



Citation: *Canada Employment Insurance Commission v PP*, 2023 SST 113

Social Security Tribunal of Canada Appeal Division

Decision

Applicant: Canada Employment Insurance Commission
Representative: Jordan Fine

Respondent: P. P.

Decision under appeal: General Division decision dated October 26, 2022
(GE-22-2467)

Tribunal member: Shirley Netten

Decision date: February 2, 2023

File number: AD-22-856

Decision

[1] Leave (permission) to appeal is granted and the appeal is allowed. By agreement, the General Division decision is rescinded (cancelled). The previous decision remains in effect: P. P. (Claimant) has a \$2,000 overpayment.

Background

[2] The Claimant received 16 weeks of the Employment Insurance Emergency Response Benefit (EI ERB), totalling \$8,000. Service Canada¹ said that she was only entitled to 12 weeks of benefits (\$6,000) and asked her to pay back \$2,000.

[3] On appeal, the Tribunal's General Division said that the Claimant should get one extra week of benefits (the week of May 31, 2020). So, she would only pay back \$1,500.

[4] The Canada Employment Insurance Commission (Commission) sought permission to appeal that decision to the Tribunal's Appeal Division. The Commission says that the General Division made several errors.

The parties agree on the outcome of the appeal

[5] At a case conference, the parties agreed that the General Division misinterpreted the law, and that the decision should be rescinded. The Claimant's overpayment would be \$2,000.

I accept the proposed outcome

[6] One of the ways a person can meet the income requirement for getting the EI ERB is if they have earnings of no more than \$1,000 over four weeks. Specifically, this must be "over a period of four weeks that succeed each other in chronological order but not necessarily consecutively and in respect of which the employment insurance emergency response benefit is paid."²

¹ On behalf of the Canada Employment Insurance Commission

² This is found in section 153.9(4) of the *Employment Insurance Act* (Act). In this situation, a claimant is deemed to meet the usual requirements for eligibility in section 153.9(1)(a)(iv) and (v) of the Act.

[7] The General Division decided that the Claimant could get the EI ERB for the week of May 31, 2020 because it was part of a four-week block with total earnings of less than \$1,000. But the General Division didn't consider that the four weeks had to be weeks **for which the EI ERB was paid**. This was an error of law. Since the Claimant wasn't paid the EI ERB for that week, this path to eligibility wasn't available to her.³

[8] I agree with the parties that the simplest way to resolve this appeal is by rescinding the General Division decision, based on an error of law. This means that the reconsideration decision remains in effect and the Claimant's overpayment is \$2,000.

The possibility of a write-off of the \$2,000 overpayment

[9] There is a special section about write-offs for the EI ERB. The Claimant may wish to look at section 153.1306 of the *Employment Insurance Act* (Act).⁴

[10] On January 11, 2023, the Commission decided not to write off the Claimant's debt under section 153.1306(2)(a) and (b)(ii) of the Act. The Claimant can dispute that decision at the Federal Court (as noted in the letter).

[11] The Claimant can also request a write-off for financial hardship, under section 153.1306(1)(f)(ii) of the Act. I understand that Canada Revenue Agency administers this process for the Commission.

Conclusion

[12] Permission to appeal is granted and the appeal is allowed. By agreement, the General Division decision is rescinded (cancelled).

Shirley Netten
Member, Appeal Division

³ The other way to get the EI ERB is if you had no income for at least seven consecutive days in a two-week period (section 153.9(1) of the Act). That doesn't come up in this appeal, because the week of May 31, 2020 was not within a two-week period where the Claimant had no income for seven days.

⁴ That section can be found online, here: [Employment Insurance Act \(justice.gc.ca\)](https://www.justice.gc.ca).