



Citation: *CF v Canada Employment Insurance Commission*, 2023 SST 299

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

## Decision

**Appellant:** C. F.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (447624) dated September 6, 2022 (issued by Service Canada)

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**Tribunal member:** Jillian Evans

**Type of hearing:** In person

**Hearing date:** March 28, 2023

**Hearing participant:** Appellant

**Decision date:** May 10, 2023

**File number:** GE-22-3397

## Decision

[1] The appeal is dismissed.

[2] The Appellant received \$2,000 more in benefits than she was entitled to receive.

## Overview

[3] The Appellant, C. F., is a dental assistant. She applied for regular EI benefits on March 16, 2020. The dental office 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 C. F. effective March 15, 2020. She collected benefits of \$500/week for six weeks: the weeks of March 15, March 22, March 29, April 5, April 12 and April 19, 2020.

[7] In addition to these payments, the Canada Employment Insurance Commission (Commission) had 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 C. F. as quickly as possible during the early weeks of the pandemic.<sup>4</sup>

[8] C. F. received her lump sum advance payment on April 6, 2020.

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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> See s. 153.7(1.1) of the EI Act

[9] The Appellant's employer applied for the Canada Emergency Wage Subsidy and began paying her wages again six weeks after they laid her off. So, C. F. stopped being entitled to EI benefits. She eventually returned to work in June 2020.

[10] Eighteen months later, in late November 2021, 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.

[11] The Commission says that C. F. was paid \$5,000 in EI-ERB (the equivalent of 10 weeks of benefits) when she was only entitled to \$3,000 or 6 weeks of benefits. So they say she has a \$2,000 overpayment that she needs to repay.

[12] The Appellant says she did not apply for CERB, EI-ERB or any other COVID-19 payments from the government. She just wanted access to the regular EI benefits that she has paid into her whole working life.

[13] She says did nothing wrong, applied for benefits that she was entitled to and did not ask for any advance payment. She has already paid income tax on the EI-ERB payments that she received and she says that should not have to repay anything because it was the Commission's error.

[14] I have to decide if C. F. received more benefits than she was entitled to.

### **Matter I have to consider first**

[15] At the beginning of the hearing, the Appellant indicated that she had not received the Commission's Reconsideration File (GD03) and the Representations of the Commission (GD04) from the Tribunal.

[16] On review of the electronic file, it was not clear to me that GD03 and GD04 had in fact been sent to the Appellant.

[17] In the circumstances, I gave the Appellant three choices:

- a) I would agree to adjourning the hearing to another day to ensure that she could be sent the Commission's responding materials and have time to review and consider them before returning for her adjourned hearing.
- b) We could proceed with her hearing as scheduled, but I would arrange for the Commission's responding materials to be sent to her after the hearing and would grant her 2 weeks to provide me with any written response to the Commission's File and Representations. I would accept these written submissions – and only these - as post-hearing documents.
- c) We could proceed with her hearing and she could waive the right to receive and review the Commission's File and Representations.

[18] C. F. chose the second option. The hearing proceeded as scheduled. GD03 and GD04 were sent to her by email on March 28, 2023 and she was given until April 14, 2023 to provide any written post-hearing submissions.

[19] C. F. confirmed receipt of GD03 and GD04. She did not provide any supplementary written submissions by April 14, 2023.

[20] I find that I am entitled to render a decision on the record as it was at April 14, 2023 and am doing so here.

## **Issues**

[21] Was the Commission justified in paying the Appellant EI-ERB instead of EI regular benefits for the period of March 15, 2020 to April 25, 2020?

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

## Analysis

### ***The Commission was justified in paying the Appellant EI-ERB benefits instead of EI regular benefits.***

[23] The Appellant says that she did not ask the government for CERB, EI-ERB or any other COVID-19 related benefits. C. F. says that when she applied online for EI, she qualified for EI regular benefits, applied for regular benefits and should have been paid regular benefits.

[24] She says that she had been paying EI premiums her whole life and simply wanted to access the regular benefits. The Appellant says that the Commission was wrong to pay her EI-ERB as this is not what she applied for. C. F. says that if had received regular benefits, she would not be facing this overpayment issue.

