



Citation: *NF v Canada Employment Insurance Commission*, 2023 SST 599

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

Decision

Appellant: N. F.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (497104) dated September 21, 2022 (issued by Service Canada)

Tribunal member: Amanda Pezzutto

Type of hearing: In person

Hearing date: March 2, 2023

Hearing participant: Appellant

Decision date: March 10, 2023

File number: GE-22-3295

Decision

[1] N. F. is the Appellant. The Canada Employment Insurance Commission (Commission) says he has to repay an Employment Insurance Emergency Response Benefit (EI ERB) advance. The Appellant is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I am dismissing the Appellant's appeal. I find that he received the EI ERB advance. He hasn't repaid it yet, and so he received more in EI ERB than he was entitled to receive. This means he has to repay the advance.

Overview

[3] The Appellant stopped work in April 2020. He applied for Employment Insurance (EI) benefits and the Commission started paying EI ERB. The Commission paid a \$2000 advance in April 2020. The Claimant did biweekly reports and collected several weeks of EI ERB. He returned to work in June 2020 and didn't collect any more EI ERB, aside from two weeks in August 2020.

[4] The Commission would have recovered the advance from the Appellant's EI ERB payments later in 2020. But the Appellant returned to work and stopped collecting EI ERB before the Commission could recover the advance.

[5] The Commission says that it paid the Appellant an advance, representing four weeks of benefits, as well as 10 weeks of EI ERB. So, the Commission says it paid 14 total weeks of EI ERB. But the Commission says the Appellant was only entitled to 10 weeks of EI ERB. The Commission says the Appellant must repay \$2000 because it didn't finish recovering the advance.

[6] The Appellant disagrees with the Commission's decision. He says he tried to apply for EI benefits, but the Commission put him on EI ERB without his permission. He isn't certain he received more than he was entitled to receive. And he says it isn't fair for the Commission to ask him to repay benefits because he wasn't expecting this to happen.

Issues

[7] To make a decision in this appeal, I will look at the following questions:

- Did the Commission pay a \$2000 advance to the Appellant?
- Has the Appellant repaid the advance?
- Does the Appellant have to repay the advance?

Analysis

[8] This appeal is about EI ERB and the way the Commission paid these benefits to claimants. So, it is important to understand why the Commission is asking some people to repay an advance of EI ERB.

[9] Everyone who applied for EI benefits between March 15 and October 3, 2020 automatically received EI ERB instead of EI benefits.¹ The law didn't give you the choice to pick either EI regular benefits or EI ERB. EI ERB was a simplified version of the EI program. Everyone got the same weekly rate: \$500 a week.²

[10] Usually, when you are collecting EI benefits, you get your EI benefits after you do your biweekly claimant reports. In other words, you have a week without work, you complete a claimant report, and then the Commission pays your EI benefits.³

[11] But with the EI ERB, the Commission paid many claimants four weeks of EI ERB in advance.⁴ In other words, the Commission paid \$2000 to many claimants before they ever completed their biweekly claimant reports.

¹ Subsection 153.5(2) of the *Employment Insurance Act*.

² Subsection 153.10(1) of the *Employment Insurance Act*.

³ See section 26 of the *Employment Insurance Regulations*

⁴ Subsection 153.7(1.1) of the *Employment Insurance Act* gave the Commission the authority to make advance payments.

[12] For many claimants, the Commission recovered the four week EI ERB advance later on in their benefit period. The Commission withheld EI ERB benefits in the 13th, 14th, 20th, and 21st weeks to recover the advance.

[13] This is easiest to understand with an example. Imagine if you stopped working in March 2020 and you remained out of work until the end of September 2020. If you had applied for EI ERB in March 2020, the Commission would have paid you a four week advance at the very beginning of your EI ERB benefits. Then, you would have started completing your biweekly reports and collecting EI ERB.

