



Citation: *LC v Canada Employment Insurance Commission*, 2023 SST 1169

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

Decision

Appellant: L. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (447452) dated September 7, 2022 (issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Teleconference

Hearing date: January 30, 2023

Hearing participant: Appellant

Decision date: January 31, 2023

File number: GE-22-3446

Decision

[1] The appeal is dismissed with modification. The Claimant must repay all of the EI Emergency Response Benefit (ERB) he received for which he is not eligible, but, he is eligible for one more week than he was paid, so he need only repay \$1,500 of the ERB advance.

Overview

[2] Due to the COVID-19 pandemic the Government amended the *Employment Insurance Act* to create a new benefit, the ERB. The ERB is effective March 15, 2020.

[3] Generally, claimants who could have had a benefit period established for regular EI benefits between March 15, 2020, and September 26, 2020, got ERB instead.

[4] The Claimant applied for benefits on April 3, 2020. He collected 8 weeks of ERB and returned to work in June 2020. He was also advanced \$2,000 worth of ERB payments on April 6, 2020.

[5] The Canada Employment Insurance Commission (Commission) says that normally, in the course of paying out ERB, they would withhold four weeks of ERB down the line, which is equal to \$2,000, in order to balance out the advance. However, in the Claimant's case he did not collect ERB long enough for them to do that, so they say he has a \$2,000 overpayment, as he needs to repay the advance, because it represents weeks of ERB for which he is not eligible.

[6] The Claimant argues that it is unfair he has to repay the advance as he was out of work, and the money he received is not even as much as he would have received if he was working, so he was not financially ahead from collecting ERB.

Issues

[7] The Claimant's eligibility for the \$2,000 advance.

Analysis

The Claimant's eligibility for the \$2,000 advance

[8] I find, that while the Claimant does have to pay back the ERB he received to which he is not eligible, he only needs to pay back \$1,500 of the advance, as he is eligible for one more week than he was paid.

[9] The Commission submits they paid the Claimant 8 weeks of ERB, and that is all the weeks of ERB he is eligible for.¹

[10] The Commission submits that they also advanced the Claimant \$2,000 worth of ERB payments (which is equal to 4 weeks of ERB), and if he got to keep the advance it would be like he was paid 12 weeks of ERB (the 8 weeks he was originally paid plus the 4 weeks the advance represents), when he is only eligible for 8 weeks.²

[11] The Claimant says that while he is very grateful for the Liberal government giving out money to support industries such as his, that were hard hit by the pandemic restrictions, he feels it is unjust to ask him to repay the \$2,000.

[12] The Claimant says his industry, the service industry, was one of the industries that took the brunt of the lockdowns in order to keep the public safe.

[13] The Claimant would rather have been working, but did his part by staying home as the Prime Minister suggested. He says that the money he received all went towards necessities and he was not benefitting financially from being laid off, as he collected \$6,000 of ERB, but would have made \$8,000 if he had been working.

[14] I find the Claimant was paid 8 weeks of ERB and given a \$2,000 advance³ that represents 4 weeks worth of ERB. This means, if the Claimant gets to keep the advance, it would be like he was paid 12 weeks of ERB.

¹ GD04-4

² GD04-4

³ He agreed in his testimony he got this advance

[15] So, in order to be eligible for the advance, in other words in order to keep the advance, he would need to be eligible for 12 weeks of ERB.

[16] Unfortunately, I find the Claimant is only eligible for 9 weeks of ERB. Which means there are 3 weeks of ERB he received (\$1,500 of the advance) which he was not eligible for and needs to repay.

[17] The Claimant filed ERB claims for the following periods:

- April 5 to 18, 2020
- April 19 to 25, 2020,
- April 26 to May 9, 2020,
- May 10 to 23, 2020 and
- May 24 to June 6, 2020

[18] The Claimant was paid for all of those periods, except for the week of May 31 to June 6, 2020.⁴ This means the Claimant filed claims for 9 weeks, but was only paid for 8 weeks. If he could be paid for that one extra week he claimed, but was not paid, that would reduce his overpayment, since that week could be used to offset the money he owes.

[19] I find the Claimant is eligible to be paid ERB for the week of May 31 to June 6, 2020.

[20] The Claimant says he stopped working due to COVID-19 restrictions shutting down his place of employment.

[21] This means, that in order to be eligible for the ERB payment he needs, among other things:

⁴ See the payment information on GD03-23 and GD03-24 which shows the Claimant was not paid for the week of May 31 to June 6, 2020.

- To cease working for at least seven consecutive days within the two-week period in respect of which he claimed ERB, and
- Have no income from employment or self-employment in respect of the seven consecutive days on which he ceased working.⁵

[22] The Claimant says his first day back at work was June 1, 2020. I find this means that in the period of May 24 to June 6, 2020, he would have had seven consecutive days without work or income from work,⁶ within the two-week period in which he claimed benefits (May 24 to June 6, 2020).

[23] Since eligibility is looked at in two weeks sections, this means that he meets the eligibility criteria for the period of May 24 to June 6, 2020, so that means he is eligible for, and can be paid for, the week of May 31 to June 6, 2020.

Summary

[24] So, in summary, I have found the Claimant is eligible for 9 weeks of ERB, which is one more week than he was originally paid.

[25] However, he must pay back all the ERB he received to which he is not eligible,⁷ but since he is eligible for one more week than he was originally paid, he can subtract one weeks worth of ERB (\$500) from the amount he needs to pay back, so he need only repay \$1,500 of the advance.

⁵ There are other factors listed that the Claimant needs to meet in order to be eligible for the ERB payments. Those factors are, he needs to reside in Canada, be at least 15, have insurable earnings of at least \$5,000 in 2019, or the 52 weeks prior to when they claim ERB. See section 153.9(1) of the *Employment Insurance Act*. However, since those other factors are not stated to be at issue for any of the weeks the Claimant claimed ERB, I focused on the two eligibility factors under contention. See GD03-24, which says the reason he was not paid for the week of May 31 to June 6, 2020, was due to working.

⁶ It is more than seven days from May 24 to June 1, 2020, even if, for some reason, you chose to not count the starting date of May 24, 2020. I would also note that the law simply says seven days and does not limit those seven days to only weekdays.

⁷ Section 153.1301 of the *Employment Insurance Act*

Conclusion

[26] The appeal is dismissed with modification. The Claimant must repay all of the EI ERB he received for which he is not eligible, but, he is eligible for one more week (May 31 to June 6, 2020) than he was paid, so he need only repay \$1,500 of the ERB advance..

Gary Conrad

Member, General Division – Employment Insurance Section