



Citation: *HE v Canada Employment Insurance Commission*, 2022 SST 1046

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

Decision

Appellant: H. E.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (463279) dated June 24, 2022
(issued by Service Canada)

Tribunal member: Angela Ryan Bourgeois
Type of hearing: Teleconference
Hearing date: October 5, 2022
Hearing participant: Appellant
Decision date: October 5, 2022
File number: GE-22-2375

Decision

[1] I am dismissing the appeal.

[2] The Appellant (Claimant) was overpaid \$2,000 in Employment Insurance Emergency Response Benefits (EI ERB). He must repay the overpayment.¹

Overview

[3] This appeal is about whether the Claimant was overpaid benefits, and if so, whether he has to repay them.

[4] The Claimant stopped working in December 2019. He claimed Employment Insurance (EI) regular benefits.

[5] In May 2020, when his EI claim ended, he reapplied for EI regular benefits.

[6] The Canada Employment Insurance Commission (Commission) considered his application as an application for EI ERB, not EI regular benefits. It did this because the government had changed the *Employment Insurance Act* - EI regular benefits weren't available between March 15, 2020, and September 26, 2020. All claims for EI regular benefits were processed as claims for EI ERB benefits.²

[7] Another change to the *Employment Insurance Act* let the Commission pay benefits in advance.

[8] The Commission paid the Claimant a total of \$4,500 in EI ERB payments. It says he was only entitled to \$2,500. It wants him to repay \$2,000.

[9] The Claimant argues that he shouldn't have to repay any benefits because

¹ Throughout the appeal file, you'll see references to Canada Response Emergency Benefit and CERB. This is because the Government of Canada refers to the emergency response benefits provided under both the *Canada Emergency Response Benefit Act* and the *Employment Insurance Act* as "Canada Response Emergency Benefit" and "CERB." This decision deals with the emergency response benefits paid under the *Employment Insurance Act* (EI ERB), so that is what you'll see in this decision.

² See section 153.8(5) of the *Employment Insurance Act*.

- He had enough hours to qualify for EI regular benefits, and applied for EI regular benefits in the usual way. He didn't know he wasn't paid EI regular benefits until he received the notice of debt in February 2022.
- The debt isn't his fault.
- He couldn't have known he was receiving anything other than EI regular benefits because the application form was the same and the Commission didn't tell him otherwise.
- He didn't know that returning to work would create an overpayment that he would have to repay.

Issue

[10] Was the Claimant overpaid EI ERB benefits?

[11] If so, does he have to repay the overpayment?

Analysis

[12] In March 2020, in response to the COVID-19 pandemic, the Government of Canada made some temporary changes to the *Employment Insurance Act*. The changes meant:

- EI regular benefits were not available between March 15, 2020, and September 26, 2020.³
- All applications for EI regular benefits were processed as a claim for EI ERB benefits.
- The weekly benefit rate was \$500.⁴

³ See section 153.8(5) of the *Employment Insurance Act*.

⁴ See section 153.10(1) of the *Employment Insurance Act*.

- The Commission was allowed to pay benefits in advance.⁵

[13] So when someone applied for EI regular benefits, like the Claimant did, they received EI ERB benefits, not EI regular benefits, at the weekly rate of \$500.

[14] When someone qualified for EI ERB benefits, the Commission immediately and automatically paid them four weeks of benefits (4 x \$500 = \$2,000). This was an advance payment against future weeks.

[15] The Commission proceeded to pay EI ERB benefits for eligible weeks with the exception of weeks 13, 14, 18 and 19 (set-off weeks).

[16] The Commission planned to recoup the advance payment by not paying benefits in the set-off weeks.

[17] Because the Claimant returned to work before the set-off weeks, the Commission didn't have a chance to recoup the advance payment. Now it wants the Claimant to repay the \$2,000 advance payment.

– **The Claimant was overpaid EI ERB benefits**

[18] The Claimant was paid more weeks of EI ERB benefits than he was entitled to receive. This is why.

[19] The evidence shows that the Claimant was entitled to receive five weeks of EI ERB benefits.⁶

[20] The Claimant was paid nine weeks of EI ERB benefits: five weeks (weeks of May 24, 2020, May 31, 2020, July 5, 2020, July 12, 2020, and August 2, 2020) *plus* the advance payment of four weeks.⁷

⁵ See section 153.7(1.1) of the *Employment Insurance Act*.

⁶ This is based on his earnings shown on page GD6-2 and GD3-35.

⁷ See pages GD6-2, GD3-35 and GD3-33.

[21] This means the Claimant was overpaid four weeks of EI ERB benefits in the amount of \$2,000 (4 weeks @ \$500 per week).

– **The Claimant has to repay \$2,000**

[22] The law says that when a claimant receives more EI ERB benefits than they are entitled to receive, they have to repay the overpayment.⁸

[23] So, the Claimant must repay the overpayment of \$2,000.

– **The Claimant's arguments**

[24] I understand the Claimant's arguments and I know he is in a difficult situation. He didn't know he was receiving EI ERB benefits and if he had, he might have made different choices.

[25] Unfortunately, neither his circumstances nor his arguments change the fact that he received more weeks of benefits than he was entitled to receive. The law is clear that even in such situations the overpayment has to be repaid. I have to follow what the law says.

Conclusion

[26] The Claimant was overpaid \$2,000 in EI ERB benefits. He has to repay it.

[27] The Claimant's appeal is dismissed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section

⁸ The requirement to repay an overpayment of EI ERB benefits is set out in s 153.6(1)(a) and s 153.1301 of the *Employment Insurance Act*, which adapts section 44 of the *Employment Insurance Act*.