



Citation: *TN v Canada Employment Insurance Commission*, 2022 SST 1108

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

## Decision

**Appellant:** T. N.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (446016) dated May 25, 2022 (issued by Service Canada)

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**Tribunal member:** Linda Bell

**Type of hearing:** Teleconference and Questions and answers

**Hearing date:** August 16, 2022

**Decision date:** September 9, 2022

**File number:** GE-22-2176

## Decision

[1] I am dismissing the appeal. I disagree with the Claimant.

[2] The Commission paid the Claimant \$2,000 for the Employment Insurance Emergency Response Benefit (EI-ERB) they were not entitled to receive.

[3] The law says the Claimant is responsible (liable) to repay the overpayment of benefits. This means I am not reducing or writing off the overpayment.

## Overview

[4] The Claimant established a claim for the EI-ERB.<sup>1</sup> They received a \$2,000 advance payment issued on April 6, 2020.

[5] The Government of Canada issued the \$2,000 as an advance payment to ensure Canadians received money as quickly as possible during the global COVID-19 pandemic.<sup>2</sup> This payment is equal to 4 weeks of the EI-ERB (4 x \$500 = \$2,000).

[6] The Claimant submitted claims requesting payment for the EI-ERB for the weeks of March 29, 2020, to June 6, 2020. The Claimant stopped requesting payment of the EI-ERB after returning to full-time work on June 8, 2020.

[7] The Commission determined that the Claimant received payment for 14 weeks of the EI-ERB but only proved entitlement to 10 weeks, from March 29, 2020, to June 6, 2020. So, they were paid \$2,000 for 4 weeks of the EI-ERB they were not entitled to receive.

[8] The Claimant disagrees with the Commission. They appeals to the Social Security Tribunal (Tribunal). The Claimant says they were unaware the \$2,000 payment was an advance and have already paid income tax on the payment. They argue the

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<sup>1</sup> In March 2020, the government made amendments to the *Act*, in response to the COVID-19 pandemic.<sup>1</sup> The Minister made several orders to amend the *Act* that were effective March 15, 2020. One of the orders added a new temporary benefit called the EI-ERB.

<sup>2</sup> Subsection 153.7(1.1) of the *Act* allowed the Commission to pay the EI-ERB in advance of the customary time for paying it.

Commission should have collected the overpayment within one year not 15 months later. They say the overpayment causes them financial hardship so they ask it to be “null or void.”

## **Matters I must consider first**

### **Adjournment**

[9] The Claimant didn't attend the August 16, 2022 hearing. The Tribunal attempted to contact the Claimant's via telephone and spoke with their brother. The brother indicated the Claimant didn't know about the hearing and she was not available because she was at work.

[10] The Tribunal told the brother that the Claimant might submit their reasons for missing the hearing in writing. When the Claimant failed to make submissions, I adjourned the matter to be heard via written questions and answers. I provided the Claimant an opportunity to reply by August 12, 2022. The Claimant failed to respond so I will proceed with determining the merits of this appeal.

### **Issues**

[11] Does the Commission have the authority to determine an overpayment of the EI-ERB?

[12] Did the Commission review the EI-ERB claims within the required time limit?

[13] Is the Claimant required to repay the overpayment of EI benefits?

### **Analysis**

#### **Authority to determine an overpayment of the EI-ERB**

[14] I find the Commission has the authority to determine an overpayment of the EI-ERB.

[15] The law says that if the Commission determines that a claimant has received payment of the EI-ERB for which they are not eligible, it must calculate the overpayment amount and notify the claimant.<sup>3</sup>

[16] The Claimant doesn't dispute that on October 21, 2021, the Commission notified them of the \$2,000 overpayment. The Claimant also doesn't dispute receiving the \$2,000 payment.

[17] I recognize that the Claimant says they didn't know the \$2,000 was an advance payment. But that doesn't change the fact that they were entitled to 10 weeks of the EI-ERB but received payment for 14 weeks, as set out above.

### **The time limit during which the Commission may review claims**

[18] The law states that the Commission has 36 months after paying benefits, to reconsider the claim.<sup>4</sup> This period is extended to 72 months in cases where, in the opinion of the Commission, a false or misleading statement or representation has been made in connection to a claim.<sup>5</sup>

[19] The Federal Court of Appeal recognizes that the Commission can't review changes to claims at the exact time they happen. It is precisely for that reason that the Act allows the Commission time to rescind or amend any decision given in any particular claim for EI benefits.<sup>6</sup>

[20] The Claimant doesn't dispute that they received \$7,000 for the EI-ERB, which is equal to 14 weeks of benefits (14 x \$500 = \$7,000). Nor do they dispute that they returned to work full-time on June 8, 2020. This means the Claimant was only entitled to \$5,000 of the EI-ERB, for the ten weeks from March 29, 2020, to June 6, 2020 (10 x \$500 = \$5,000).

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<sup>3</sup> See section 153.1303 (2) of the Act.

<sup>4</sup> Section 52 of the Act.

<sup>5</sup> See subsection 52(5) of the Act.

<sup>6</sup> *Canada (Attorney General) v Landry*, A-532-98.

[21] The Claimant says they shouldn't have to repay the overpayment because it stems from payments they received 15 months ago. They also say they have already paid income tax on these benefits.

[22] Even though the Claimant may not have known of the advance payment, or they paid income tax on the benefits they received, it doesn't change the fact they were paid 4 weeks of the EI-ERB they were not entitled to receive.

[23] I find that the Commission conducted its assessment in accordance with the law. This means the \$2,000 overpayment is valid. The Commission issued the \$2000 EI-ERB advance payment to the Claimant on April 6, 2020, which is 18 months from the date the Commission notified the Claimant of the \$2,000 overpayment decision. So, the Commission's assessment was conducted within the required time limit.

## **Repayment of an overpayment?**

[24] The law states that a claimant is responsible (liable) to repay any EI-ERB that they are not entitled to receive.<sup>7</sup>

[25] This is truly an unfortunate situation. I recognize that the Commission's delay when reviewing the advance payment of the EI-ERB has created a large overpayment, additional stress, and financial hardship for the Claimant.

[26] The Commission conducted its assessment in accordance with the law so the overpayment is valid. I don't have any authority to waive the overpayment.<sup>8</sup> That authority rests with the Commission. I also don't have any authority to order the Commission to waive or write off an overpayment.

[27] I sympathize with the Claimant given the circumstances they presented. But, my decision is not based on fairness or financial hardship. Instead, my decision is based on the facts before me and the application of the law. There are no exceptions and no

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<sup>7</sup> See section 44 of the Act.

<sup>8</sup> See section 112.1 and 113 of the Act.

room for discretion. I can't interpret or rewrite the Act in a manner that is contrary to its plain meaning, even in the interest of compassion.<sup>9</sup>

## **Conclusion**

[28] The appeal is dismissed.

Linda Bell  
Member, General Division – Employment Insurance Section

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<sup>9</sup> *Canada (Attorney General) v Knee*, 2011 FCA 301.