



Citation: *GD v Canada Employment Insurance Commission*, 2023 SST 837

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: G. D.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (446575) dated February 1, 2023 (issued by Service Canada)

Tribunal member: Ambrosia Varaschin

Type of hearing: Teleconference

Hearing date: April 4, 2023

Hearing participant: Appellant

Decision date: April 19, 2023

File number: GE-23-490

Decision

[1] The appeal is dismissed. The Appellant received an additional \$2,000 that he was not entitled to receive.

Overview

[2] The Appellant applied for Employment Insurance (EI) sickness benefits on March 11, 2020, and established a claim as of March 22, 2020. Since his benefit period began after March 15, 2020, his claim was converted to Employment Insurance Emergency Response Benefits (ERB).¹

[3] The Appellant received ten weeks of ERB benefits from March 22, 2020, to May 30, 2020.

[4] The Appellant also received an advanced payment of \$2,000 on April 13, 2020, which is for four weeks of ERB benefits that would have been paid later on in his claim. This means the Appellant received fourteen weeks of benefits in total.

[5] The Commission says that the advance payment created an overpayment of \$2,000 because the Appellant didn't receive ERB benefits long enough to have the "procedural disentitlements" applied to it. The Commission automatically disentitled ERB claimants for two weeks after their 12th week and 17th week of benefits to offset the original four-week advanced payment. They submit that since ERB benefits were only paid to the Appellant for ten weeks, he didn't have his benefits automatically adjusted.

[6] The Appellant disagrees because he filed for sickness benefits, which is how his claim was originally started before being converted to ERB benefits. This happened without his consent or knowledge. He argues that he was entitled to more money under the EI sickness benefits than he received from ERB benefits, and he never would have had an advance payment if his claim remained a sickness benefit claim.

¹ See subsection 153.5(2)(b) of the *Employment Insurance Act* (Act).

[7] The Appellant also argues that he didn't receive all the benefits he was entitled to because he ended his claim early to prevent an overpayment. He says he was entitled to thirteen weeks of benefits, which means he only has an overpayment of \$500.00. The Appellant says that he followed the directions of the Commission to prevent an overpayment from happening. The instructions from the Commission were incorrect, and actually created the overpayment.

Issue

[8] Does the Appellant have an overpayment for four weeks of ERB benefits that he wasn't entitled to?

Analysis

[9] The law says that ERB benefits are payable to a claimant who makes a claim and who is eligible for the benefit.² The amount of the benefit for a week is \$500.00.³ The Commission is allowed to pay ERB to claimants in advance.⁴

[10] If a claimant received ERB benefits they weren't eligible for, or received more ERB benefits than they were entitled to, they are liable to pay back those amounts.⁵

The Appellant was misinformed by the Commission

[11] The Commission admits that the Appellant was given incorrect information about his claim. Unfortunately, the law says that misinformation provided by the Commission doesn't create an entitlement to benefits that doesn't exist in the legislation.⁶ This means I can't remove an overpayment of benefits if the Appellant isn't eligible to receive those benefits, even if the Commission provides poor advice.

[12] The Appellant originally filed for sickness benefits for the period he was without earnings until he was eligible for his workplace disability benefits. The Appellant was

² Subsection 153.7(1) of the Act.

³ Subsection 153.10(1) of the Act.

⁴ Subsection 153.7(1.1) of the Act.

⁵ Section 153.1301 of the Act.

⁶ See *Canada (AG) v. Shaw* 2002 FCA 325, and *Granger v. CEIC* (1986), 69 N.R. 212 (FCA).

proactive and took sensible steps to inform himself of his rights and obligations under the *Employment Insurance Act* (Act) by calling the Commission several weeks before his disability benefits became payable. He did this specifically to prevent an overpayment on his claim.

[13] The Commission told the Appellant he should end his claim early to prevent an overpayment, so he did. By following the Commission's advice, he didn't receive benefits he would have been eligible for and didn't reduce his overpayment.

[14] During the reconsideration process, the Commission offered to reduce the overpayment to \$500.00 by applying three weeks of benefits the Appellant could have received. This was a solution the Appellant was happy with at the time, and still feels is a fair resolution. When he called to follow up with the status of his file, the Commission backtracked on this resolution, saying the reconciliation policy doesn't allow this because the Appellant didn't go back to work.⁷ The Appellant says this is discriminatory because he's disabled and can't work.

[15] The Appellant requested a copy of the policy used to make this decision because he felt it discriminated against his disability. The officer was unable or unwilling to provide this document. The Tribunal requested a copy of the policy and/or procedure from the Commission for further information.⁸ The Commission denied this request as well.⁹

[16] If an internal policy does exist allowing the Commission to reconcile ERB overpayments with ERB benefits that were not claimed, with the requirement that a claimant returns to work, then I would agree that such a policy is discriminatory against people who can't work based on a protected ground.

