



Citation: *JN v Canada Employment Insurance Commission*, 2022 SST 1261

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

Decision

Appellant: J. N.
Representative: T. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (452784) dated August 4, 2022
(issued by Service Canada)

Tribunal member: Mark Leonard

Type of hearing: Teleconference

Hearing date: September 12, 2022

Hearing participants: Appellant's representative

Decision date: September 21, 2022

File number: GE-22-2737

Decision

[1] The appeal is dismissed.

[2] The Appellant (Claimant) is not eligible for the \$2,000.00 in advance EI benefits paid to her because no claims for weeks of unemployment were submitted by the legislated deadline to account for the advance.

Overview

[3] The Claimant established an initial claim for EI-ERB effective May 17, 2020. This entitled the Claimant to EI-ERB for the period from the establishment of her claim until September 26, 2020. During that period the Claimant was required to submit biweekly reports (claims) confirming she remained unemployed in order to receive benefits.

[4] The Canada Employment Insurance Commission (Commission) says that it made an initial payment (advance) to the Claimant of \$2,000.00 in May 2020, consistent with the provisions of the Act. Subsequently, it disentitled the Claimant because it says that she never filed any biweekly reports for weeks of unemployment to account for the EI benefits they paid her. This resulted in a \$2,000.00 overpayment subject to recovery.

[5] The Claimant's Representative says that the Claimant was incapable of making decisions due to early-onset Alzheimer's. He says that he was unaware of the Claimant's application and further he did not have power of attorney for her financial affairs until much later when it was too late to make the reports. He says that the Claimant would have been eligible for the benefits if she had made her reports. Since she was incapable, she should not be held responsible to repay them. He is asking the Tribunal to cancel the overpayment on compassionate grounds.

[6] I must decide if the Claimant was entitled to the advanced EI-ERB benefits.

Issues

[7] Is the Claimant entitled to the advanced EI-ERB benefits paid?

[8] Can the overpayment be written off or reduced?

Analysis

[9] In March 2020, the government changed the EI Act to allow the Minister to make interim orders to mitigate the effects of the Covid-19 pandemic.¹

[10] One of the orders added a temporary benefit known as EI-ERB. This benefit became available March 15, 2020. Claimants who made an initial claim for benefits between March 15, 2020, and September 26, 2020, were deemed to have applied for EI-ERB. The benefit period for these benefits was from March 15, 2020, to October 3, 2020. After this benefit period, claimants were either required to reapply or had new EI claims automatically established by the Commission.

[11] In order to receive the maximum \$500.00 per week in benefits during that benefit period, claimants were required to complete their usual biweekly reports confirming their unemployment.² The legislation also explicitly requires that claimants make all claims for EI-ERB no later than December 2, 2020.³

Issue 1: Is the Claimant entitled to the EI-ERB benefits paid?

[12] The Claimant is not eligible for the \$2,000.00 advanced payment because she did not submit biweekly reports for weeks of unemployment that fell within the benefit period.

[13] The Claimant made her initial claim in May 2020 and was deemed effective May 17, 2020.

[14] The Commission issued an immediately initial advance of \$2,000.00. This advance covers four weeks of benefits that must be accounted for with claims for weeks of unemployment.

[15] The Commission submits that the Claimant did not submit any reports to claim weeks of unemployment until her Representative with power of attorney made another

¹ See Covid-19 Emergency Response Act added Section 153.3 to the *Employment Insurance Act*.

² See Section 153.8(1) of the *Employment Insurance Act*.

³ See Section 152.8(2) of the *Employment Insurance Act*.

initial claim on her behalf effective October 8, 2020. When the Representative submitted the new claim, the Commission applied its policy of automatically reactivating her previous claim.⁴ It then applied the *Regulation* provisions allowing it to pay eligible benefits related to that claim.⁵

[16] Since the Claimant had made no previous reports within the previous four weeks, the Commission decided that it could only pay one week's worth of benefits related to the May 2020 claim (September 27, 2020, to October 3, 2020). It issued payment of \$500.00 to the Claimant. It says that no other biweekly reports were submitted.

[17] The Commission asserts that since the Claimant did not submit reports to account for the four weeks of advanced benefits, the Claimant is not entitled to the benefits paid to her. Consequently, it established an overpayment of \$2,000.00 subject to recovery.

[18] The Claimant's Representative does not dispute that the Claimant received both the advanced payment of \$2,000.00 and one week's benefits of \$500.00. He also agrees that neither he nor the Claimant submitted any biweekly reports to account for weeks of unemployment that occurred in the benefit period.

[19] However, the Representative asserts that the Claimant had a good reason why the claims were never filed. He says that the Claimant, his wife, was suffering from early-onset Alzheimer's. The family had noticed that the Claimant's mental health was deteriorating in early 2020. He explained that her increasing forgetfulness was the reason she lost her employment. He was unaware that she had filed an EI claim in May 2020 with the assistance of a friend. He offered that it was not unusual for his wife to forget to inform him of things she had done. Had he been aware, he would have ensured that the reports were submitted.

