



Citation: *MV v Canada Employment Insurance Commission*, 2023 SST 867

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

Decision

Appellant: M. V.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (447710) dated October 2, 2022
(issued by Service Canada)

Tribunal member: Linda Bell
Type of hearing: Teleconference
Hearing date: March 8, 2023
Hearing participant: Appellant
Decision date: March 24, 2023
File number: GE-22-3580

Decision

[1] M. V. is the Appellant in this case. I am dismissing his appeal.

[2] The Commission has shown the Appellant was overpaid \$2,000 of the Employment Insurance Emergency Response Benefit (EI-ERB).

[3] The law says the Appellant must repay an overpayment of the EI-ERB. This means I am not reducing or writing off the overpayment.

Overview

[4] The Appellant applied for regular EI benefits on March 30, 2020. The Commission approved his application for the EI-ERB, effective March 29, 2020.¹

[5] The Appellant received a \$2,000 advance payment issued on April 6, 2020. The Government of Canada issued the \$2,000 advance payment to ensure Canadians received money as quickly as possible during the global COVID-19 pandemic.² This payment is equal to 4 weeks of the EI-ERB (4 x \$500 = \$2,000).

[6] The Appellant was also paid \$500 a week for the claims he submitted for the ten weeks from March 29, 2020, to June 6, 2020 (10 x \$500 = \$5,000). The Appellant stopped submitting claim reports after returning to full-time work on June 7, 2020.

[7] The Commission conducted a review and determined the Appellant received a total of \$7,000, which is 14 weeks of the EI-ERB (14 x \$500 = \$7,000). But the Appellant has only proven entitlement to 10 weeks, from March 29, 2020, to June 6, 2020 (10 x \$500 = \$5,000). So, the Commission determined the Appellant was overpaid by \$2,000.

¹ In March 2020, the government made amendments to the *Employment Insurance Act* (EI Act), in response to the COVID-19 pandemic.¹ The Minister made several orders to amend the EI Act that were effective March 15, 2020. One of the orders added a new temporary benefit called the EI-ERB.

² Subsection 153.7(1.1) of the EI Act allowed the Commission to pay the EI-ERB in advance of the customary time for paying it.

[8] The Commission explained that because the Appellant didn't make a claim for benefits after June 7, 2020, the Commission was not able to recover the advance payment from subsequent weeks of benefits that may have been payable to him. This means he was overpaid and is required to repay \$2,000 of the EI-ERB.

[9] The Appellant asked the Commission to reconsider its decision. He confirmed received \$7,000 of the EI-ERB. The Commission maintained its decision that he was overpaid the EI-ERB and must repay the \$2,000 overpayment.

[10] The Appellant disagrees with the Commission. He appeals to the Social Security Tribunal (Tribunal).

Matters I must consider first

Adjournment

[11] The hearing was scheduled to commence on December 21, 2022. The hearing was adjourned to March 7, 2023, to allow the Appellant more time to prepare.

[12] The Appellant submitted his appeal on October 24, 2022, requesting an in-person hearing. The hearing was scheduled to occur two months later, on December 21, 2022. On December 12, 2022, the Appellant submitted an email requesting the hearing be delayed for another 9-12 months.

[13] I agreed to delay the hearing until March 7, 2023. But I changed the December 21, 2022, in-person hearing to a case conference, held by teleconference. During that case conference we discussed, among other things, the hearing process, the Appellant's request for a lengthy delay, his schedule, the efforts he had made thus far to prepare his evidence and submissions, and next steps.³

[14] I scheduled a second case conference for January 25, 2023. This was to allow the Appellant the opportunity to update me on his efforts to prepare for the hearing and

³ See the case conference summary letter at pages GD7-1 to GD7-3.

efforts to seek assistance or representation. It was also discussed how the hearing would proceed in-person, during normal business hours, on March 7, 2023.

[15] On February 27, 2023, the Appellant wrote to the Tribunal. He asked that the March 7, 2023, in-person hearing proceed by teleconference on March 7, 2023, after 4:30 p.m. I granted his request and adjourned the hearing to 5:00 p.m. on March 7, 2023, via teleconference.

[16] At the March 7, 2023, hearing, the Appellant explained how he no longer felt the need to have representation. Upon further clarification, the Appellant said he understands that there has not been a legal challenge on the issues under appeal. So, he wished to proceed with the March 7, 2023, hearing without representation. He further explained that he may have representation if his appeal goes to the third stage, in front of a judge.