[14] Then, in your 13th and 14th weeks of benefits, the Commission would have withheld two weeks of EI ERB to offset half of the advance. In other words, the Commission would withhold benefits for two weeks that you otherwise would have been entitled to EI ERB. The Commission would have withheld benefits again in the 20th and 21st weeks to recover the second half of the advance. In this way, you would receive all of the benefits you were entitled to receive, based on the number of weeks you went without any work.

[15] But this way of recovering the advance only worked for people who were out of work and claiming EI ERB for at least 21 weeks. For anyone else who returned to work earlier, the Commission had to recover the \$2000 advance in another way.

[16] This appeal is about the advance. So, first I will look at whether the Commission paid the advance to the Claimant. Then, I will look at whether the Commission recovered the full amount of the advance from the Claimant's EI ERB.

Did the Commission pay a \$2000 advance to the Appellant?

[17] The Commission has given me evidence showing that it paid a \$2000 advance to the Appellant on April 20, 2020.

[18] The Appellant has said that he disagrees that he received the advance. But he hasn't given me any evidence that contradicts the Commission's evidence. In fact, his

bank statements show that he received a \$2000 payment from the Commission on April 20, 2022.

[19] I find the Commission's evidence more convincing that the Appellant's statements. This is because the Commission has statements and pay summaries showing that it gave the Appellant a \$2000 advance. His bank statements match the Commission's evidence. And the Appellant hasn't given me any bank statements or other documents showing that he didn't receive the advance.

[20] And I believe the Commission's evidence that the Appellant was only entitled to 10 weeks of benefits. This is because he only submitted biweekly reports to claim 10 weeks of benefits. The Appellant hasn't shown me that he claimed more than 10 weeks of benefits.

[21] I believe the Commission's evidence showing that it paid the equivalent of 14 weeks of benefits to the Appellant. This is because the Appellant hasn't given me evidence showing me that he didn't receive the equivalent of 14 weeks of benefits.

[22] This means that the Appellant received the equivalent of four weeks – or \$2000 – more than he was entitled to receive. This matches the amount of the advance.

[23] So, I find that the Commission paid a \$2000 advance to the Appellant.

Has the Appellant repaid the \$2000 advance?

[24] I find that the Appellant hasn't repaid the advance. This is because he returned to work before the Commission could recover the advance.

[25] The Commission says it would have recovered the Appellant's advance in the 13th and 14th weeks, and the 20th and 21st weeks of benefits.

[26] But the Appellant returned to work in June 2020. He declared earnings for the rest of the summer, except for two weeks in August. This means he only ever claimed 10 weeks of benefits. So, the Commission says he didn't collect enough EI ERB for it to start to recover the advance.

[27] The Appellant hasn't given me any information that makes me doubt the Commission's evidence about his EI ERB and the advance. I have reviewed the Commission's evidence, and I agree with the Commission.

[28] I find that the Appellant hasn't repaid any of the advance. This is because he didn't collect enough weeks of EI ERB for the Commission to begin to recover the advance.

Does the Appellant have to repay the advance?

[29] I find that the Appellant received more benefits than he was entitled to receive. So, he has to repay those benefits.

[30] This is because the law says you have to repay benefits if you received more than you were entitled to receive.⁵ I don't have the power to waive the Appellant's obligation to repay.⁶ And, I do not have the authority to order the Commission to write off the Appellant's overpayment.⁷

Conclusion

[31] I am dismissing the Appellant's appeal. I find that he received more benefits than he was entitled to receive. This is because I find that he received a \$2000 advance, but he hasn't repaid it yet. The Appellant must repay the advance.

Amanda Pezzutto

Member, General Division – Employment Insurance Section

⁵ Section 43 of the *Employment Insurance Act*.

⁶ The Federal Court of Appeal says this in its decision *Canada (Attorney General) v. Buors*, 2002 FCA 372.

⁷ The Federal Court of Appeal says this in its decision *Canada (Attorney General) v. Woods*, 2002 FCA 91.