



Citation: *PR v Canada Employment Insurance Commission*, 2023 SST 1252

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

## Decision

**Appellant:** P. R.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (514907) dated December 2, 2022 (issued by Service Canada)

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**Tribunal member:** Jillian Evans

**Type of hearing:** Teleconference

**Hearing date:** May 9, 2023

**Hearing participant:** Appellant

**Decision date:** May 11, 2023

**File number:** GE-22-4137

## Decision

[1] The appeal is dismissed.

[2] The Appellant received \$1,000 more in benefits than she was entitled to receive. To date, she has only repaid \$100 of this overpayment.

## Overview

[3] The Appellant, P. R., worked at a childcare facility. She applied for regular EI benefits on March 20, 2020. The facility where she worked closed when the COVID-19 lockdown began and she was laid off.

[4] Due to the pandemic, the Government amended the *Employment Insurance Act* to create a new benefit, the EI Emergency Response Benefit (EI-ERB).<sup>1</sup>

[5] Between March 15, 2020 and September 26, 2020, claimants who would otherwise have been entitled to regular or special EI benefits got the EI-ERB instead.<sup>2</sup> EI-ERB benefits were payable at \$500/week.<sup>3</sup>

[6] An EI-ERB claim was started for P. R. effective March 15, 2020. She continued to receive wages from her employer until March 31, 2020.

[7] She collected benefits of \$500/week for 13 weeks: the weeks of March 29, April 5, April 12, April 19, April 26, May 3, May 10, May 17, May 24, May 31, June 7, June 14 and July 5, 2020.<sup>4</sup>

[8] In addition to these payments, the Canada Employment Insurance Commission (Commission) also issued an advance, lump-sum payment of \$2,000 to the Appellant, representing four weeks of EI-ERB benefits. This lump-sum payment was legislated as part of the changes to the EI Act to get funds to claimants like P. R. as quickly as possible during the early weeks of the pandemic.<sup>5</sup>

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<sup>1</sup> Part VIII.4 of EI Act

<sup>2</sup> See s. 153.5(2)(b) of the EI Act

<sup>3</sup> See s. 153.10 (1) of the EI Act

<sup>4</sup> GD3-23

<sup>5</sup> See s. 153.7(1.1) of the EI Act

[9] The Appellant received her lump sum payment on April 6, 2020.

[10] The Appellant's employer called her back to work at the end of June 2020. So, P. R. stopped being entitled to EI benefits.

[11] Nearly two years later, in May 2022, the Appellant was advised by the Commission that she had received an overpayment of EI-ERB benefits. A Notice of Debt was sent to her.<sup>6</sup>

[12] The Commission says that P. R. was paid \$8,500 in EI-ERB (the equivalent of 17 weeks of benefits) when she was only entitled to \$7,500 (or 15 weeks of benefits). So they say she has a \$1,000 overpayment that she needs to repay.

[13] The Appellant says that she repaid all of the EI ERB benefits that she received when she paid her 2020 taxes. She also says that she cannot afford to repay the debt that the Commission says they are owed as her family has faced personal and financial hardship as a result of the COVID pandemic as she was out of work for a long time.

[14] I have to decide if P. R. received more benefits than she was entitled to and whether or not she has already repaid the Commission.

## Issues

[15] Was the Appellant paid more EI-ERB benefits than she was entitled to receive?

[16] If so, has she already repaid the debt to the Commission?

## Analysis

***The Appellant was paid more EI-ERB benefits than she was entitled to receive.***

[17] If a person has received EI benefits - including EI-ERB benefits - that they weren't entitled to, they have to repay those benefits.<sup>7</sup>

[18] The EI Act says that the Commission has 36 months to reconsider a claim for

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<sup>6</sup> GD3-76

<sup>7</sup> See sections 43, 153.1301 and 153.6(1)(a) of the Act

benefits paid to a claimant and can seek repayment of any overpayment during this time.<sup>8</sup>

[19] The Commission's records indicate that the Appellant was paid a total of \$8,500 in EI-ERB benefits – 13 weekly payments of \$500 (on each of the weeks listed in paragraph 7 above), plus \$2,000 in an advance payment.<sup>9</sup> The Appellant does not recall exactly how much she received. But she has no evidence to dispute this amount and I accept this as the total amount of EI-ERB paid to her.

[20] The Commission says that when they paid P. R. the \$2,000 advance on April 6, 2020, they planned to “recoup” that advance over the course of later EI-ERB payments. They intended to withhold four weeks of benefits later on during the benefit period – during weeks 13, 14, 17 and 18 - to offset the advance that she had received.

