



Citation: *NH v Canada Employment Insurance Commission*, 2022 SST 985

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

Decision

Appellant: N. H.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (467707) dated March 31, 2022 (issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Teleconference

Hearing date: July 5, 2022

Hearing participant: Appellant

Decision date: July 7, 2022

File number: GE-22-1542

Decision

[1] The appeal is dismissed. The Claimant is not entitled to any of the \$2,000 Emergency Response Benefits (ERB), advance and the Claimant must pay back benefits she received to which she was not entitled.

Overview

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

[3] In general, people who could have had a benefit period established for regular EI benefits between March 15, 2020, and September 26, 2020, got ERB instead.

[4] The Claimant applied for benefits on March 20, 2020, as she was quarantining for two weeks due to COVID-19 rules, and an ERB claim was started for her effective March 15, 2020.

[5] She collected benefits for the weeks of March 15 and March 22, 2020. Then she started working again. She also collected a week of ERB for the week of September 27, 2020, after she had left her job.

[6] On April 6, 2020, the Canada employment Insurance Commission (Commission) issued the \$2,000 ERB advance to the Claimant.

[7] The Commission says that normally, in the course of paying out ERB, they would withhold four weeks of ERB down the line, which is equal to \$2,000, in order to balance out the advance. However, the Commission says the Claimant did not collect ERB long enough for them to balance out the advance by withholding four weeks, so they say she has a \$2,000 overpayment because she needs to repay the advance.

[8] The Claimant says that while she did go back to work after her two weeks quarantining, she was working from home, and her hours and been cut significantly so she was making a lot less money. She says she would like have the overpayment erased, but is willing to pay back \$1,000.

Issue

[9] Does the Claimant have to repay the \$2,000?

Analysis

[10] I find the Claimant does have to pay back the \$2,000 ERB advance, as she is not entitled to any of it.

[11] The Commission says they paid the Claimant the \$2,000 advance and normally they would recoup the advance over the course of ERB payments by withholding four weeks of benefits; however, the Claimant did not collect ERB long enough for them to do that.¹

[12] The Commission submits the Claimant was paid ERB for three weeks March 15, 2020, March 22, 2020, and September 27, 2020, which represents \$1,500 (ERB pays \$500 a week) and is all the money she is entitled too.²

[13] The Commission submits that if the Claimant got to keep the \$2,000 advance then it would be as if she was paid seven weeks of ERB for a total of \$3,500, when she is only entitled to three weeks.

[14] The Claimant says that she was off work for two weeks in March 2020 as she had to quarantine due to COVID rules and then went back to work, working from home for approximately six weeks, before she went back to work at the office.

[15] In September 2020 she had left her job and so was collecting ERB due to being unemployed.

[16] The Claimant says she needed the money and was never trying to take advantage of the system as even when she was working from home and her hours were

¹ GD04-3

² GD04-3

cut significantly she still did not file any claims for ERB, as she was just barely able to pay her bills.

[17] The Claimant says she would like the entire overpayment erased, but as a compromise, she is willing to meet in the middle and pay back \$1,000 to the Commission.

[18] I find I agree with the Commission that the Claimant is not entitled to the \$2,000 advance and must pay it back.

[19] The law³ states that a “claimant” is someone who ceases working for reasons related to COVID-19 or someone that could have, but for the implementation of the ERB, on or after March 15, 2020, had a benefit period established with respect to regular EI benefits,

[20] I find that as the Claimant stopped working in March 2020 due to having to quarantine as a result of COVID-19 rules, she meets the definition of a “claimant” at the time her claim was established. As she was unemployed and could have established a claim for regular benefits in September 2020, but for ERB being in effect, she meets the definition of “claimant” at that time.

[21] The law⁴ states that if someone is a “claimant” because they stopped working due to COVID 19 or as they could have, but for the implementation of the ERB, on or after March 15, 2020, had a benefit period established with respect to regular EI benefits, then they are eligible for ERB if they have no work and no income from employment for at least seven consecutive days within the two week period of which they claimed the benefit.

[22] I find that this means for the two week period of March 15, 2020, to March 28, 2020, where the Claimant was not working, she was eligible for ERB benefits at the rate of \$500 a week for a total amount of \$1,000 over that two week period.

³ See section 153.5 of the *Employment Insurance Act (Act)*

⁴ Paragraph 153.9(1) of the Act

[23] I find this means that it was not until she left her job for the week of September 27, 2020, that she had another period of no income from employment for at least seven consecutive days in a two week claim period. So the only other week she was eligible for was the week of September 27, 2020 at the rate of \$500.

[24] I note that while she had left her job and was unemployed beyond the week of September 27, 2020, that week ends on October 3, 2020, and that was when the period to make an ERB claim ends according to the law.⁵ This means she could not have kept getting paid ERB beyond that week even though she was still unemployed at that point.

[25] I did consider the possibility of the alternative eligibility route, of a claimant being eligible for ERB if they do not have more than \$1,000 in income over a period of four weeks, but the Claimant says she was making approximately \$800 to \$1000 every two weeks, and her paystubs support as such, so she could not be eligible for extra weeks of ERB through that route.⁶

[26] I accept the Claimant was paid a \$2,000 advance representing four weeks of ERB payments as the Claimant says she paid taxes on that amount, supporting she got the payment, and the Commission's payment data says they advanced it to her.⁷

[27] So, since I have found the Claimant was only eligible for three weeks of ERB, which she was paid, I find she has to repay the advance,⁸ as if she got to keep it that would represent her getting paid seven weeks of ERB, four more weeks than she is entitled to.

[28] I note the Claimant has asked me to erase the overpayment entirely, or reduce it to \$1,000, but I cannot do that. She would have to ask the Commission to do that, as only the Commission can waive or reduce an overpayment outright.⁹

⁵ Section 153.8(1) of the *Employment Insurance Act*

⁶ GD03-28 to GD03-31

⁷ GD03-15

⁸ 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

⁹ See section 56 of the Employment Insurance Regulations which deals with writing off an overpayment <https://laws-lois.justice.gc.ca/eng/regulations/SOR-96-332/page-9.html#h-983617>

Conclusion

[29] The appeal is dismissed.

[30] The Claimant was only entitled to three weeks of ERB and she was paid those three weeks. This means she must repay the \$2,000 advance as it represents four weeks of ERB to which she was not entitled.

Gary Conrad

Member, General Division – Employment Insurance Section