



Citation: *HG v Canada Employment Insurance Commission*, 2022 SST 1718

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

Decision

Appellant: H. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (441169) dated March 24, 2022 (issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Teleconference

Hearing date: June 27, 2022

Hearing participant: Appellant

Decision date: July 7, 2022

File number: GE-22-1322

Decision

[1] The appeal is dismissed with modification, the Claimant cannot have regular employment insurance (EI) benefits in place of Employment Insurance Emergency Response Benefits (ERB).

[2] The Claimant must also repay the two weeks of benefits, \$1,000, he received to which he is not entitled.

Overview

[3] Due to the COVID-19 pandemic the Government amended the *Employment Insurance Act* to create a new benefit, the ERB. The ERB is effective March 15, 2020.

[4] In general claimants who could have had a benefit period established for regular EI benefits between March 15, 2020, and September 26, 2020, got ERB instead.

[5] The Claimant applied for EI on April 28, 2020, and filed a renewal claim on July 25, 2020. His benefit period was established starting March 19, 2020. The Claimant was paid some ERB benefits and he was advanced \$2,000 worth of ERB payments.

[6] The Commission says that normally, in the course of paying out ERB, they would withhold four weeks of ERB down the line, which is equal to \$2,000, in order to balance out the advance. However, the Commission says the Claimant did not collect ERB long enough for them to balance out the advance by withholding four weeks, so they say he has a \$2,000 overpayment as he needs to repay the advance.

[7] The Claimant says the \$2,000 payment was not an advance, it was simply the payment from his waiting period, as you need to wait two weeks before you can begin collecting benefits.

[8] The Claimant also argues that his layoff had nothing to do with COVID and he did not apply for ERB, he applied for regular EI benefits.

Issue

[9] Does the Claimant have to repay the \$2,000?

Analysis

Should the Claimant get ERB or regular EI?

[10] The Claimant says he did not apply for ERB as his layoffs were routine and had nothing to do with COVID.

[11] I can accept that Claimant was not laid off due to COVID; however, that does not mean he can get regular EI instead of the ERB.

[12] The law says that no claim for regular benefits can be established between March 15, 2020, and September 26, 2020,¹ so since the Claimant applied on April 28, 2020, and this is within the period where the law says no claim for regular benefits can be established, he had to get ERB.

[13] I find that when he renewed his claim in July 2020, he was simply renewing the ERB claim that was already established.

[14] So, I find the Claimant had to get, and was getting, ERB payments.

What is the reason for the \$2,000 payment?

[15] I find the \$2,000 payment is an advance of four weeks of ERB.

[16] The Claimant agrees he got the \$2,000 payment from the Commission, but argues it is not an advance payment of ERB, it is the two weeks of payment he is owed from the waiting period as he needed to wait two weeks before he could collect any EI.

[17] The Commission says the \$2,000 is an advance payment of four weeks of ERB (each week of ERB is a \$500 payment) which the law allows them to issue. They say they issued this advance to the Claimant on May 4, 2020.

[18] I disagree with the Claimant; the \$2,000 is not the payment from his waiting period.

¹ See section 153.8(5) of the *Employment Insurance Act*

[19] At the time of the Claimant's claim temporary measures were introduced in the law that removed the waiting period.² Since there was no waiting period, this means the \$2,000 cannot be money from a waiting period. I note the payment records also show the Claimant was paid benefits the first week of his benefit period (April 19, 2020) further supporting the \$2,000 is not delayed payment from a waiting period.

[20] I accept the submission from the Commission that they paid the Claimant an advance of four weeks of ERB in the amount of \$2,000 as I find the law allows them to do this,³ their payment records show they advanced the Claimant \$2,000 of ERB on May 4, 2020,⁴ and the Claimant agrees he got this payment.

Does the Claimant need to pay back the \$2,000?

[21] So, at this point in the analysis I have determined the Claimant had to, and was, getting ERB benefits instead of regular benefits and the \$2,000 represents an advance of four weeks of ERB benefits.

[22] Now I need to determine if he has to repay some, or all, of the \$2,000.

[23] I find the Claimant only needs to repay \$1,000 as that represents the two weeks of benefits he got to which he was not entitled.