[21] However, P. R. did not end up collecting EI-ERB long enough for them to recoup all of the advance payments. They did “recoup” two weeks (or \$1,000) of the advance payment by withholding P. R.'s EI-ERB benefits during week 13 (June 21, 2020) and week 14 (June 28, 2020). This offset \$1,000 of the advance payment.

[22] But P. R. was no longer collecting benefits by weeks 17 and 18. She had returned to work. As such the remaining \$1,000 of the advance payment was never recovered by the Commission.

[23] The Commission submits the Appellant was entitled to EI-ERB for 15 weeks between March 31, 2020 and July 5, 2020. Her entitlement ended once her employer started paying her wages again. These 15 weeks represent \$7,500 and that is all the money she was entitled to.

[24] The Commission submits that if the Appellant got to keep the \$1,000 advance that she received on top of the fifteen weeks of benefits then it would be as if she was paid seventeen weeks of EI-ERB when she is only entitled to fifteen weeks.

[25] The Appellant does not dispute that she was only entitled to fifteen weeks of EI

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<sup>8</sup> See section 52 of the EI Act

<sup>9</sup> GD3-23

benefits. She agrees that she returned to work after fifteen weeks.

[26] I find that the Appellant received \$1,000 more EI-ERB benefits than she was entitled to.

***The Appellant has only repaid \$100 of the debt to the Commission. She still owes \$900.***

[27] P. R. believes that she has already repaid whatever EI overpayment she might owe to ‘the government’. She testified at the hearing that she recalled owing a lot of taxes on her 2020 income tax return. It was her understanding that that she ‘repaid’ most of the EI-ERB benefits that she had received as part of filing her taxes.

[28] She advises that she thought that after paying those taxes, any amount that she might have had to “pay back” was taken care of. P. R. recalls that the amount she had to pay in taxes that year was higher than she was used to paying and so she assumed that this meant that she had repaid her benefits.

[29] The Appellant says was surprised to receive a Notice of Debt from Employment and Social Development Canada more than a year after filing her 2020 tax return.

[30] She told the Tribunal that when she got the Notice, she called ESDC right away and paid \$100 towards the debt but has since then been unable to pay anything more towards it. The Appellant also questions whether the debt is accurate, given the taxes that she paid the year before.

[31] The Commission acknowledges that P. R. did make a payment of \$100 towards her debt on July 8, 2022.<sup>10</sup> But it says that paying income tax on the benefits that she received is not the same thing as paying back benefits that you were not entitled to receive in the first place.

[32] I agree with the Commission. There is no evidence before me that P. R. paid the Commission anything more than \$100 towards the \$1,000 overpayment that she received in benefits. Income tax is not a means by which EI benefit overpayments are collected. The fact that the Appellant paid tax on her benefit income does not prove that she repaid the overpayment.

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<sup>10</sup> GD4-5

[33] The Appellant also says that if she does owe the Commission money, the amount should be waived or forgiven for compassionate reasons. She explains that since getting the Notice of Debt in May 2022, she has had to deal with a number of personal and financial crises in her family life (including the deaths of two close family members and the need to financially support her mother after her father's passing).

[34] These crises would make repaying \$900 a financial hardship for her.

[35] She is asking the Tribunal to decide that she should not have to repay the debt for these reasons.

[36] I understand the Appellant's distress and have empathy for the difficulty that this debt creates. However, the law provides that if a worker is paid more benefits than they are entitled to, they need to repay the benefits that they were not entitled to.<sup>11</sup>

[37] Since I have found that P. R. was paid more than she was entitled to, she is required at law to repay it.

[38] Adjudicators with the Tribunal aren't permitted to rewrite the EI Act or to interpret it in a manner that is contrary to its plain meaning. The Act does not allow the Tribunal to "write-off" debt. These kinds of decisions can only be made by the Commission.<sup>12</sup>

[39] Although I don't have the power to reduce or cancel the Appellant's overpayment, P. R. still has options.

[40] She could ask the Commission to forgive all or part of her overpayment due to financial hardship.<sup>13</sup>

[41] She can also talk to Canada Revenue Agency about repayment options.

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<sup>11</sup> See s. 43, 153.1301 and 52(3) of the EI Act

<sup>12</sup> See s. 153.1306

<sup>13</sup> s. 153.1306(1)(f)

## **Conclusion**

[42] The appeal is dismissed.

[43] The Appellant was overpaid \$1,000 in EI-ERB benefits.

[44] She has only re-paid \$100 of that debt. The remaining \$900 remains unpaid.

Jillian Evans

Member, General Division – Employment Insurance Section