



Citation: *RK v Canada Employment Insurance Commission*, 2022 SST 1208

Social Security Tribunal of Canada Appeal Division

Decision

Applicant: R. K.

Respondent: Canada Employment Insurance Commission
Representative: Anick Dumoulin

Decision under appeal: General Division decision dated October 14, 2022
(GE-22-1550)

Tribunal member: Shirley Netten

Decision date: November 7, 2022
File number: AD-22-766

Decision

[1] Leave (permission) to appeal is granted and the appeal is allowed. R. K. (Claimant) is entitled to the employment insurance emergency response benefits (EI ERB) he received in 2020. This means that the notice of debt of \$7,700 is cancelled.

Background

[2] The Claimant received the EI ERB from March 15 to September 19, 2020. Service Canada¹ later decided that the Claimant was not entitled to most of those benefits because he was not available for work from May to August, and September to December, 2020. The Claimant's appeal to the General Division was dismissed.

[3] The Claimant asked for permission to appeal to the Appeal Division.

The parties agree on the outcome of the appeal

[4] The Canada Employment Insurance Commission concedes that the General Division made a legal error by applying sections 18 and 153.161 of the *Employment Insurance Act* (Act) to his claim. The parties agree that the Claimant was entitled to the EI ERB he received.

I accept the proposed outcome

[5] I agree that the General Division made an error of law. There is a special part of the Act for the EI ERB.² Only certain sections in the rest of the Act apply to the EI ERB, and those sections do not include section 18 or section 153.161.³

[6] The Claimant did not have to prove his availability under section 18 of the Act. There was no basis for the disentitlement, and so the Claimant can keep the EI ERB that he received.

¹ Service Canada acts on behalf of the Canada Employment Insurance Commission.

² It is Part VIII.4, and includes sections 153.5 to 153.14.

³ See section 153.6 of the Act.

[7] Even though the General Division confirmed a disentitlement up to December 31, 2020 (after the end of the EI ERB), the Claimant did not claim or receive any benefits between September 19 and December 31, 2020.

Conclusion

[8] Permission to appeal is granted and the appeal is allowed. The General Division made an error of law. I am replacing the General Division decision with a decision that the Claimant was not disentitled from receiving the EI ERB in 2020. He can keep the EI ERB he received.

Shirley Netten
Member, Appeal Division