



[TRANSLATION]

Citation: *SS v Canada Employment Insurance Commission*, 2022 SST 1460

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

Decision

Appellant: S. S.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (440509) dated February 17, 2022 (issued by Service Canada)

Tribunal member: Josée Langlois
Type of hearing: Teleconference
Hearing date: May 30, 2022
Hearing participant: Appellant
Decision date: May 30, 2022
File number: GE-22-906

Decision

[1] The appeal is dismissed.

[2] The Appellant has to pay back the \$2,000 advance payment.

Overview

[3] The Appellant stopped working for three weeks because of the COVID-19 pandemic.

[4] On May 23, 2020, he applied for benefits. The Canada Employment Insurance Commission (Commission) established a benefit period for the Emergency Response Benefit (ERB).¹ The Appellant received an advance payment of \$2,000 on April 6, 2020.

[5] On February 25, 2022, [the] Commission issued a reconsideration decision saying that the Appellant had to pay back the \$2,000 advance payment that was made to him when his benefit period was established.

[6] The Appellant says it isn't fair that he has to pay back this amount, because he used it to support himself.

[7] I have to decide whether the Appellant has to pay back the ERB advance payment of \$2,000.

Issue

[8] Does the Appellant have to pay back the \$2,000 advance payment?

Analysis

Does the Appellant have to pay back the \$2,000 advance payment?

[9] Section 153.8(5) of the *Employment Insurance Act* (Act) says that, between March 15, 2020, and September 26, 2020, benefit periods for the ERB have to be

¹ Sections 153.8(5) and 157(1.1) of the *Employment Insurance Act* (Act).

established except in the exceptional cases set out in section 153.5(3) of the Act.² In other words, no claim is to be established for regular benefits between March 15, 2020, and September 26, 2020, with some exceptions.

[10] Under the temporary measures introduced during the COVID-19 pandemic, the Commission can pay the ERB ahead of time. When it does, it makes an advance payment.³

[11] The ERB isn't paid automatically. A claimant has three weeks to submit their claimant report for a given week.⁴

[12] According to sections 153.7(1) and 153.8(1) of the Act, to be entitled to the ERB, a claimant has to make a claim and show that they are eligible.

[13] The Appellant says that he understands the eligibility rules, but he argues that there are still some weeks where he had no income and that he used the \$2,000 advance payment to pay his bills.

[14] The fact is that the Appellant didn't work for three weeks. However, he explained that he received earnings for the week of March 22, 2020, from employer-paid banked sick days. He started working again on April 20, 2020.

[15] The Commission says that the Appellant isn't entitled to the \$2,000 advance payment.

[16] When making his reconsideration request, the Appellant submitted pay stubs that show that he earned more than \$1,000 for the period from March 22, 2020, to May 3, 2020.

² Section 153.1310 of the Act.

³ Section 153.7(1.1) of the Act.

⁴ Section 26(1) of the *Employment Insurance Regulations*.

[17] As he confirmed with the Commission, the Appellant indicated at the hearing that, after March 22, 2020, he earned more than \$1,000 for each of the following four-week periods.

[18] As the Commission says, the payment of \$2,000 to facilitate access to benefits is an advance that corresponds to payments that will be made later. So, a claimant has to be entitled to benefits during the period when the payments should have been made.

[19] In his case, the Appellant received four payments of \$500 and he had to submit his claimant reports for every subsequent two-week period. However, the Appellant went back to work on April 20, 2022, and he earned more than \$1,000 for each four-week period after March 22, 2020.

[20] He asked the Commission to cancel the claimant reports made starting from March 22, 2020, so that he would not have to repay the \$2,000.

[21] The Commission rightly found that the Appellant had to pay back the \$2,000 advance payment he received at the start of his benefit period for the ERB.

[22] The Appellant received an advance payment of \$2,000, and that amount wasn't applied to any of the weeks of his benefit period for the ERB. He received earnings from his job of more than \$1,000 for each of the following four-week periods. He isn't eligible for the ERB for that period.

[23] Under sections 43 and 44 of the Act, a claimant who received benefits they weren't entitled to has to pay back the amount paid.

[24] The Appellant explained that he already used that money to pay his bills and, although he understands that he isn't eligible for the \$2,000, he would like the Commission to consider reducing the amount to be repaid. He explained that the money was used to allow him to support himself and that, although he received more than \$1,000 for each of the four-week periods, he argues that he still stopped working for three weeks.

[25] As I explained at the hearing, the Tribunal doesn't have jurisdiction to hear requests for write-off related to an overpayment of benefits, but the Appellant can make such a request to the Commission.

[26] I find that the Appellant has to pay back the \$2,000 advance payment.

Conclusion

[27] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section