



Citation: *MR v Canada Employment Insurance Commission*, 2022 SST 1047

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

## **Decision**

**Appellant:** M. R.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (447103) dated June 23, 2022 (issued by Service Canada)

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**Tribunal member:** Angela Ryan Bourgeois

**Type of hearing:** Teleconference

**Hearing date:** October 5, 2022

**Hearing participant:** Appellant

**Decision date:** October 6, 2022

**File number:** GE-22-2241

## Decision

[1] I am dismissing the appeal.

[2] The Appellant (Claimant) was overpaid \$2,000 in Employment Insurance Emergency Response Benefits (EI ERB). He must repay the overpayment.<sup>1</sup>

## Overview

[3] This appeal is about whether the Claimant was overpaid benefits, and if so, whether he has to repay them.

[4] The Claimant stopped working on March 20, 2020. He applied for Employment Insurance (EI) regular benefits on May 8, 2020.

[5] The Canada Employment Insurance Commission (Commission) considered his application as a claim for EI ERB benefits, not EI regular benefits. This was due to the temporary changes the government had made to the *Employment Insurance Act*.

[6] The Commission paid the Claimant \$3,500 in EI ERB benefits. It says he was only entitled to \$1,500. It wants him to repay \$2,000.

[7] The Claimant acknowledges that he claimed benefits for three weeks but says he didn't ask for the advance payment of \$2,000, and can't even be sure that he received it.

## Issues

[8] Was the Claimant overpaid EI ERB benefits?

[9] If so, does he have to repay the overpayment?

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<sup>1</sup> 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.

## Analysis

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

- EI regular benefits were not available between March 15, 2020, and September 26, 2020.<sup>2</sup>
- The Commission processed claims for EI regular benefits as a claim for EI ERB benefits.
- Everyone was paid the same weekly benefit rate of \$500.<sup>3</sup>
- The Commission was allowed to pay benefits in advance.<sup>4</sup>

[11] 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.

[12] Further, when a claim for EI ERB benefits was established, the Commission immediately paid the claimant four weeks of benefits in advance.

[13] The Commission planned to recoup the advance payment by not paying benefits for weeks 13, 14, 18 and 19.

### – The Claimant was overpaid EI ERB benefits

[14] The Claimant was paid more weeks of EI ERB benefits than he was entitled to receive.

[15] The evidence shows that:

- On June 10, 2020, the Commission paid the Claimant three weeks of EI ERB for the weeks of May 10, 17, and 24, 2020.<sup>5</sup>

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<sup>2</sup> See section 153.8(5) of the *Employment Insurance Act*.

<sup>3</sup> See section 153.10(1) of the *Employment Insurance Act*.

<sup>4</sup> See section 153.7(1.1) of the *Employment Insurance Act*.

<sup>5</sup> See Attestation Certificate on page GD3-18 of the appeal file.

- On June 15, 2020, the Commission paid the Claimant \$2,000 in advance EI ERB benefits for four additional weeks.<sup>6</sup>

[16] I accept that the Claimant was entitled to three weeks of EI ERB benefits. This is what the Commission says, and the Claimant agreed that he claimed EI ERB benefits for three weeks.

[17] I see no evidence in the file that would allow me to find that the Claimant was entitled to more than three weeks of EI ERB benefits. Neither party provided evidence of the Claimant's earnings.

[18] The Commission paid the Claimant seven weeks of EI ERB benefits (7 weeks x \$500 per week = \$3,500).<sup>7</sup>

[19] He was only entitled to three weeks of EI ERB benefits (3 weeks x \$500 per week = \$1,500).

[20] So the Commission paid him four weeks too many of EI ERB benefits.

[21] This means he was overpaid \$2,000 (4 weeks x \$500 per week = \$2,000).

– **The Claimant has to repay \$2,000**

[22] The law says that when a claimant receives more EI ERB benefits than they are entitled to receive, they have to repay the overpayment.<sup>8</sup>

[23] I know the Claimant didn't ask for the advance payment, but that doesn't change the fact that he was paid more benefits than he was entitled to receive.

[24] So, the Claimant must repay the overpayment of \$2,000.

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<sup>6</sup> See ERB details on page GD3-17 of the appeal file.

<sup>7</sup> Three weeks for which he submitted claims and four weeks as an advance payment.

<sup>8</sup> 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*.

– **The Claimant can't recall receiving the money**

[25] I understand that the Claimant can't recall whether he received the \$2,000. But the evidence before me is enough to prove that it is more likely than not that the Commission paid him the advance payment of \$2,000 on June 15, 2020.<sup>9</sup> The Claimant's statement that he doesn't know if the money was paid isn't enough to call this into question.

– **Other considerations**

[26] Although I don't have the power to reduce or cancel the Claimant's overpayment, the Claimant still has options.<sup>10</sup>

[27] He could ask the Commission to forgive all or part of his overpayment due to financial hardship.<sup>11</sup>

[28] He could also talk to Canada Revenue Agency (1-866-864-5823) about repayment options.

[29] Also, although the time to file EI ERB claims has ended, the Claimant might ask the Commission to consider if he could be entitled to more weeks of EI ERB benefits. For example, maybe his earnings were below the threshold for more than three weeks or maybe his benefit period could be antedated.

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<sup>9</sup> See page GD3-17 of the appeal file. The Claimant hasn't offered any evidence to show that he didn't receive the payments. He hasn't provided bank statements showing that the money wasn't deposited to his account.

<sup>10</sup> Write-off decisions are made by the Commission. Appeals of write-off decisions are not reviewable by the Tribunal. See section 153.1307 of the *Employment Insurance Act*, which adapts section 112.1 of the *Employment Insurance Act*.

<sup>11</sup> See section 153.1306 of the *Employment Insurance Act*.

## **Conclusion**

[30] The Claimant was overpaid \$2,000 in EI ERB benefits. He has to repay it.

[31] The appeal is dismissed.

Angela Ryan Bourgeois  
Member, General Division – Employment Insurance Section