from the CERB program administered through Canada Revenue Agency. Both were commonly referred to as "CERB", but they were different benefit programs, with different rights and obligations.

<sup>2</sup> His application is at GD3-4 to GD3-20.

<sup>3</sup> All claims for EI benefits that were established between March 15, 2020 and September 26, 2020 were automatically processed as claims for EI ERB.

<sup>4</sup> See ROE at GD3-43.

<sup>5</sup> See Notice of Debt at GD3-44.

<sup>6</sup> See GD3-45 to GD3-46, and GD3-50 to GD3-51.

Commission that he was off work until June 1, 2020, but only claimed 4 weeks of EI ERB (from March 22, 2020 to April 18, 2020). He argued he should be able to keep the \$2,000 advance payment to compensate him for the weeks he was off work and did not receive benefits<sup>7</sup>.

[8] The Commission maintained that he received \$2,000 in EI ERB benefits that he was not entitled to and must repay this money. The Claimant appealed that decision to the Social Security Tribunal (Tribunal).

## Issue

[9] Is the Claimant required to repay the \$2,000 EI ERB advance payment?

## Analysis

[10] In order to get emergency response benefits to Canadians more quickly, the Government of Canada amended the *Employment Insurance Act* (EI Act) to allow to the Commission to give claimants an advance payment of benefits<sup>8</sup>. The advance payment was the equivalent of 4 weeks of EI ERB, namely \$2,000<sup>9</sup>. Normally, the Commission would recover this advance by not paying out benefits for **two weeks** after the **12<sup>th</sup>** and **17<sup>th</sup>** weeks of the benefit period.

[11] The Commission can reconsider any claim for benefits within 36 months of benefits being paid<sup>10</sup>. If the Commission decides that a claimant received EI ERB which they were not entitled to, the Commission must calculate the amount of money that was overpaid and notify the claimant<sup>11</sup>.

### Issue 1: What kind of benefits was the Claimant eligible for?

[12] The Claimant could not receive regular EI benefits. He had to be paid EI ERB.

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<sup>7</sup> See Request for Reconsideration at GD3-53 to GD3-54 and reconsideration interview at GD3-55.

<sup>8</sup> This was authorized by section 153.7(1.1) of the *Employment Insurance Act* (EI Act).

<sup>9</sup> EI ERB was paid at a standard, flat rate of \$500 per week.

<sup>10</sup> See section 52 of the EI Act.

<sup>11</sup> See section 153.1303 (1) of the EI Act, which adapts section 52(2) of the EI Act when dealing with EI ERB.

[13] The Claimant says that he applied for regular EI benefits and should have been paid regular EI benefits. He says he did not ask for EI ERB, and didn't even know what it was. When he realized he was not getting regular EI benefits, he thought he was getting CERB under a totally different program. He thinks he should be paid regular EI benefits for the time he was unemployed.

[14] The law at the time the Claimant applied for EI benefits said that all claims for regular EI benefits established between March 15, 2020 and September 26, 2020 had to be processed as claims for EI ERB<sup>12</sup>.

[15] This made the payment of EI ERB mandatory for EI claims that started within that window. There was no provision in the law for the Claimant to choose between regular EI benefits and EI ERB. Nor did the law give the Commission any discretion to pay regular EI benefits instead of EI ERB.

[16] The Claimant applied for EI benefits on March 24, 2020. According to his application and his Record of Employment, his last day of work was March 20, 2020. He received benefits starting from the week of March 22, 2020<sup>13</sup>.

[17] There is no question his claim was established within the EI ERB window between March 15, 2020 and September 26, 2020. This means he had to be paid EI ERB.

[18] I find that the Claimant was not eligible for regular EI benefits on the application he filed on March 24, 2020. The Commission correctly determined he was eligible for EI ERB.

## **Issue 2: How many weeks of EI ERB was the Claimant entitled to?**

[19] The *Employment Insurance Act* (EI Act) says that benefits are payable to a claimant who is **eligible** for and makes a claim for the benefit<sup>14</sup>.

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<sup>12</sup> See sections 153.4 to 153.9 in Part VIII.4 of the EI Act.

<sup>13</sup> See payment history at GD3-17.

<sup>14</sup> See section 153.1 of the EI Act. To be paid benefits, claimants must make a claim for benefits by completing bi-weekly claimant reports

[20] Claimants who were eligible for EI ERB **and** who filed their weekly claim reports were **entitled** to be paid \$500 for each **week of unemployment they claimed**<sup>15</sup>.

[21] The evidence shows that the Claimant was eligible for **and** made claims for 4 weeks of unemployment between March 22, 2020 and April 18, 2020<sup>16</sup>. This means he was entitled to be paid EI ERB for these 4 weeks<sup>17</sup>.

