



Citation: *Canada Employment Insurance Commission v AM*, 2023 SST 1329

## **Social Security Tribunal of Canada Appeal Division**

# **Decision**

**Appellant:** Canada Employment Insurance Commission  
**Representative:** Joshua Toews

**Respondent:** A. M.

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**Decision under appeal:** General Division decision dated May 8, 2023  
(GE-22-3964)

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**Tribunal member:** Stephen Bergen

**Type of hearing:**

**Decision date:** **October 3, 2023.**

**File number:** AD-23-573

## Decision

[1] I am granting leave to appeal and allowing the appeal in part.

## Overview

[2] A. M. is the Respondent in this appeal. He applied for Employment Insurance benefits and claimed the Emergency Response Benefit (ERB), so I will call him the Claimant. After he applied, the Canada Employment Insurance Commission (Commission) advanced him \$2000.00 immediately and paid him a weekly benefit of \$500.00 as well. The Commission expected that it would offset the advance by not paying him a weekly benefit for certain weeks later in the claim.

[3] Anticipating his return to work, the Claimant stopped claiming the weekly benefit before the Commission had recovered the advance. The Commission asked him to pay the advance back as an overpayment. The Claimant asked the Commission to reconsider but it would not change its decision.

[4] The Claimant appealed to the General Division. The General Division allowed his appeal. It found six additional weeks in which the Claimant would have been entitled to the ERB benefit, so it said he did not have to pay back the advance and directed the Commission to pay an additional \$1000.00 to the Claimant.

[5] The Commission appealed to the Appeal Division. I convened a settlement conference on September 12, 2023, which resulted in the parties agreeing on the disposition of the appeal.

[6] The parties agree, and I confirm, that the General Division did not make an error by offsetting the \$2000.00 advance against four weeks in which the Claimant was entitled to benefits. However, the General Division did make an error by directing the Commission to pay benefits for an additional two weeks.

## **The parties agree on the outcome of the appeal**

### **The advance**

[7] The parties agree that the Claimant is entitled to the \$2000.00 that the Commission paid as an advance.

[8] The Commission acknowledged that the Claimant would have been entitled to additional weeks of employment if he had made a claim for those weeks. In this case, the Claimant stopped claiming weeks of benefits because he expected to return to work and did not think he would be entitled to ERB. As it happened, he did not return to work as quickly as he expected, and he would have been entitled to more weeks.

[9] The Commission now accepts that the Claimant claimed and was entitled to another four weeks of benefits. It confirms that the Claimant may retain the advance. The Commission is not now asserting any interest in the \$2000.00 paid as an advance. The Commission is not seeking to recover it as a debt.

[10] I accept the parties' agreement on the disposition of the advance. I find that their agreement is consistent with the law and facts.

[11] Section 153.7(1) of the EI Act states that the ERB is payable to a Claimant who makes a claim under section 153.8. The Commission states that section 153.8(1) of the EI Act allows a claimant to make a claim for ERB benefits "in the form and manner" established by the Minister. The Commission has developed a policy by which it establishes an alternate form or manner, which may be applied to reconcile the advance payment only.

[12] Since the Claimant made a claim in alternate form and manner for the additional four weeks of benefits, the General Division did not make an error in finding that he was entitled to those benefits,

## **The additional \$1000.00**

[13] The parties also agree that the General Division made an error by directing the Commission to pay to the Claimant \$1000.00 above and beyond the \$2000.00 advance, which represented an additional two weeks of benefits.

[14] I find that their agreement is consistent with the law and facts.

### **– Error of jurisdiction**

[15] The General Division did not have jurisdiction to find that the Commission owed the Claimant for the additional two weeks of benefits.

[16] The General Division may only consider those issues arising from the reconsideration decision. Section 113 of the EI Act states that a party may only appeal a reconsideration decided under section 112.

[17] The reconsideration decision concerned the recovery of an overpayment for the advance. Neither the original decision, nor the reconsideration that maintained it, considered whether the Claimant was entitled to additional weeks of benefits beyond those represented by the advance/overpayment.

### **– Error of law**

[18] The General Division made an error of law by permitting the Claimant to claim an additional two weeks of benefits after the limitation period for making such a claim had lapsed.

[19] The Claimant did not make a claim for those additional weeks of benefits in the regular way, that is; by filing his weekly claim reports. The alternate “form and manner” permitted by the Commission is for the purpose of reconciling the advance payment only.

[20] Section 153.8(2) of the EI Act, states that a claim (for ERB) must not be made after December 2, 2020. The Claimant did not make a claim for the additional two weeks of benefits to which he might have been entitled, and he cannot claim them now.

## **Conclusion**

[21] I accept the parties' agreement and I am allowing the appeal is in part.

[22] Having regard to the alternate manner and form in which the Claimant claimed weeks of ERB benefits, the General Division properly allowed the Claimant to offset the advance against weeks of benefits to which he was entitled.

[23] The General Division made an error by finding that the Commission must pay the Claimant \$1000.00 for an additional two weeks of benefits to which he would have been entitled, had he claimed them.

Stephen Bergen  
Member, Appeal Division