



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *DW v Canada Employment Insurance Commission*, 2021 SST 137

Tribunal File Number: GE-21-416

BETWEEN:

**D. W.**

Appellant (Claimant)

and

**Canada Employment Insurance Commission**

Respondent (Commission)

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Linda Bell

HEARD ON: March 30, 2021

DATE OF DECISION: March 31, 2021

## **DECISION**

[1] I am dismissing the appeal. The Claimant cannot request retroactive payment for the Employment Insurance Emergency Response Benefits (EI-ERB) after December 2, 2020.

## **OVERVIEW**

[2] On May 26, 2020, the Claimant voluntarily left his employment. Approximately four months later, he submitted an application for Employment Insurance (EI) Benefits on September 14, 2020. The Commission processed his application under the Emergency Response Benefit (EI-ERB), effective September 13, 2020. The EI-ERB is a temporary measure set up by the government in response to the global COVID-19 pandemic. When the EI-ERB ended on October 3, 2020, a subsequent claim for regular EI benefits was automatically set up for the Claimant, effective October 4, 2020.

[3] On December 8, 2020, the Claimant requested the Commission pay him EI benefits for an earlier period from May 26, 2020, to September 23, 2020. The Claimant says he did not initially apply for benefits for this earlier period because he believed he was not eligible based on information he read. The Commission denied the Claimant's request for retroactive payments because they say he cannot make a claim for the EI-ERB after December 2, 2020.

[4] Upon reconsideration, the Commission maintained their decision that the Claimant cannot submit a late claim for the EI-ERB. The Claimant disagrees with the Commission's decision to deny him EI benefits for the earlier period. He says the government did not provide clear instructions for individuals who became unemployed due to circumstances unrelated to the COVID-19 pandemic so the Commission should pay him.

## **ISSUES**

[5] Can the Claimant make a retroactive claim for the period from May 26, 2020, to September 12, 2020, after December 2, 2020?

## ANALYSIS

[6] In March 2020, the government made amendments to the *Employment Insurance Act (EI Act)*, in response to the COVID-19 pandemic.<sup>1</sup> The Minister made several orders to amend the *EI Act* that became effective March 15, 2020. One of the orders added a new temporary benefit called the EI-ERB.<sup>2</sup>

[7] The EI-ERB replaces regular EI benefits from March 15, 2020, to October 3, 2020. A claimant cannot choose to collect regular EI benefits instead of the EI-ERB for this period.

[8] In order to receive payment for the EI-ERB, a claimant must make a claim by completing biweekly reports. The *EI Act* stipulates that a claimant cannot make a claim for the EI-ERB after December 2, 2020.<sup>3</sup>

[9] The Commission states that the Claimant is not entitled to the EI-ERB prior to September 13, 2020, because he requested the retroactive payment on December 8, 2020, after the December 2, 2020, deadline. They also state that the Claimant has not shown good cause for the entire period of delay in requesting EI benefits. The Commission relies on a copy of their Supplementary Record of Claim dated December 8, 2020, to support their statement that the Claimant made his request after the December 2, 2020, time limit.<sup>4</sup> The Claimant does not dispute that first time he requested the retroactive payment was December 8, 2020.

[10] The Claimant states that he did not request payment for EI benefits on an earlier date because the government did not provide clear information. He says he did not apply sooner because he thought he would get another job. He initially asks for retroactive payment of EI benefits for the period from May 26, 2020, to September 23, 2020. He confirms that his claim for benefits is effective September 13, 2020, so he clarified that he is seeking retroactive payments up to September 12, 2020.

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<sup>1</sup> Subsection 153.5 of the *EI Act*.

<sup>2</sup> See Part VIII.4 of the *EI Act*.

<sup>3</sup> Subsection 153.8(2) of the *EI Act*.

<sup>4</sup> See page GD3-14.

[11] After careful consideration of the evidence, I find that the Claimant is not entitled to retroactive payments for regular EI benefits or the EI-ERB from May 26, 2020, to September 12, 2020. As set out above, a claimant cannot choose between regular benefits or the EI-ERB. The law clearly states that claims made from March 15, 2020, to October 3, 2020, fall under the EI-ERB. The law also stipulates that claims for the EI-ERB cannot be made after December 2, 2020. This means the Claimant cannot receive retroactive payments for the period from May 26, 2020, to September 12, 2020, because he did not make his request until December 8, 2020, six days after the December 2, 2020, deadline.

[12] I sympathize with the Claimant given the circumstances he presented. Although he may perceive this as an unjust result, my decision is not based on fairness. Rather, my decision is based on the facts before me and the application of the EI law. There are no exceptions and no room for discretion. I cannot interpret or rewrite the *EI Act* in a manner that is contrary to its plain meaning, even in the interest of compassion.<sup>5</sup>

### CONCLUSION

[13] The Claimant cannot make a claim for the EI-ERB, after December 2, 2020. This means that I am dismissing the appeal.

Linda Bell

Member, General Division - Employment Insurance Section

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| HEARD ON:             | March 30, 2021              |
| METHOD OF PROCEEDING: | Teleconference              |
| APPEARANCES:          | D. W., Appellant (Claimant) |

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<sup>5</sup> *Canada (Attorney General) v Kneé*, 2011 FCA 301.