[22] I therefore find he has proven he was entitled to the \$2,000 (4 x \$500) he received for the 4 weeks between March 22, 2020 and April 18, 2020.

[23] I further find that the Claimant was no longer entitled to receive EI ERB after he returned to work full-time on June 1, 2020.

[24] This leaves the 6-week period between the last week the Claimant was paid for and the week of his return to work, namely the weeks of:

April 19 – April 25, 2020

April 26 – May 2, 2020

May 3 – May 9, 2020

May 10 – May 16, 2020

May 17 – May 23, 2020

May 24 to May 30, 2020

[25] There is no question the Claimant was **eligible** for EI ERB during these 6 weeks. But he failed to file his claimant reports to claim EI ERB for these 6 weeks. This means he is not **entitled** to EI ERB for these weeks.

[26] The Claimant testified that he did not know he was required to file claimant reports. He was confused by the \$2,000 lump sum he received immediately after

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<sup>15</sup> See section 153.10(1) of EI Act.

<sup>16</sup> The Claimant's claim reports are at GD3-33 to GD3-40.

<sup>17</sup> The Commission agrees that the Claimant was entitled to EI ERB for these 4 weeks, and so do I.

applying for regular EI benefits and thought he was receiving a different kind of emergency benefit. He said that since he was unemployed between March 22, 2020 and June 1, 2020, it makes sense for him to keep the \$2,000 advance payment as an offset, especially since he would still be short what he should have received for the whole time he was unemployed<sup>18</sup>.

[27] Unfortunately for the Claimant, he cannot be given the offset he is asking for.

[28] This is because it is too late for him to file his claims for those 6 weeks of EI ERB now. The law gave claimants a deadline of December 2, 2020 to request any EI ERB they were owed<sup>19</sup>, and that deadline has passed. Although I am sympathetic to the Claimant's situation, I cannot disregard or refuse to apply the law<sup>20</sup>.

[29] This means the Claimant has only proven his **entitlement** to 4 weeks of EI ERB benefits.

## **Issue 2: How many weeks of EI ERB did the Claimant receive?**

[30] The Claimant received the \$2,000 advance payment of EI ERB, which means he received the equivalent of 4 weeks of EI ERB.

[31] He also received a \$500 EI ERB payment for **each** of the following 4 **weeks**<sup>21</sup>:

March 22 – March 28, 2020

March 29 – April 4, 2020

April 5 – April 11, 2020

April 12 – April 18, 2020

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<sup>18</sup> In this way, the Claimant could get 4 of the 6 weeks he failed to claim during his period of unemployment.

<sup>19</sup> See section 153.8(2) of the EI Act.

<sup>20</sup> *Granger v. Canada (CEIC)*, [1989] 1 S.C.R. 141

<sup>21</sup> See payment history at GD3-31.

[32] Because of the \$2,000 advance payment, the Claimant actually received \$4,000 – which is a total of 8 weeks of EI ERB benefits.

[33] This means he received \$2,000 – or 4 weeks – more than he was entitled to.

### **Issue 3: Does the Claimant have to repay the weeks of EI ERB he received but was not entitled to?**

[34] Yes, he does.

[35] The Commission says that normally, when a claimant receives the full allotment of EI ERB payments, they would end up repaying the advance by being disentitled to benefits for **two weeks** after the 12<sup>th</sup> week and 17<sup>th</sup> week, respectively. But the Claimant stopped filing his claimant reports after 4 weeks of EI ERB and returned to work 6 weeks after that, on June 1, 2020. This means he was not eligible for EI ERB by the 12<sup>th</sup> week or the 17<sup>th</sup> week, and the Commission did not have the chance to impose those disentitlements and recoup the money paid out as an advance. That is why a Notice of Debt for \$2,000 was issued to the Claimant.

[36] The Commission acknowledges the Claimant's situation, but says he must repay the EI ERB he received but was not entitled to.

[37] The Claimant received the \$2,000 advance payment and understands that it represents 4 weeks of EI ERB payments. He also admits to receiving the additional 4 weeks of EI ERB payments. But he maintains he should not have an overpayment on his claim.

[38] The Claimant testified that:

- The government has been harassing him and “screwing” him over in a variety of ways. He considers this situation with EI just another thing they’re “pulling” on him.
- He applied for regular EI benefits.

