



Citation: *RM v Canada Employment Insurance Commission*, 2022 SST 1109

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

Decision

Appellant: R. M.
Representative: B. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (447212) dated July 19, 2022
(issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: Teleconference

Hearing date: October 6, 2022

Hearing participants: Appellant
Appellant's representative

Decision date: October 13, 2022

File number: GE-22-2881

Decision

[1] The appeal is dismissed. The Claimant must repay the \$2,000 overpayment from the advance payment of the Employment Insurance Emergency Response Benefit.

Overview

[2] The Claimant's employer laid him off from his job. So he applied for employment insurance (EI) benefits. The Claimant received a \$2,000 advance payment. He received 10 weeks of benefits after that.

[3] The Commission says it paid the Claimant the Employment Insurance Emergency Response Benefits (EI ERB), including the \$2,000 advance. It says it normally offsets the advance payment by imposing two two-week disentitlements. But, it could not do this because the Claimant returned to work. This resulted in a \$2,000 overpayment. The Commission says the Claimant has to repay this amount.

[4] The Claimant says if he got the normal EI regular benefits, he would have been entitled to more benefits. He argues the Commission should waive the overpayment.

Matter I have to consider first

The Claimant didn't get the Commission's reconsideration file and representations

[5] At the hearing, the Claimant's representative said she didn't get the Commission's reconsideration file and representations. The database used by the Tribunal shows an email was sent to the representative on September 19, 2022. The Commission's reconsideration file and representations were attached to the email. The representative confirmed that the email address to which the two documents were sent belongs to her.

[6] I told the Claimant and his representative that I would have the Tribunal re-send the two documents to both of them by email. The hearing proceeded as scheduled, but I gave the Claimant and his representative until October 13, 2022 to send any additional comments they may have after reading the Commission's documents.

[7] The Claimant, through his representative, sent a post-hearing submission. The submission reiterated evidence already before me for consideration.

The Claimant's representative gave testimony at the hearing

[8] The Claimant identified his wife as representative on his notice of appeal. She confirmed at the hearing that she wanted to give testimony as a witness. For this reason, I had her take a solemn affirmation as a witness.

Issues

[9] Did the Commission overpay the Claimant because of the advance payment of the EI ERB?

[10] If so, does the Claimant have to repay the overpayment?

Analysis

Did the Commission overpay the Claimant because of the advance payment of the EI ERB?

[11] Yes. The Commission paid the Claimant a \$2,000 advance payment of the EI ERB. This is an overpayment.

[12] The government established Interim Orders in response to the COVID-19 pandemic. This allowed it to add or adapt provisions of the *Employment Insurance Act* (Act), or to cause parts of the Act not to apply.¹ Under the Interim Orders, a new benefit, the EI ERB, was created.

[13] There are special rules for claimants who would have, if not for amended provisions in the law, established a benefit period on or after March 15, 2020. A claimant can't start a benefit period for EI regular benefits between March 15, 2020 and

¹ See section 153.3(1) of the *Employment Insurance Act* (Act).

October 3, 2020. The reason is that in this period, a claimant is deemed to have made a claim for the EI ERB.² The amount of the EI ERB is \$500 a week.³

[14] The Claimant was laid off from his job after working there for 34 years. So he applied for EI benefits on March 23, 2020. He testified that he applied for EI regular benefits. But he said he was automatically switched to the Canada Emergency Response Benefit (CERB).

[15] The Commission says that everyone who applied for EI regular benefits between March 15, 2020 and October 3, 2020 automatically got the EI ERB. It says there was no normal EI at the time, and claimants could not choose between the usual EI and the EI ERB.

[16] The Commission's reconsideration file has a copy of a screenshot from its database. It shows the Claimant got 10 weeks of the EI ERB for the weeks March 22, 2020 through May 31, 2020. It also shows a \$2,000 EI ERB payment issued on April 6, 2020. Another screenshot shows that the Claimant got \$0 benefits for the week of May 31, 2020.

[17] The Claimant confirmed that his social insurance number appears at the top of the first screenshot. He also confirmed that he received 10 weeks of benefits and the \$2,000 payment. His wife confirmed that the Claimant completed reports every two weeks that asked questions like if he was working or not.

