



[TRANSLATION]

Citation: *MA v Canada Employment Insurance Commission*, 2022 SST 1089

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

Decision

Appellant: M. A.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (443787) dated May 2, 2022
(issued by Service Canada)

Tribunal member: Normand Morin
Type of hearing: Teleconference
Hearing date: September 29, 2022
Hearing participant: Appellant
Decision date: October 21, 2022
File number: GE-22-2444

Decision

[1] The appeal is dismissed.

[2] I find that the Canada Employment Insurance Commission (Commission) was justified in deciding to pay the Appellant Employment Insurance (EI) benefits under the EI Emergency Response Benefit (EI ERB) instead of EI regular benefits for the period from March 22, 2020, to June 13, 2020.¹ This means that the Appellant isn't entitled to EI regular benefits for the period for which he claimed this type of benefit.

[3] The Appellant has to pay back the amount of money he was overpaid as an advance payment of the EI ERB (overpayment).²

Overview

[4] From November 26, 2012, to March 18, 2020, inclusive, the Appellant worked as a purchasing agent and production planner ("Purchasing") for the employer X (X). He stopped working for it because of a shortage of work.

[5] On March 23, 2020, the Appellant made an initial claim for EI benefits (regular benefits).³ A benefit period was established effective March 22, 2020, so that he could receive the EI ERB.⁴

[6] On October 21, 2021, the Commission told him that, in spring 2020, he received an initial Canada Emergency Response Benefit (CERB) payment of \$2,000, saying that it was an advance payment of four weeks to get money to him as quickly as possible. It explained to him that the maximum amount he should have received was \$500 per week during the full period he was eligible for this type of benefit. The Commission told

¹ See Part VIII.4 of the *Employment Insurance Act* (Act) – Employment Insurance Emergency Response Benefit.

² See sections 43, 44, 52, 153.6(1)(a), 153.1301, and 153.1303(1) of the Act.

³ See GD3-3 to GD3-14.

⁴ See GD3-1 and GD4-1.

him that, according to information it had on file, he was paid more benefits than the amount for which he was eligible.⁵

[7] On May 2, 2022, after reconsideration, the Commission told him that a new decision had replaced the October 21, 2021, decision about the benefit overpayment he had to pay back ([translation] “advance payment – recovery of lump sum payment”). It explained to him that, according to that new decision, the overpayment he had to pay back was the \$2,000 advance payment issued to him on April 6, 2020. It told him that the outstanding overpayment balance of \$1,000 would be changed to \$2,000 to reflect the actual overpayment. The Commission said that he would receive a notice of debt and that he would have to pay back the benefits he wasn’t entitled to.⁶

[8] The Appellant says that he applied for EI benefits (regular benefits), not for the EI ERB or the CERB. He argues that, with regular benefits, he would have been paid more than what he got. He explains that the Commission is asking him to pay back the \$2,000 advance payment, that he received on top of the EI ERB, almost two years after he received it. He says that he finds it unreasonable that the Commission is asking him to pay back the money it says he owes. He says that he isn’t able to pay it back, given the family responsibilities he has to fulfill. He argues that the Commission could reimburse itself from the EI premiums he continues to pay. On July 14, 2022, the Appellant challenged the Commission’s reconsideration decision before the Tribunal. That decision is now being appealed to the Tribunal.

[9] In the case before me, the Appellant referred to the type of benefit paid to him as the CERB, but he actually got the EI ERB, given the information the Commission has provided about this. Even though the Commission also talks about CERB payments in its October 21, 2021, decision,⁷ it explains that the Appellant’s situation meets the definition of “claimant” set out in section 153.5(2)(b) of Part VIII.4 of the *Employment Insurance Act* (Act), which deals with the EI ERB.⁸ It says that the Appellant meets the

⁵ See GD3-20.

⁶ See GD3-28 and GD3-29.

⁷ See GD3-20.