[25] The Commission says that because of the COVID-19 pandemic, changes were made to the *Employment Insurance Act* (EI Act).

[26] These changes meant that between March 15, 2020 and September 26, 2020, claimants who would otherwise have been entitled to regular EI benefits got the EI-ERB instead. The amount of the EI-ERB for a week was \$500.

[27] The Commission says that these changes to the Act gave the Appellant no choice. The Appellant wasn't able to receive regular benefits during her benefit period because they were not offered at that time. The only type of benefit the Appellant could get when she applied for benefits was the EI-ERB and the EI Act deemed her to have applied for that benefit.<sup>5</sup>

[28] I find that the Appellant wasn't entitled to EI regular benefits between March 15, 2020 and April 25, 2020 since this type of benefit wasn't available during the period for which she claimed it. The Commission was justified in paying the Appellant EI-ERB benefits at the established rate of \$500 per week during the period of her entitlement.

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<sup>5</sup> See s. 153.1310(a) of the EI Act

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

[29] If a person has received EI benefits - including EI-ERB benefits - that they weren't entitled to, they have to repay those benefits.<sup>6</sup>

[30] The EI Act says that the Commission has 36 months to reconsider a claim for benefits paid to a claimant and can seek repayment of any overpayment during this time.<sup>7</sup>

[31] The Appellant and the Commission agree that the Appellant was paid a total of \$5,000 in EI-ERB benefits. This is the amount that C. F. claimed on her tax return and it is reflected on her T4E.<sup>8</sup>

[32] The Commission says that when they paid C. F. the \$2,000 advance on April 6, 2020, they planned to "recoup" the advance over the course of later EI-ERB payments. They intended to "fail to process" four weeks of benefits later on during the benefit period to offset the advance that she had received.

[33] However, C. F. did not end up collecting EI-ERB long enough for them to do that. The advance payments were never offset.

[34] The Commission submits the Appellant was entitled to EI-ERB for six weeks between March 15, 2020 and April 25, 2020. Her entitlement ended once her employer started paying her wages again under the CEWS. These 6 weeks represent \$3,000 and that is all the money she was entitled to.

[35] The Commission submits that if the Appellant got to keep the \$2,000 advance that she received on top of the six weeks of benefits then it would be as if she was paid ten weeks of EI-ERB when she is only entitled to six weeks.

[36] The Appellant does not dispute that she was only entitled to six weeks of EI benefits. However, she says she would like the overpayment erased. She says that she

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<sup>6</sup> See sections 43, 153.1301 and 153.6(1)(a) of the Act

<sup>7</sup> See section 52 of the EI Act

<sup>8</sup> GD3-64 and GD3-65

never asked to be paid more than she was entitled to. She was completely upfront and truthful with the Commission in her application and was not aware that she was receiving benefits to which she might later not be entitled. She says it is not fair that she is being told a year and a half later that she has to repay money that she never asked for.

[37] C. F. says that since she has been paying EI premiums for nearly 40 years, all of the premiums that she has paid should be used to pay off any overpayment that arose because of the Commission's "error."

[38] I understand the Appellant's frustration. She said at her hearing that she purposely did not apply COVID-19 related 'subsidies' from the government precisely because she suspected that she might be asked to pay them back later. She thought that she was applying for regular EI and assumed that she was getting regular EI.

[39] Regardless of the type of benefit that the Appellant received, however, the law provides that if a claimant is paid more than they are entitled to, they need to repay the benefits that they were not entitled to.<sup>9</sup>

[40] Adjudicators with the Tribunal aren't permitted to rewrite the Act or to interpret it in a manner that is contrary to its plain meaning.

[41] I find that the Appellant received \$2,000 more EI-ERB benefits than she was entitled to. So I find that the Commission is justified in asking the Appellant to pay back the overpayment.

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<sup>9</sup> See s. 43, 153.1301 and 52(3) of the EI Act

## **Conclusion**

[42] The appeal is dismissed.

[43] The Appellant was overpaid \$2,000 in EI-ERB benefits.

Jillian Evans

Member, General Division – Employment Insurance Section