[17] Unfortunately, this Tribunal has no authority to remedy either of the two instances where the Commission provided improper information to the Appellant.

⁷ See GD03-34.

⁸ See GD06.

⁹ See GD08.

The Appellant didn't apply for ERB benefits

[18] Even though the Appellant applied for sickness benefits, the emergency measures taken by the government to help Canadians during the COVID-19 pandemic meant that only ERB benefits were available to him at the time.

[19] The Appellant argues that he didn't apply for EI benefits because of the pandemic, he applied for sickness benefits because he suffered a major health event that has prevented him from returning to work. He has provided evidence that his claim was originally activated as a sickness claim, and the Commission's records confirm he received four weeks of sickness benefits.¹⁰

[20] The Appellant says his entitlement to benefits was more under the sickness benefit regime than the ERB benefits, and the Commission's records confirm that his gross entitlement for sickness benefits was \$573, compared to the \$500 entitlement for ERB.¹¹ If his claim was left as sickness benefits he would have received \$730 more for his ten weeks of benefits and would not have received the \$2,000 advanced payment that has resulted in this appeal.

[21] When the COVID-19 pandemic began, the government implemented emergency measures that included temporary changes to EI benefits. The law says that anyone eligible for sickness benefits¹² with a benefit period starting on or after March 15, 2020, will receive ERB benefits¹³ and they are considered to have made a claim for them.¹⁴ Since the Appellant's benefit period started March 22, 2020, he could only receive ERB benefits.

[22] The Appellant pointed out that the first four weeks of the benefits he received were coded "sickness,"¹⁵ to support the point that he originally had a sickness benefit

¹⁰ See GD03-41, GD07-4-5.

¹¹ See GD03-41.

¹² See Section 153.5(3) of the Act.

¹³ See Section 153.5(2) of the Act.

¹⁴ See Section 153.1310 of the Act.

¹⁵ See GD03-41.

claim. The law says that any payments received in relation to the claim I just discussed are considered to be ERB regardless of what they might have been called at the time.¹⁶

Is the Appellant entitled to benefits he didn't receive?

[23] Since the Appellant stopped making claims for benefits on May 30, 2020, and no further ERB claims can be made after December 2, 2020, he has no further benefits payable to him.

[24] The Appellant argues that even though the prepayment of ERB benefits meant he received four weeks of benefits he wasn't entitled to, the Commission advised him to end his benefits early to prevent an overpayment on his file. This meant he stopped making claims for benefits three weeks before his disability insurance payments started. So, he is entitled to three weeks of benefits he didn't receive. While this would generally be correct, the ERB provisions in the law state that no benefit period is to be established for most types of EI claims, including sickness benefits.¹⁷ Since no benefit period can be established for the Appellant's claim, there is no entitlement to benefits within a certain timeframe.

[25] Additionally, the law says that a claim for ERB benefits is required in order for claimants to be entitled to them.¹⁸ Since the Appellant didn't make any claims for benefits after May 30, 2020, and no further claims to ERB benefits can be made after December 2, 2020, no additional ERB benefits are payable to him.¹⁹

[26] I find that the Appellant was overpaid by \$2000.00. This is consistent with the evidence in the file and the Appellant's testimony.

[27] The Commission has the authority to review EI claims and to assess whether a Claimant has been overpaid.²⁰ In this case, the Claimant was overpaid ERB benefits. This means that the Claimant is responsible for repaying the overpayment.

¹⁶ See Section 153.1310 of the Act.

¹⁷ See Section 153.8(5) of the Act.

¹⁸ See Section 153.7(1) of the Act.

¹⁹ See Section 153.8(2) of the Act.

²⁰ See section 52(1) of the Act.

[28] The Commission may consider writing off overpayments for several reasons. For example, the Commission may write off overpayments if:

- The overpayment isn't because of the claimant's error or false or misleading statements.
- The debt is because of a payment of the ERB benefit in excess of \$500 per week.

The Commission may also choose to write off an overpayment regardless of when they notified the claimant of a debt for undue hardship.²¹

[29] I do not have the authority to write off an overpayment²², but the Appellant can request that the Commission consider writing off his debt. Given the Commission's delay reviewing the file and the misinformation given to the Appellant not once, but twice, I feel it's appropriate to suggest the Commission consider writing off this debt if a request is made.

Conclusion

[30] The appeal is dismissed. The Appellant was overpaid ERB benefits.

[31] The Appellant has an overpayment of \$2,000.

Ambrosia Varaschin
Member, General Division – Employment Insurance Section

²¹ See section 153.1306(1)(f)(ii) of the Act.

²² See section 153.1307 of the Act.