[17] In addition, the Appellant testified that the record was complete. He said he believes all the required documents are before the Tribunal, so he wished to proceed with the March 7, 2023, teleconference hearing as scheduled. Accordingly, the hearing proceeded. I will now determine the merits of this appeal.

Issues

[18] Could the Appellant have been paid regular EI benefits for his March 30, 2020, application?

[19] Does the Commission have the authority to determine an overpayment of the EI-ERB?

[20] Did the Commission review the EI-ERB claims within the required time limit?

[21] Is the Appellant required to repay the overpayment of EI benefits?

Analysis

Could the Appellant have been paid regular EI benefits for his March 30, 2020, application?

[22] No. The Appellant couldn't be paid regular EI benefits. The Commission had to pay him the EI-ERB at \$500.00 per week. Here is what I considered.

[23] The Appellant says that he applied for regular EI benefits and should have been paid regular EI benefits at a higher benefit rate. He says he didn't ask for the EI-ERB. He argued that he was laid off from his job so he should be entitled to regular EI benefits.

[24] The law states that all claims for regular EI benefits established between March 15, 2020, and September 26, 2020, had to be processed as claims for the EI-ERB.⁴ This means the payment of the EI-ERB was mandatory for all claims that started within that window from March 15, 2020, to September 26, 2020.

[25] The law also states the amount of the EI-ERB is \$500.00 per week.⁵ This means the Appellant can't request that his weekly benefit rate be paid at a higher rate.

[26] There was no provision in the law for the Appellant to choose between regular EI benefits and the EI-ERB. Nor did the law give the Commission any discretion to pay regular EI benefits instead of the EI-ERB.

[27] The Appellant applied for regular EI benefits on March 30, 2020. There is no question his claim was established within the EI ERB window between March 15, 2020, and September 26, 2020. This means he had to be paid the EI-ERB at \$500.00 per week.

[28] After consideration of the facts, as set out above, I find the Appellant wasn't eligible for regular EI benefits based on the application he submitted on March 30, 2020.

⁴ See sections 153.4 to 153.9 in Part VIII.4 of the EI Act.

⁵ See section 153.10(1) of the EI Act.

The Commission correctly determined he was eligible for the EI-ERB at \$500.00 per week.

Authority to determine an overpayment of the EI-ERB

[29] I find the Commission has the authority to determine whether the Appellant has been overpaid the EI-ERB. I've considered the following when making this finding.

[30] The law says that if the Commission determines that a claimant received payment of the EI-ERB for which they are not eligible, it must calculate the overpayment amount and notify the claimant.⁶

[31] The EI Act says that benefits are payable to a claimant who is **eligible** for **and** makes a claim for the benefit.⁷

[32] There are deadlines for making claims. The law states that a claim for the EI-ERB must be made before December 2, 2020.⁸

[33] Claimants who were eligible for EI ERB **and** who filed their weekly claim reports were **entitled** to be paid \$500 for each **week of unemployment they claimed**.⁹

[34] The Appellant doesn't dispute that on November 20, 2021, the Commission sent him a Notice of Debt informing him of the \$2,000 overpayment. The Appellant also doesn't dispute receiving the \$2,000 advance payment, bringing the total amount of the EI-ERB he received to \$7,000.

[35] The evidence shows the Appellant was eligible for **and** made claims for 10 weeks of unemployment between March 29, 2020, and June 6, 2020. This means he was entitled to be paid \$5,000 of the EI-ERB for these 10 weeks (10 x \$500 = \$5,000).

⁶ This is set out in section 153.1303 (2) of the EI Act.

⁷ See sections 153.7(1) and 153.8(1) of the EI Act. To be paid benefits, claimants must make a claim for benefits by completing bi-weekly claimant reports.

⁸ Section 153.8(2) of the EI Act states that a claimant is not permitted to make a claim for the EI-ERB after December 2, 2020. Section 26 of the *Employment Insurance Regulations* says biweekly claims must be submitted within 3 weeks after the week for which benefits are claimed.

⁹ See section 153.10(1) of EI Act.

[36] I find the Appellant was no longer entitled to receive EI ERB after he returned to work full-time on June 7, 2020. Even if he may have been **eligible** for the EI-ERB, he failed to file any claim reports to claim the EI ERB after June 7, 2020. This means he is not **entitled** to payment for any additional weeks of the EI ERB.