⁸ See GD4-3.

eligibility conditions set out in section 153.9(1)(b) of the Act and that he could have had a benefit period established effective March 22, 2020.⁹ So, I will refer to what he received during the period in question as the EI ERB.

[10] I note that, even though the EI ERB and the CERB can be considered similar, they are two different types of benefits. When these two types of benefits were available, that is, from March 15, 2020, to October 3, 2020, inclusive, those normally entitled to EI benefits (regular or special benefits) got the EI ERB, and those not normally entitled to them got the CERB, if they qualified to receive them. The amount paid was the same in both cases: \$500 per week.

Issues

[11] I have to decide whether the Commission was justified in deciding to pay the Appellant the EI ERB instead of EI regular benefits for the period from March 22, 2020, to June 13, 2020.¹⁰

[12] I also have to decide whether the Appellant has to pay back the benefits he was overpaid.¹¹

Analysis

Payment of the EI ERB to the Appellant

[13] Because of COVID-19,¹² changes were made to the Act. For example, the EI ERB was introduced. People can become EI ERB claimants for different reasons. This type of benefit isn't just for those who have stopped working for reasons related to COVID-19.

[14] A claimant can get the EI ERB if, for example, their benefit period could have been established for EI regular benefits, among other things, during the period from

⁹ See GD4-3.

¹⁰ See Part VIII.4 of the Act.

¹¹ See sections 43, 44, 52, 153.6(1)(a), 153.1301, and 153.1303(1) of the Act.

¹² Coronavirus disease 2019.

March 15, 2020, to September 26, 2020, inclusive.¹³ However, for that period, no benefit period is to be established for EI regular benefits or special benefits (for example, sickness benefits).¹⁴

[15] The amount of the EI ERB for a week is \$500.¹⁵

[16] In this case, I find that the only type of benefit the Appellant could get after applying for benefits on March 23, 2020, was the EI ERB.

[17] The Commission argues as follows:

- a) The Appellant's situation meets the definition of "claimant," as indicated in section 153.5(2)(b) of Part VIII.4 of the Act. He could have had a benefit period established effective March 22, 2020. He also meets the eligibility conditions set out in section 153.9(1)(b) of the Act.¹⁶
- b) All claims for EI regular benefits or special benefits (for example, sickness benefits) with benefit periods starting between March 15, 2020, and September 27, 2020, are considered claims for the EI ERB, and the benefit rate is \$500 per week. This is a flat rate, and it can't be changed.¹⁷
- c) For that period, no benefit period is to be established for regular benefits or special benefits (for example, sickness benefits).¹⁸

[18] The Appellant's testimony and statements indicate the following:

- a) When the Appellant stopped working on March 18, 2020, he made an EI claim, on March 23, 2020, to get EI regular benefits, not the EI ERB or the CERB.¹⁹

¹³ See section 153.5(2)(b) of Part VIII.4 of the Act.

¹⁴ See sections 153.5(3)(a) and 153.8(5) of Part VIII.4 of the Act.

¹⁵ See section 153.10(1) of Part VIII.4 of the Act.

¹⁶ See GD4-3.

¹⁷ See GD4-3.

¹⁸ See sections 153.5(3)(a) and 153.8(5) of the Act. See also GD4-3.

¹⁹ See GD2-7, GD3-3 to GD3-14, and GD3-24.

- b) With regular benefits, he would have gotten more than \$500 per week, given his salary.²⁰
- c) The Appellant feels that the system penalized him, since the Commission paid him less in benefits than what he should have gotten.
- d) The Appellant has been paying EI premiums for years. He is entitled to regular benefits.

[19] In this case, even though the Appellant argues that he applied for EI regular benefits on March 23, 2020, he can't get such benefits given the provisions of the Act related to the COVID-19 pandemic.²¹

[20] It isn't disputed that the Appellant could have had a benefit period established for regular benefits effective March 22, 2020, which falls in the period from March 15, 2020, to September 26, 2020, inclusive. Because of this, the Appellant has to be considered a "claimant" for the purposes of the EI ERB.²²

[21] This means that the Appellant can't have a benefit period established for regular benefits.²³

[22] The Act gives the Appellant no choice. He can't get regular benefits.²⁴

[23] The amount the Appellant can be paid in EI ERB is \$500 per week (amount of payment).²⁵

[24] This amount can't be established using the weekly benefit rate specified in the part of the Act that sets out the rate for EI regular benefits,²⁶ even if the amount would be higher with that rate than with the EI ERB rate.

