



[TRANSLATION]

Citation: *MA v Canada Employment Insurance Commission*, 2023 SST 290

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

**Decision**

**Appellant:** M. A.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (529353) dated  
September 20, 2022 (issued by Service Canada)

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**Tribunal member:** Normand Morin  
**Type of hearing:** Teleconference  
**Hearing date:** January 26, 2023  
**Hearing participant:** Appellant  
**Decision date:** March 17, 2023  
**File number:** GE-22-3276

## Decision

[1] The appeal is dismissed. I find that the Canada Employment Insurance Commission (Commission) is justified in asking the Appellant to pay back the amount of money he was overpaid as an advance payment of the Employment Insurance (EI) Emergency Response Benefit (ERB) (overpayment).<sup>1</sup> The Appellant has to pay it back.

## Overview

[2] On April 12, 2020, after working as a forklift operator for the employer X from January 28, 2020, to April 7, 2020, the Appellant made an initial claim for EI benefits (regular benefits).<sup>2</sup> A benefit period was established effective April 5, 2020, so that he could receive the EI ERB.<sup>3</sup>

[3] On May 28, 2022, Employment and Social Development Canada sent the Appellant a notice of debt.<sup>4</sup>

[4] In response to a request from the Tribunal, the Commission says that it didn't send the Appellant a letter informing him of the initial decision in his case concerning an overpayment of benefits.<sup>5</sup> Instead, it sent him a notice of debt.<sup>6</sup> I find that the notice of debt that was sent to the Appellant on May 28, 2022, serves as the initial decision in this case.<sup>7</sup>

[5] On September 20, 2022, after a request for reconsideration, the Commission told the Appellant that it was maintaining the decision about his benefit overpayment ([translation] "advance payment – recovery of lump sum payment").<sup>8</sup>

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<sup>1</sup> See sections 43, 44, 47, 52, 153.6(1)(a), 153.1301, and 153.1303(1) of the *Employment Insurance Act* (Act).

<sup>2</sup> See GD3-3 to GD3-18.

<sup>3</sup> See GD3-1 and GD4-1.

<sup>4</sup> See the document entitled "Notice of Debt / *Avis de dette*" issued by Employment and Social Development Canada / *Emploi et Développement social Canada*—GD3-21 to GD3-25 and GD7-1 to GD7-5.

<sup>5</sup> See GD6-1.

<sup>6</sup> See GD6-1.

<sup>7</sup> See GD3-21 to GD3-25 and GD7-1 to GD7-5.

<sup>8</sup> See GD2-4 and GD3-35.

[6] The Appellant explains that he received a total of \$4,500 in benefits. He argues that it wasn't just the EI ERB or the Canada Emergency Response Benefit (CERB). He says that he received \$2,000 in EI ERB or CERB and \$2,500 in EI regular benefits. He argues that he was entitled to the benefits he received. On October 11, 2022, he challenged the Commission's reconsideration decision before the Tribunal. That decision is now being appealed to the Tribunal.

## Issue

[7] I have to decide whether the Commission is justified in asking the Appellant to pay back the amount of money he was overpaid as an advance payment of the EI ERB (overpayment) and whether he has to pay this money back.<sup>9</sup>

## Analysis

[8] Because of COVID-19,<sup>10</sup> changes were made to the *Employment Insurance Act* (Act). For example, the EI ERB was introduced. People can become EI ERB claimants for different reasons. This type of benefit isn't just for those who have stopped working for reasons related to COVID-19.

[9] A claimant can get the EI ERB if, for example, their benefit period could have been established for EI regular benefits, among other things, during the period from March 15, 2020, to September 26, 2020, inclusive.<sup>11</sup> However, for that period, no benefit period is to be established for EI regular benefits or special benefits (for example, sickness benefits).<sup>12</sup>

[10] In this case, the Commission talked about the CERB and EI ERB payments that the Appellant had received.<sup>13</sup> The Appellant referred to the benefits he had received as the CERB and as EI regular benefits.<sup>14</sup>

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<sup>9</sup> See sections 43, 44, 47, 52, 153.6(1)(a), 153.1301, and 153.1303(1) of the Act.

<sup>10</sup> Coronavirus disease 2019.

<sup>11</sup> See section 153.5(2)(b) of Part VIII.4 of the Act.

<sup>12</sup> See sections 153.5(3)(a) and 153.8(5) of Part VIII.4 of the Act.

<sup>13</sup> See GD3-19, GD3-22 to GD3-25, GD4-2, GD4-3, and GD7-1 to GD7-5.

<sup>14</sup> See GD2-8 and GD3-26.