[24] The Commission submits they paid the Claimant ERB from April 19-May 23, 2020. They did not pay him benefits for the week of May 24 to May 30, 2020, as he reported a return to work at the beginning of the week commencing May 24, 2020.⁵

[25] The Claimant filed a renewal application in July 2020 and the Commission says they paid him benefits from July 19, 2020 and August 15, 2020. No benefits were paid for the period of August 16 -29, 2020 as the Claimant reported full time work in each of those weeks.⁶

² See section 153.191(1) of the *Employment Insurance Act*

³ See section 153.7(1.1) of the *Employment Insurance Act*

⁴ GD03-15

⁵ GD04-1

⁶ GD04-1

[26] The Commission says they amended the week of August 9 -15, 2020, to create an overpayment of \$500 as the Claimant reported full-time work for that week.⁷

[27] The Commission says they paid the Claimant the \$2,000 advance on May 4, 2020, and normally they would recoup the advance over the course of ERB payments by withholding four weeks of benefits; however, the Claimant did not collect enough weeks of ERB to allow them to do that.⁸

[28] The Commission submits the Claimant was only eligible for 8 weeks of ERB, which he was paid, so if he was allowed to keep the \$2,000 advance it would be like he was paid for 12 weeks of ERB since the \$2,000 advance represents an additional four weeks of ERB payments.⁹

[29] Claim reports are for two week periods or time.

[30] In the Claimant's case his two week claim periods were as follows¹⁰:

| Two Week Period | Week Paid For | Work Reported |
|----------------------|---------------------------------|---------------|
| April 19 to April 25 | Yes | No |
| April 26 to May 2 | Yes | No |
| May 3 to May 9 | Yes | No |
| May 10 to May 16 | Yes | No |
| May 17 to May 23 | Yes | No |
| May 24 to May 30 | No | Yes |
| July 19 to July 25 | Yes | No |
| July 26 to Aug 1 | Yes | No |
| Aug 2 to Aug 8 | Yes | No |
| Aug 9 to Aug 15 | Yes, turned into an overpayment | Yes |
| Aug 16 to Aug 22 | No | Yes |
| Aug 23 to Aug 29 | No | Yes |

⁷ GD04-1

⁸ GD04-4

⁹ GD04-4

¹⁰ This table was compiled from the payment information on GD03-17

[31] As the Commission submitted, the Claimant was not paid for the week of May 24-30, 2020, as he was working that week, August 9-15, 2020, as he was working that week, and from August 16-29, 2020, as he was working those weeks.

[32] Now, I agree with the submission of the Commission that they did not collect any weeks of the Claimant's ERB to offset the \$2,000 advance, as I see no evidence that would make me doubt their submission.

[33] However, I find the Commission was incorrect in not paying the Claimant for the weeks May 24-30, 2020, and August 9-15, 2020, as I find he does qualify for the ERB, in those weeks as, while I am not bound by it, I choose to following the reasoning in the case of *Canada Employment Insurance Commission v JE*, 2022 SST 201, as I find it persuasive.

[34] The law¹¹ states that if someone is a "claimant" as they could have, but for the implementation of the ERB, on or after March 15, 2020, had a benefit period established with respect to regular EI benefits, then they are eligible for ERB if they have no income from employment for at least seven consecutive days during the two week period they claimed the benefit.

[35] This would mean that even though the Claimant worked for the week of May 24-30, 2020, and August 9-15, 2020, since he did not work in the week prior to these weeks, he had seven consecutive days with no income from employment in the two week period in which he claimed the benefit.

[36] Since the Claimant is eligible for two extra weeks of ERB, meaning he was eligible for 10 weeks of ERB in total, the \$2,000 advance represents only two weeks of ERB the Claimant was not eligible for since the \$2,000 advance minus the \$1,000 for the extra two weeks the Claimant was eligible for equals \$1,000 above what the Claimant was eligible for in ERB benefits.

¹¹ Paragraph 153.9(1)(b) of the *Employment Insurance Act*

Summary

[37] The Claimant applied for benefits and those benefits have to be ERB.

[38] He was paid eight weeks of ERB, and given a \$2,000 advance payment representing four weeks of ERB benefits, which would mean the Claimant was paid the equivalent of 12 weeks of ERB in total.

[39] I have found the Claimant is entitled to 10 weeks of ERB. Accordingly, there is only 2 weeks for which he received benefits for which he was not entitled to.

Conclusion

[40] The appeal is dismissed with modification.

[41] I find the Claimant must have the ERB, he cannot have regular EI instead, but he is entitled to two more weeks of ERB than the Commission originally determined.

[42] This means he was not entitled to 2 weeks for which he was paid benefits in the total amount of \$1000.

Gary Conrad
Member, General Division – Employment Insurance Section