⁴ See Digest of Benefit Entitlement Principles Chapter 3.1.1.

⁵ See Section 26(2) of the *Employment Insurance Act*.

[20] The Claimant's doctors ultimately rendered a diagnosis of early-onset Alzheimer's. They confirmed that the Claimant's capacity to conduct her own affairs was severely affected as early as March 2020.

[21] Given this information, the Representative took steps to obtain power of attorney to manage his wife's health and financial matters. He would not receive that approved power of attorney until October 2020.

[22] Once properly authorized to make decisions on his wife's behalf, the Representative made an initial claim for EI sickness benefits on behalf of the Claimant. The Representative asserts that he was unaware of the May 2020 claim. It was not until he was approved and received an access code that he was able to access her on-line account and found out in February 2021, that there was another earlier claim and that it was subject to an overpayment of benefits.

[23] The Representative testified that he tried to have the claims merged and then to antedate the claims so that he could submit biweekly reports to account for the weeks of unemployment his wife had experienced. He says that the Commission issued a decision denying the antedate of the claims. It should be noted that the Commission's decision concerning antedate of claims is not the subject of this appeal. The only subject of this appeal is the eligibility of the Claimant to receive benefits stemming from the May 2020 claim.

[24] He says that the Claimant was legitimately unemployed and she would have received the EI-ERB benefits had she submitted the reports. He asserts that her medical condition was the reason she forgot to file the reports. He says and that the overpayment would not exist except for that fact.

[25] I am satisfied from the medical information in the submissions, and the testimony of the Representative, that the Claimant was experiencing a medical condition that affected her capacity to make her biweekly reports.

[26] Ordinarily the Claimant or Representative could apply to have late claims antedated to an earlier date.⁶ The provisions found in Part I of the Act recognize that in some cases, there are exceptional circumstances that might prevent a Claimant from making reports and such circumstances will meet the definition of good cause for a delay. In those instances, the claims can be backdated and the eligible benefits paid.

[27] In my opinion, the Claimant's medical condition is an exceptional circumstance that would likely have been deemed good cause for the delay in making her claims.

[28] However, the provisions contained in the interim orders do not allow for antedating any claims.⁷ The provisions explicitly state that no claim may be made later than December 2, 2020. Further, the interim orders also detail that where there is conflict with other parts of the Act, the provisions in the interim orders shall prevail.⁸

[29] I acknowledge receipt of additional information (GD5) from the Representative that outlines an unfortunate timeline beyond his control that contributed to the delay in making any reports on behalf of the Claimant. While under different circumstances, this information may have added to the exceptional circumstances to support good cause for a delay, the strict wording of the interim order would still prevail.

[30] So, regardless of the exceptional nature of the circumstances that resulted in the Claimant's delay making reports, there simply is no option available to backdate them to account for weeks of unemployment within the EI-ERB benefit period.

[31] I find that the Claimant received a \$2,000.00 advanced payment of EI benefits. She did not complete biweekly reports (claims) for weeks of unemployment to account for the advanced payment. Therefore, the Claimant is not eligible for the \$2,000.00 in EI benefits paid.

⁶ See Section 10(5) of the *Employment Insurance Act*.

⁷ See Section 153(2) of the *Employment Insurance Act*.

⁸ See Section 153.3(8) of the *Employment Insurance Act*.

[32] The Representative testified that he had already repaid the overpayment, but that in doing so, it has caused him financial hardship.

Issue 2: Can the overpayment be written off or reduced?

[33] My jurisdiction is limited to decisions that have been reconsidered by the Commission.⁹ In this appeal, the only issue in dispute is the eligibility for the advance of EI benefits paid to the Claimant.

[34] I understand the Claimant's Representative has been going through a lengthy and stressful period dealing with his wife's medical condition. I empathize with his concerns regarding the negative financial circumstances in which he finds himself resulting from the overpayment.

[35] However, I do not have any discretion to waive the overpayment, no matter how compelling the Claimant's circumstances may be. The law simply does not allow me to relieve the Claimant from responsibility for the overpayment.¹⁰ I cannot rewrite the law, or interpreted it in a manner contrary to its plain meaning, even if the outcome may seem unfair.¹¹

Conclusion

[36] The appeal is dismissed.

[37] The Claimant is not entitled to the advanced EI benefits paid to her because she did not submit required claims by the legislated deadline to account for weeks of unemployment.

Mark Leonard
Member, General Division – Employment Insurance Section

⁹ See Section 112.1 of the *Employment Insurance Act*.

¹⁰ See Sections 43 and 44 of the *Employment Insurance Act*.

¹¹ See (*Canada (A.G.) v. Knee*, 2011 FCA 301)