[37] I recognize the Appellant says he believes he was underpaid because he should be paid regular EI benefits. But that doesn't change the fact that he was only entitled to \$5,000 of the EI-ERB (10 weeks paid at \$500.00 per week). But he received a total of \$7,000 for 14 weeks, (14 x \$500 = \$7,000). This means he was overpaid \$2,000 for the EI-ERB.

The time limit during which the Commission may review claims

[38] I find the Commission conducted its review within the required time, as set out below.

[39] The law states the Commission has 36 months after paying benefits, to reconsider the claim.¹⁰ This period is extended to 72 months in cases where, if in the opinion of the Commission, a false or misleading statement or representation has been made in connection to a claim.¹¹

[40] The Federal Court of Appeal recognizes that the Commission can't review changes to claims at the exact time they happen. It is precisely for that reason that the EI Act allows the Commission time to rescind or amend any decision given in any particular claim for benefits.¹²

[41] In this case, the Commission conducted a review of the benefits paid to the Appellant for the week from March 29, 2020, and June 6, 2020. It sent the Appellant a Notice of Debt on November 20, 2021, informing him of the \$2,000 overpayment. This was 20 months and 14 days from the date the benefits became payable. So, I find the Commission's review was conducted within the required time limit.

¹⁰ Section 52 of the EI Act.

¹¹ See subsection 52(5) of the EI Act.

¹² *Canada (Attorney General) v Landry*, A-532-98.

Other Arguments

[42] The Appellant argued he has already paid income tax on the EI-ERB he received. He also argued that he has paid thousands of dollars into the EI fund so he should be able to receive the benefits when something like this happens.

[43] Even though the Appellant paid income tax on the benefits he received, it doesn't change the fact he was paid 4 weeks of the EI-ERB he was not entitled to receive. So, he was overpaid the EI-ERB. Once he repays the overpayment, the Commission will issue the Appellant a T4E so that the income tax can be resolved when he completes his tax return for the year in which he repays the EI-ERB overpayment.

[44] I acknowledge the Appellant says he should be entitled to receive benefits because he paid thousands of dollars into the EI fund. But the employment insurance plan is an insurance scheme. It is not a pension fund or a needs-based program that you can withdraw anytime you want or need. Instead, claimants must meet the qualifying conditions and requirements set out in the EI Act, to be entitled to benefits.

Is the Appellant required to repay the overpayment?

[45] The law says that a claimant is responsible (liable) to repay any EI-ERB that they are not entitled to receive.¹³

[46] I don't have any authority to waive the overpayment.¹⁴ That authority rests with the Commission. I also don't have any authority to order the Commission to waive or write off an overpayment.

[47] The Federal Court of Canada has the jurisdiction to hear an appeal relating to a write-off issue.¹⁵ So if the Appellant wishes to pursue an appeal in response to the Commission's refusal to write off the debt, he is at liberty to do so at the Federal Court of Canada.

¹³ See section 43, 44, and as adapted in section 153.1301 and 153.303 of the EI Act.

¹⁴ See sections 112.1 and 113 of the EI Act.

¹⁵ See *Steel v Canada (Attorney General)*, 2011 FCA 153, and *Bernatchez v Canada (Attorney General)*, 2013 FC 111.

[48] If the Appellant is wishing to negotiate repayment arrangements, he may wish to contact Service Canada or the Canada Revenue Agency (CRA) to discuss repayment options.

[49] This is truly an unfortunate situation. I recognize that having to repay an EI-ERB overpayment may cause additional stress or financial hardship for the Appellant. But the Commission conducted its assessment in accordance with the law, so the overpayment is valid.

[50] I acknowledge that this may not have been the outcome the Appellant was seeking. But my decision is not based on empathy or financial hardship. Instead, my decision is based on the facts before me and the application of the law. There are no exceptions and no room for discretion. I can't interpret or rewrite the EI Act in a manner that is contrary to its plain meaning, even in the interest of compassion.¹⁶

Conclusion

[51] The Appellant received \$7,000 for the EI-ERB. But he was only entitled to receive \$5,000 for the EI-ERB. So he must repay the \$2,000 overpayment.

[52] The appeal is dismissed.

Linda Bell
Member, General Division – Employment Insurance Section

¹⁶ *Canada (Attorney General) v Knee*, 2011 FCA 301.