- When he got the \$2,000 initial lump sum, he realized he was not on regular EI benefits.
- He had no idea he was on EI ERB – he thought he was on (the other) CERB.
- He received a total of \$4,000. At \$500 per week, that represents 8 weeks of benefits. He was off work for approximately 8 weeks, so he didn't care that the payments stopped.
- He was never told how EI ERB works.
- He was never told that the \$2,000 was an advance payment that would be recouped down the road.
- He was never told he had to file claimant reports, or that there was a deadline of December 2, 2020 to do so.
- The government set things up to confuse him so that he “automatically disqualified” himself from the benefits he was entitled to.
- This is part of the “behaviour modification” campaign by the government to “screw people over by confusing them”.
- In his case, they brought confusion into his mind and now they are “shaking” him down for \$2,000.
- This is how the government gets away with paying people less than what they're entitled to.
- He is out 6 weeks of EI ERB.
- The government needs to make it right by allowing him to keep the \$2,000 advance payment as an offset against the benefits he should have received.



[39] I acknowledge the Claimant's frustration with the situation he now finds himself in. But I must agree with the Commission that he is liable for the \$2,000 overpayment of EI ERB he received.

[40] The law is clear: the Commission was authorized and directed to immediately pay \$2,000 out as an advance payment of EI ERB to any claimant who established a claim for EI benefits between March 15, 2020 and September 26, 2020.

[41] And EI ERB was only available to claimants who filed their claimant reports for weeks when they were unemployed.

[42] The Claimant started his claim for EI ERB on March 22, 2020, but only filed claimant reports to be paid for the 4 weeks from March 22, 2020 to April 18, 2020. He returned to work full-time on June 1, 2020 – which was 6 weeks after he stopped filing his claimant reports. He was fortunate that his period of unemployment was only 10 weeks. But since he was not unemployed during the two-weeks after the 12<sup>th</sup> week and 17<sup>th</sup> week of his potential benefit period, he was not entitled to the EI ERB advance payment he received for those weeks.

[43] And since he is out of time to claim EI ERB for the 6 weeks of unemployment that he did not file claimant reports for (April 18, 2020 to May 30, 2020), he is not entitled to anymore EI ERB benefits. This means he cannot offset the \$2,000 advance payment against the weeks of EI ERB he missed out on.

[44] It also means he must repay the \$2,000 advance payment he received.

[45] The Claimant is not at fault here. He is without blame in the creation of this overpayment. But I cannot accept his offset argument to eliminate the overpayment on his claim.

[46] I cannot change the law. The law simply does not empower the Tribunal to relieve the Claimant from liability for the overpayment<sup>22</sup>, and I cannot ignore the law,

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<sup>22</sup> Sections 43 and 44 of the *Employment Insurance Act* establish liability for an overpayment on a claimant.

even if the outcome seems harsh or unfair<sup>23</sup>. This means I cannot reduce or waive the \$2,000 overpayment on his claim.

[47] The Claimant argues he was confused about the EI ERB program and misinformed by the Commission about his rights and obligations. I am sympathetic to his argument, as I have heard it from many claimants in similar circumstances. However, as set out in paragraph 46 above, I cannot ignore the law or make an exception for the Claimant.

[48] The Claimant is left with 2 options:

a) He can ask the Commission to consider writing off the debt because of undue hardship<sup>24</sup>. If he doesn't like the Commission's response, he can file a Notice of Application for judicial review with the Federal Court of Canada<sup>25</sup>, but there is a 30-day timeframe for appealing to the Federal Court, and the Claimant may have to explain why his application is late.

*or*

b) He can telephone the Debt Management Call Centre at CRA at 1-866-864-5823 and ask about debt relief due to financial hardship<sup>26</sup>. He will need to present information about his financial circumstances for consideration.

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<sup>23</sup> *Granger v. Canada (CEIC)*, [1989] 1 S.C.R. 141

<sup>24</sup> Section 56 of the *Employment Insurance Regulations* gives the Commission broad powers to write off an overpayment when it would cause undue hardship for a claimant to repay it.

<sup>25</sup> It is up to the Claimant to investigate the process and take the required steps to appeal to the Federal Court. Application forms are usually available by calling the Courts Administration Service (1-613-992-4238) or by going to a local office of the Courts Administration Service. For a list of local Courts Administration Service offices, go to [www.cas-satj.gc.ca](http://www.cas-satj.gc.ca) and click on Registry Office.

<sup>26</sup> The telephone number is also found on the Notice of Debt and account statements sent to the Claimant for the overpayment.

## **Conclusion**

[49] The Claimant was eligible for EI ERB and not regular EI benefits.

[50] But he was not entitled to the \$2,000 advance payment of EI ERB he received. This is because he stopped filing his claimant reports after 4 weeks and returned to work 6 weeks after that, and was not unemployed during the weeks for which this lump sum payment was advanced.

[51] This means he must repay the \$2,000 advance payment of EI ERB he received.

[52] The appeal is dismissed.

**Teresa M. Day**

**Member, General Division – Employment Insurance Section**