



Citation: *KH v Canada Employment Insurance Commission*, 2022 SST 1037

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

Decision

Appellant:	K. H.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (441600) dated July 5, 2022 (issued by Service Canada)
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Tribunal member:	Angela Ryan Bourgeois
Type of hearing:	Teleconference
Hearing date:	October 3, 2022
Hearing participant:	Appellant
Decision date:	October 4, 2022
File number:	GE-22-2536

Decision

[1] I am allowing the appeal in part.

[2] The Appellant (Claimant) is entitled to one week of Employment Insurance Emergency Response Benefits (EI ERB).

[3] This means she was overpaid \$1,500 (not \$2,000) in EI ERB benefits. She has to repay this money.

Overview

[4] The Claimant stopped working because of COVID-19. She applied for Employment Insurance (EI) regular benefits on April 9, 2020.¹

[5] The Canada Employment Insurance Commission (Commission) processed her application as a claim for EI ERB. It did this because the *Employment Insurance Act* had been changed so that all claims for EI regular benefits made between March 15, 2020, and September 26, 2020, were processed as claims for EI ERB benefits.² EI regular benefits were not available then.³

[6] Another change to the *Employment Insurance Act* let the Commission pay benefits in advance.

[7] On April 13, 2020, the Commission paid the Claimant \$2,000 in advance EI ERB benefits.⁴

[8] The Claimant returned to work on April 20, 2020.⁵ She didn't receive any other EI ERB benefits.

¹ See application form on page GD3-3. All page numbers are from the appeal file.

² See section 153.8(5) of the *Employment Insurance Act*.

³ Throughout the appeal file you'll see references to Canada Response Emergency Benefit and CERB. This is because the Government of Canada refers to the emergency response benefits provided under both the *Canada Emergency Response Benefit Act* and the *Employment Insurance Act* as "Canada Response Emergency Benefit" and "CERB." This decision deals with the emergency response benefits paid under the *Employment Insurance Act* (EI ERB), so that is what you'll see in this decision.

⁴ See ERB details on page GD3-15.

⁵ See Supplementary Record of Claim on page GD3-16 and ERB details on page GD3-15.

[9] The Commission wants her to repay the \$2,000.

[10] The Claimant argues that she shouldn't have to repay the full \$2,000 because she was laid off because of COVID-19, and was the sole earner in her household. She says she met the EI criteria. She says not paying her EI or EI ERB benefits while she was the sole supporter of her family unit is punitive, unfair, and against the spirit of the Federal pandemic relief program.

[11] The Commission says the Claimant cannot keep any of the advance payment. It says that based on her income, she wasn't entitled to receive any EI ERB benefits.

Issue

[12] Is the Claimant entitled to EI ERB benefits?

[13] Does the Claimant have to repay EI ERB benefits?

Analysis

[14] This appeal is about whether the Claimant can keep some of the EI ERB benefits the Commission paid her.

[15] In March 2020, in response to the COVID-19 pandemic, the Government of Canada made some temporary changes to the *Employment Insurance Act*. The changes meant:

- Regular Employment Insurance benefits were not available between March 15, 2020, and September 26, 2020.⁶
- All applications for EI regular benefits were processed as a claim for EI ERB benefits.
- Everyone got the same weekly benefit rate (\$500).⁷

⁶ See section 153.8(5) of the *Employment Insurance Act*.

⁷ See section 153.10(1) of the *Employment Insurance Act*.

- The Commission was allowed to pay benefits in advance.⁸

[16] So when someone applied for EI regular benefits, like the Claimant did, they received EI ERB benefits, not EI regular benefits, at the weekly rate of \$500.

[17] As soon as a claimant established a claim, the Commission paid them four weeks of benefits (4 x \$500 = \$2,000). This was an advance payment.

[18] The Commission says the Claimant wasn't entitled to any EI ERB benefits because she earned more than \$1,000 over a period of four weeks.⁹

Is the Claimant entitled to EI ERB benefits?

[19] Yes. The Claimant is entitled to one week of EI ERB benefits (\$500). She has to repay the other \$1,500 of EI ERB benefits she received.

[20] A claimant is eligible for EI ERB benefits if they meet all of the following criteria:

- a) They reside in Canada
- b) They are at least 15 years old
- c) They have insurable earnings of at least \$5,000 in 2019
- d) They stopped working for at least seven consecutive days within the two-week period in which they claim the benefit
- e) They have no income from employment or self-employment in respect of the consecutive days on which they cease working.¹⁰

[21] There is no dispute that the Claimant meets criteria a, b and c.

⁸ See section 153.7(1.1) of the *Employment Insurance Act*.

⁹ See page GD4-5.

¹⁰ This is set out in section 153.9(1) of the *Employment Insurance Act*.

[22] The Commission seems to suggest that she doesn't meet criteria d and e. I don't agree.

[23] The evidence shows that the Claimant stopped working for at least seven consecutive days within a two-week period, from April 12, 2020, to April 19, 2020, inclusive.¹¹ This means she meets criterion d.

[24] The Claimant had no earnings in respect of the seven days she didn't work. She confirmed at the hearing that she wasn't paid for Easter Monday (April 13, 2020). This is supported by the earnings shown in the Commission's Supplementary Record of Claim, which it reports came from the Claimant's pay stubs.¹² This means the Claimant meets criterion e.

[25] The Claimant may have received a pay cheque from her previous job during this period, but those earnings were for work she had done previously.¹³ The earnings were not *in respect* of the seven days she didn't work.

[26] As the Claimant meets all the criteria, she is eligible for EI ERB benefits.

[27] The Commission says the Claimant isn't eligible because her income exceeded \$1,000 over a period of four weeks as set out in section 153.9(4) of the *Employment Insurance Act*.

[28] It is true that she earned more than \$1,000 over a four-week period. But section 153.9(4) is the exception to the rule that a claimant can have no income. It is there to help claimants who continued to work but had significantly reduced earnings qualify for EI ERB benefits. This provision is meant to broaden EI ERB eligibility, not restrict it.

¹¹ The Claimant's last day of work was April 9, 2020. Her benefit period started on April 12, 2020.

¹² See page GD3-26.

¹³ See record of employment on page GD3-13.

[29] The Claimant isn't entitled to EI ERB benefits after April 20, 2020, because she no longer met the eligibility requirements of paragraphs d and e, and she doesn't qualify for the exception in section 153.9(4). She doesn't dispute this.

– **She has to repay \$1,500 in EI ERB benefits.**

[30] The Claimant is entitled to \$500 (one week) of EI ERB benefits. The Commission paid her \$2,000 (four weeks) of EI ERB benefits.

[31] The law says that when a claimant receives more EI ERB benefits than they are entitled to receive, they have to repay the overpayment.¹⁴

[32] So, the Claimant must repay the overpayment of \$1,500 (three weeks).

[33] I understand the Claimant's arguments, but they don't change that she was eligible for only one week of EI ERB benefits, that she was overpaid EI ERB benefits, or that overpayments must be repaid.

Conclusion

[34] The Claimant is eligible for one week of EI ERB benefits in the total amount of \$500 for the week of April 12, 2020.

[35] The Claimant was overpaid \$1,500 in EI ERB benefits.

[36] The Claimant has to repay the overpayment of \$1,500.

[37] The Claimant's appeal is allowed in part.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section

¹⁴ The requirement to repay an overpayment of EI ERB benefits is set out in s 153.6(1)(a) and s 153.1301 of the *Employment Insurance Act*, which adapts section 44 of the *Employment Insurance Act*.