²⁰ See GD3-24.

²¹ See Part VIII.4 of the Act.

²² See section 153.5(2) of Part VIII.4 of the Act.

²³ See sections 153.5(3)(a) and 153.8(5) of Part VIII.4 of the Act.

²⁴ See sections 153.5(3)(a) and 153.8(5) of Part VIII.4 of the Act.

²⁵ See section 153.10(1) of Part VIII.4 of the Act.

²⁶ See section 14(1) of the Act.

[25] In short, what the Appellant is entitled to is the EI ERB, at the established rate of \$500 per week. The Appellant can't be entitled to regular benefits.

[26] I find that the Commission has shown that the Appellant wasn't entitled to EI regular benefits, since this type of benefit wasn't available during the period for which he claimed it.

Repaying benefits that were overpaid

[27] The Appellant has to pay back the amount of money he was overpaid in benefits.

[28] If a person has received EI benefits—including the EI ERB—they weren't entitled to or because [*sic*] they were disqualified from receiving those benefits, they have to repay those benefits or the resulting overpayment.²⁷

[29] The Commission has 36 months to reconsider a claim for benefits paid or payable to a claimant, including the EI ERB. The Commission has 72 months if, in its opinion, a false or misleading statement or representation has been made in connection with a claim.²⁸

[30] The Commission argues as follows:

- a) On April 6, 2020, the Appellant received an advance payment of \$2,000. This advance payment is the equivalent of four weeks of EI ERB to be paid later after the establishment of his claim for benefits under section 153.7(1.1) of the Act.²⁹
- b) He received benefits for 12 weeks, from March 22, 2020, to June 13, 2020, at a weekly rate of \$500, for a total of \$6,000. With the \$2,000 advance payment he received on April 6, 2020, which is equal to four weeks of benefits, this means that he received a total of \$8,000 in benefits.³⁰

²⁷ See sections 43, 44, and 153.6(1)(a) of the Act.

²⁸ See sections 52 and 153.6(1)(a) of the Act.

²⁹ See GD4-2.

³⁰ See GD4-2.

- c) Despite claiming benefits for 12 weeks, the Appellant received the equivalent of 16 weeks of benefits. The \$2,000 benefit overpayment is the advance payment he received. This overpayment is the equivalent of four weeks of benefits.³¹
- d) The benefit payment system was programmed to recover the full \$2,000 of the advance payment of benefits to a claimant in an instalment of \$1,000 at weeks 13 and 14 of the benefit period, followed by another instalment of \$1,000 at weeks 20 and 21. But the system wasn't able to recover the \$2,000 advance payment in the Appellant's case, since he claimed benefits for only 12 weeks.³²
- e) Although the Appellant says that he didn't get any explanation about the establishment of his debt or the change in debt amount to \$2,000, the Commission tried to talk to him during a telephone call. But he had doubts about the call's authenticity, which the Commission says is understandable. It explains that, in the circumstances, it had no choice but to send him only the decision letter related to the amount of money he has to repay.³³
- f) The sections of the Act that deal with liability to return benefits that were overpaid and overpayments apply to the EI ERB.³⁴ This means that the Appellant has to pay back the benefits he isn't entitled to.³⁵

[31] The Appellant, meanwhile, argues as follows:

- a) The Appellant doesn't dispute that, in April 2020, the Commission paid him \$2,000 as an advance on his EI ERB payments, on top of those he received for the period from March 22, 2020, to June 13, 2020.

³¹ See GD4-2 and GD4-3.

³² See GD4-2 and GD4-3.