[11] I note that even though the EI ERB and the CERB can be considered similar, they are two different types of benefits.

[12] When these types of benefits were available, that is, from March 15, 2020, to October 3, 2020 (week of September 27, 2020), inclusive, those normally entitled to EI benefits (regular or special benefits) got the EI ERB, and those not normally entitled to them got the CERB, if they qualified for it.

[13] The amount paid was the same in both cases: \$500 per week.<sup>15</sup>

[14] In this case, based on the information in the Commission's arguments, the Appellant received the EI ERB.<sup>16</sup> The Commission says that he met the conditions to receive benefits and that he could have had a benefit period established effective March 22, 2020.<sup>17</sup> I will refer to what he received as the EI ERB.<sup>18</sup>

[15] The Act says that if a person has received EI benefits—including the EI ERB—they weren't entitled to or because [*sic*] they were disqualified from receiving those benefits, they have to repay those benefits or the resulting overpayment.<sup>19</sup>

[16] The Commission has 36 months to reconsider a claim for benefits paid or payable to a claimant, including the EI ERB. The Commission has 72 months if, in its opinion, a false or misleading statement or representation has been made in connection with a claim.<sup>20</sup>

[17] The Commission argues as follows:

a) On April 13, 2020, the Appellant received an advance payment of \$2,000.

That payment is the equivalent of four weeks of EI ERB ( $4 \times \$500 = \$2,000$ ).

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<sup>15</sup> See section 153.10(1) of Part VIII.4 of the Act.

<sup>16</sup> See GD4-2 and GD4-3.

<sup>17</sup> See GD4-3.

<sup>18</sup> See section 153.10(1) of Part VIII.4 of the Act.

<sup>19</sup> See sections 43, 44, 47, 52, and 153.6(1)(a) of the Act.

<sup>20</sup> See sections 52 and 153.6(1)(a) of the Act.

The Commission may pay the EI ERB in advance of the customary time for paying it.<sup>21</sup>

- b) The Appellant also received benefits for five weeks, from April 5, 2020, to May 9, 2020, at a rate of \$500 per week, for a total of \$2,500 ( $5 \times \$500 = \$2,500$ ).<sup>22</sup>
- c) Including the \$2,000 advance payment, the Appellant received the equivalent of nine weeks of benefits ( $9 \times \$500 = \$4,500$ ), despite claiming benefits for only five weeks.<sup>23</sup>
- d) An overpayment was created because of the advance payment he received. The overpayment is the equivalent of four weeks of benefits, that is, \$2,000 ( $4 \times \$500 = \$2,000$ ).<sup>24</sup>
- e) Since the Appellant claimed benefits for only five weeks, the benefit payment system could not recover the overpayment. This is because it was programmed not to pay benefits at weeks 13 and 14 of the benefit payment sequence and at weeks 20 and 21.<sup>25</sup>
- f) This means that the amount of money the Appellant received as an advance payment could not be deducted in his 13th and 14th weeks of benefits and in his 20th and 21st weeks of benefits.<sup>26</sup>
- g) Although the Appellant says he didn't receive \$2,000 under the EI ERB, since he didn't receive \$2,000 in a single payment,<sup>27</sup> the evidence shows the

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<sup>21</sup> See section 153.7(1.1) of the Act. See also GD4-2.

<sup>22</sup> See GD3-20 and GD4-2.

<sup>23</sup> See GD4-2.

<sup>24</sup> See GD4-2.

<sup>25</sup> See GD4-2.

<sup>26</sup> See GD4-2.

<sup>27</sup> See GD2-8.

contrary. He was paid \$2,000 on April 13, 2020.<sup>28</sup> His bank statement shows that an amount of \$2,000 was deposited into his account on April 21, 2020.<sup>29</sup>

- h) The Appellant received benefits for each week for which he claimed benefits. He also received a \$2,000 advance payment. The \$2,000 wasn't recovered. He has to pay it back.<sup>30</sup>

[18] The Appellant's testimony and statements indicate the following:

- a) He received a total of \$4,500 in benefits,<sup>31</sup> but that isn't the amount he received in EI ERB.
- b) The \$2,000 cheque he received (payment made on April 13, 2020) was an EI ERB payment.<sup>32</sup> That is the only amount of money he received relating to the EI ERB. According to him, the EI ERB is paid in instalments of \$2,000.<sup>33</sup>
- c) When he claimed the EI ERB, he met all the requirements to receive this type of benefit.<sup>34</sup>
- d) After he stopped working at X, he didn't claim the EI ERB.<sup>35</sup>
- e) He also received \$2,500, specifically two \$1,000 cheques and one \$500 cheque,<sup>36</sup> but those weren't EI ERB payments, according to him. They were EI regular benefits. He also talked about [translation] "social benefits" in this case.<sup>37</sup>
- f) He argues that he was entitled to the benefits he received.<sup>38</sup>

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<sup>28</sup> See GD3-19.