[18] I'm satisfied from the Commission's evidence and the Claimant's testimony that he got an advance payment of \$2,000 and 10 weeks of the EI ERB. The Claimant applied for the normal EI regular benefits. He completed reports to get \$500 in benefits for each of the 10 weeks. The Commission's file shows the payments for each of the 10 weeks.

[19] The Claimant thinks he got the CERB. But since he applied for EI benefits on March 23, 2020, I find that he was deemed to have made a claim for the EI ERB

² See section 153.1310 of the Act.

³ See section 153.10(1) of the Act.

according to the law. I find that he received the EI ERB. The Commission's screenshots showing payments of an ERB claim support this.

[20] The Commission says it normally imposed a disentitlement in advance for two two-week periods to prevent payments of the EI ERB so it could offset the advance. It says the first one was to be imposed after the 12th week of paid benefits. The Commission says the Claimant was entitled to only 10 weeks of benefits, but he got the equivalent of 14 weeks of benefits including the \$2,000 advance. It says the advance is an overpayment.

[21] I find that the Commission paid the Claimant 10 weeks of the EI ERB up to May 30, 2020, in addition to the \$2,000 advance. The Claimant doesn't dispute this. The Claimant said he returned to work on June 1, 2020 after the 10th week of benefits paid. Because of this, I find that his claim for the EI ERB didn't last long enough for the Commission to offset the \$2,000 advance payment with the usual two two-week disentitlements imposed. I find that this resulted in an overpayment of \$2,000.

[22] I find from the above that the Commission overpaid the Claimant \$2,000.

Does the Claimant have to repay the overpayment?

[23] Yes, the Claimant has to repay the \$2,000 overpayment.

[24] A claimant who has received EI ERB in excess of the amount they are eligible for, has to repay it without delay.⁴

[25] The Claimant and his wife said he shouldn't have to repay the overpayment because so much time has passed. They also said the Claimant would have gotten more benefits if the Commission had paid him EI regular benefits.

[26] The Commission says it can reconsider any claim for the EI ERB within 36 months after paying benefits. Where it does so, and decides a claimant has received

⁴ Section 153.1301 of the Act.

benefits they aren't entitled to, the Commission has to calculate the amount and let the claimant know.⁵

[27] I understand the Claimant's frustration at being asked to repay money he got almost two and a half years ago. But, I find the law allowed the Commission to reconsider the Claimant's claim for the EI ERB within 36 months of paying it. 36 months had not passed since the Commission paid the Claimant the EI ERB.

[28] The Claimant testified that if he had gotten EI regular benefits, he would have received 55% of his earnings, which would be more than the \$500 weekly EI ERB he got.

[29] The Commission says under the normal EI regular benefits rules, the Claimant would have had to serve a one-week waiting period and his earnings in his last week of work would have reduced his first week of benefits to \$109. This would mean that for the 10 weeks he was off work, he would have been entitled to \$4,693 of EI regular benefits.

[30] I accept the Claimant's testimony that he has suffered financially since the pandemic. And now he faces having to repay a \$2,000 overpayment. But, I find that the Commission paid the Claimant \$5,000 of the EI ERB that he was entitled to, and this is more than he would have gotten under the normal EI program.

[31] The Claimant's wife is asking that the overpayment be waived. She said they don't have the \$2,000, and having to repay it is causing them undue hardship.

[32] I sympathize with the Claimant given his circumstances. But I don't have the authority to forgive the debt from the overpayment. I can only make suggestions. The Claimant can ask the Commission to write off the overpayment based on financial hardship. He can also contact the Canada Revenue Agency to make arrangements to repay the debt in a way that won't be so hard financially.

⁵ See sections 52 and 153.1303 of the Act.

[33] While I sympathize with his situation, I can't change the law.⁶ I find that since the Commission overpaid him by \$2,000, he has to repay that amount.

Conclusion

[34] The appeal is dismissed. The Claimant must repay the \$2,000 overpayment from the advance payment of the EI ERB.

Audrey Mitchell

Member, General Division – Employment Insurance Section

⁶ See *Pannu v Canada (Attorney General)*, 2004 FCA 90.