³³ See GD4-2 and GD4-3.

³⁴ See sections 42(1), 42(2), 43, 44, 47, 50, 52, 153.6(1)(a), and 153.1303(1) of the Act. See also GD4-3.

³⁵ See sections 44, 52(2), 153.6(1)(a), and 153.1303(1) of the Act. See also GD4-3.

- b) On October 8, 2021 (October 8, 2021, notice of debt), he was initially asked to pay back \$1,000. This was about 18 months after he was paid \$2,000 (advance payment).
- c) Early in the morning on April 22, 2022, he got a call from a private number. During that call, he was asked, among other things, to provide his social insurance number. He then doubted that it might be a call from the Commission.
- d) On May 2, 2022, about two years after it started paying him the EI ERB, including the \$2,000 advance payment, the Commission told him that he now had to pay back \$2,000 instead of \$1,000, and it gave him no convincing explanation for this.³⁶
- e) The Appellant says that he finds it unreasonable that the Commission is asking him to pay back the amount of money he was overpaid in benefits (advance payment).³⁷
- f) The Appellant says that he doesn't have the money to pay back the amount he owes, given his family responsibilities. He doesn't want to go into debt paying this amount, especially since the Commission paid him less in EI ERB than what he would have gotten in EI regular benefits.
- g) In his opinion, the Commission could reimburse itself from the EI premiums he pays through his job.

[32] Even though the Appellant disagrees that he has to repay the \$2,000 EI ERB advance payment he received, the fact is that he has to pay it back.

³⁶ See GD2-7, GD3-28, and GD3-29.

³⁷ See GD3-24.

[33] The Appellant received this advance payment in addition to receiving benefits for all 12 weeks for which he claimed benefits. This means that the \$2,000 advance payment is an overpayment that has to be repaid.

[34] According to the Commission's explanations, the advance payment was supposed to be recovered as of the Appellant's 13th week of benefits. But it could not be recovered, since the Appellant received the EI ERB for 12 weeks.

[35] On this point, the Commission specifies that, for this reason, the advance payment could not be repaid in a first instalment of \$1,000 at weeks 13 and 14 of the Appellant's benefit period, followed by a second instalment of \$1,000 in his 20th and 21st weeks of benefits.³⁸

[36] The Federal Court of Appeal (Court) tells us that the amount of an overpayment specified in a notice of debt becomes repayable on the date of the notification of the amount of the overpayment and that a person who receives an overpayment of benefits is required to return the amount of the overpayment without delay.³⁹

[37] Even though many months passed before the Commission told the Appellant that he had to pay back the EI ERB advance payment he had received, this doesn't change the fact that he was overpaid.

[38] But I am of the view that the Commission should have acted quickly to inform the Appellant of its decision about this.

[39] The Appellant's situation can't relieve him from his liability to repay the benefit overpayment that he owes.

³⁸ See GD4-2.

³⁹ The Federal Court of Appeal (Court) established this principle in *Braga*, 2009 FCA 167. See also sections 43, 44, 52, and 153.6(1)(a) of the Act.

[40] While I sympathize with the Appellant's case, the Court tells us that adjudicators, including the Tribunal, aren't permitted to rewrite the Act or to interpret it in a manner that is contrary to its plain meaning.⁴⁰

[41] I find that the Commission is justified in asking the Appellant to pay back the overpayment. It is up to the Commission to consider how the Appellant should pay back the amount of money it says he owes.

Conclusion

[42] I find that the Commission was justified in deciding to pay the Appellant EI benefits at the EI ERB weekly rate. The Appellant isn't entitled to EI regular benefits for the period from March 22, 2020, to June 13, 2020.

[43] The Appellant has to pay back the amount of money that he was overpaid in benefits for the period in question, and that the Commission says he owes, in the manner determined by the Commission.

[44] This means the appeal is dismissed.

Normand Morin
Member, General Division – Employment Insurance Section

⁴⁰ The Court established this principle in *Knee*, 2011 FCA 301.