<sup>29</sup> See GD2-13 and GD4-2.

<sup>30</sup> See GD4-2 and GD4-3.

<sup>31</sup> See GD8-1.

<sup>32</sup> See GD8-1.

<sup>33</sup> See GD2-8.

<sup>34</sup> See GD2-8.

<sup>35</sup> See GD3-3 to GD3-18.

<sup>36</sup> See GD8-1.

<sup>37</sup> See GD2-8 and GD3-26.

<sup>38</sup> See GD2-8.

[19] In this case, the Appellant acknowledges that he received a total of \$4,500 in benefits, which includes the \$2,000 EI ERB advance payment.

[20] Concerning the \$2,500 he received in addition to the advance payment, those payments weren't regular benefits as he claims. He could not receive regular benefits for the period from April 5, 2020, to May 9, 2020.

[21] This wasn't possible because of the provisions of the Act<sup>39</sup> relating to the COVID-19 pandemic.

[22] A benefit period was established effective April 5, 2020, so that the Appellant could receive the EI ERB.<sup>40</sup>

[23] Claims for regular benefits or special benefits (for example, sickness benefits) with benefit periods starting between March 15, 2020, and September 26, 2020, inclusive, are considered claims for the EI ERB or the CERB, whichever applies.<sup>41</sup>

[24] Even though the Appellant met the conditions to receive benefits and could have had a benefit period established effective March 22, 2020,<sup>42</sup> he could not receive regular benefits, given that he made his claim for benefits on April 12, 2020.

[25] I don't accept the Appellant's argument that the \$1,000 or \$500 amounts he received in benefits by cheque were regular benefits and that only the \$2,000 cheque was a cheque for the EI ERB.

[26] The cheques he received, totalling \$4,500,<sup>43</sup> were EI ERB payments.

[27] The Appellant received a \$2,000 advance payment, on top of receiving benefits for five weeks.

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<sup>39</sup> See Part VIII.4 of the Act.

<sup>40</sup> See GD3-1 and GD4-1.

<sup>41</sup> See Part VIII.4 of the Act.

<sup>42</sup> See GD4-3.

<sup>43</sup> See GD8-1.

[28] The \$2,000 advance payment he received is the equivalent of four weeks of benefits.

[29] This means that he received nine weeks' worth of benefits, when he could receive benefits for five weeks, from April 5, 2020, to May 9, 2020.

[30] The Commission wasn't able to recover the \$2,000 advance payment when the Appellant received the EI ERB.

[31] According to the Commission's explanations, the advance payment was supposed to be recovered from the Appellant's 13th and 14th weeks of benefits and then from his 20th and 21st weeks of benefits, but this wasn't possible, since he received the EI ERB for only five weeks.

[32] Even though the Appellant disagrees with having to pay back the \$2,000 EI ERB advance payment he received, the fact is that he has to pay it back.

[33] The Appellant received this advance payment in addition to receiving benefits for all five weeks for which he claimed benefits.

[34] This means that the \$2,000 advance payment that the Commission was unable to recover when it paid him the EI ERB is an overpayment that has to be repaid.

[35] The Federal Court of Appeal (Court) tells us that the amount of an overpayment specified in a notice of debt becomes repayable on the date of the notification of the amount of the overpayment and that a person who receives an overpayment of benefits is required to return the amount of the overpayment without delay.<sup>44</sup>

[36] The Appellant's situation can't relieve him from his liability to repay the benefit overpayment that he owes.

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<sup>44</sup> The Court established this principle in *Braga*, 2009 FCA 167. See also sections 43, 44, 47, 52, and 153.6(1)(a) of the Act.

[37] While I sympathize with the Appellant's case, the Court tells us that adjudicators, including the Tribunal, aren't permitted to rewrite the Act or to interpret it in a manner that is contrary to its plain meaning.<sup>45</sup>

[38] I find that the Commission is justified in asking the Appellant to pay back the overpayment. It is up to the Commission to consider how he should pay back the amount of money it says he owes.

## **Conclusion**

[39] I find that the Appellant has to pay back the amount of money that he was overpaid as an advance payment of benefits, and that the Commission says he owes, in the manner determined by the Commission.

[40] This means that the appeal is dismissed.

Normand Morin  
Member, General Division – Employment Insurance Section

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<sup>45</sup> The Court established this principle in *Knee*, 2011 FCA 301.