



Citation: *AM v Canada Employment Insurance Commission*, 2023 SST 499

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

## Decision

**Appellant:** A. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (495780) dated November 4, 2022 (issued by Service Canada)

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**Tribunal member:** Glenn Betteridge

**Type of hearing:** Videoconference

**Hearing date:** April 18, 2023

**Hearing participant:** Appellant

**Decision date:** May 8, 2023

**File number:** GE-22-3964

## Decision

[1] I am allowing A. M.'s appeal and making the decision the Canada Employment Insurance Commission (Commission) should have made.

[2] He has proven the Commission didn't pay him more Employment Insurance Emergency Response Benefits (EI-ERB) than he was entitled to get.<sup>1</sup>

[3] So the Commission's decision to create and collect an \$2,000 overpayment from him is wrong.

[4] The Commission should make sure he is paid back \$2,000. This is the amount of money the Canada Revenue Agency (CRA) deducted from his tax refund to recover the debt the Commission said he owed.

[5] I have also decided A. M. has proven he is eligible for another 2 weeks of EI-ERB (\$1,000), which the Commission should now pay him.

## Overview

[6] A. M. (the Appellant) stopped working because of the COVID-19 pandemic.

[7] He applied for Employment Insurance (EI) benefits. Then filed reports with the Commission for April 5, 2020 to May 23, 2020 (7 weeks).

[8] So the Commission paid him the EI-ERB—an advance payment (\$2,000) soon after he applied **and** then \$500 a week for the next 7 weeks.

[9] About two years later the Commission decided the Appellant was not legally entitled to keep the EI-ERB advance payment. It sent him a decision letter explaining why, and a notice of debt for \$2,000.

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<sup>1</sup> The Employment Insurance Emergency Response Benefit (EI-ERB) is almost identical to the Canada Emergency Response Benefit (CERB). One important difference is that the EI Commission ran the EI-ERB program under amendments to the *Employment Insurance Act* (EI Act). While the Canada Revenue Agency ran the CERB program under the *Canada Emergency Response Benefit Act*. The Commission sometimes wrote "CERB" in letters to people when it is referring to the EI-ERB, which is confusing.

[10] The CRA recovered the \$2,000 debt by taking it out of his income tax refund.

[11] The Appellant says he didn't owe the Commission \$2,000. He stopped filing reports in May 2020 because he thought he was going back to work then. But it turned out he went back to work on July 2, 2020. So he says he was eligible for more EI-ERB—enough to pay off the overpayment.

## Issue

[12] Does the Appellant owe an overpayment of \$2,000 (EI-ERB advance payment)?

## Analysis

### Temporary changes to *Employment Insurance Act* during COVID

[13] In response to the COVID-19 pandemic, the federal government made temporary changes to the *Employment Insurance Act* (EI Act).<sup>2</sup> The following changes are important to this appeal:

- a person could apply for the EI-ERB for a two-week period, and had to follow the Commission's rules and give it the information it needed to decide their application<sup>3</sup>
- the Commission made \$2,000 EI-ERB advance payments to eligible people, as soon as possible after they applied<sup>4</sup>
- the weekly EI-ERB benefit was \$500 per week<sup>5</sup>
- the Commission recovered the \$2,000 advance payment by not paying a person a weekly EI-ERB benefit in 4 weeks (13, 14, 18, and 19)<sup>6</sup>

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<sup>2</sup> See Part VIII.4 (Employment Insurance Emergency Response Benefit) of the EI Act.

<sup>3</sup> See sections 153.8(1) and (3) of the EI Act. The Commission could pay the EI-ERB to eligible people for 2-week periods between March 15, 2022 to October 3, 2020.

<sup>4</sup> See EI Act section 153.7(1.1).

<sup>5</sup> See EI Act section 153.10. This is the amount someone in the Appellant's situation was entitled to get.

<sup>6</sup> This was an internal procedure used by the Commission based in its authority to pay the EI ERB **in advance** under EIA section 153.7(1.1). The Commission decided to make an advance payment equal to

[14] The changes to the law also allowed the Commission to go back and review a person's entitlement to EI-ERB—**up to 36 months after** they got an EI-ERB payment.<sup>7</sup> And to create and collect an overpayment (and debt) where a person got more EI-ERB than they were entitled to get.<sup>8</sup>

### **What the Commission and the Appellant say**

[15] The Commission says it paid the Appellant an EI-ERB advance payment of \$2,000 (covering 4 weeks), plus 7 weekly payments of \$500.<sup>9</sup> So he got a total of 11 weeks (\$5,500) of EI-ERB.

[16] The Commission says the Appellant proved he was eligible for 7 weekly EI-ERB payments. He did this by filing reports with the Commission for April 5, 2020 to May 23, 2020.

[17] But because he stopped getting the EI-ERB after 7 weeks, the Commission could not recover the \$2,000 advance payment from him (in weeks 13, 14, 18, and 19). So this was an overpayment (and debt) he had to repay.

[18] The Commission acknowledges the Appellant went back to work on July 2, 2020. This is what his record of employment shows.<sup>10</sup> So when it was deciding his reconsideration request, it contacted him to get missing reports for the weeks he didn't work. But he didn't respond.<sup>11</sup>

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4 weeks of EI-ERB. Then make no payment in 4 weeks later on (13, 14, 18, and 19) to recover the advance payment.

<sup>7</sup> See EI Act section 153.6(1), (2), and (3). That section applies and adapts the Commission's authority under section 52 to the EI-ERB. Section 52 of the EI Act says, in part, "the Commission may reconsider a claim for benefits **within 36 months after the benefits have been paid** or would have been payable".

<sup>8</sup> See EI Act section 153.6(1), (2), and (3). That section applies and adapts the Commission's authority under sections 43 (**claimant liability for overpayment**), 44 (**claimant liability to return overpayment**), and 47 (**overpayment a debt owed to the Crown**) to the EI-ERB.

<sup>9</sup> See the Commission's representation at GD4.

<sup>10</sup> His record of employment at GD3-21.

<sup>11</sup> The Commission wrote in its representation, at GD4-2: "The Commission tried to contact the claimant in regards to his missing reports as he stopped reporting on May 23, 2020; **however he could be entitled to additional benefits as he went back to work on July 2, 2020**. The claimant failed to respond (GD3-35)." [I added the bold highlighting.]

[19] The Appellant says he doesn't owe the \$2,000 overpayment. He explained he stopped filing reports in early May 2020 because he thought he would be called back to work then. But the situation was uncertain and in flux. As it turned out, he was off work until July 2, 2020.<sup>12</sup>

### **The overpayment is wrong and the Commission owes the Appellant additional EI-ERB benefits**

[20] I have reviewed the Commission's evidence and calculation of the EI-ERB it paid to the Appellant and the overpayment it says he owes.<sup>13</sup>

[21] I accept the Commission's evidence that it paid the Appellant the EI-ERB advance payment (4 weeks) plus 7 weeks of benefits. I also accept the Commission's evidence about the reports he filed. The Appellant doesn't dispute these things. And there is no evidence that goes against the Commission's evidence.

[22] But I find the Appellant doesn't owe the Commission an overpayment (or debt).

[23] I find the Appellant has proven he was eligible for 6 more weeks of EI-ERB—from May 24, 2020 to July 5, 2020—after he stopped filing reports.<sup>14</sup> I find that he didn't go back to work until July 2, 2020. I have no reason to doubt what the Appellant said in his testimony or documents. And no reason to doubt what his employer wrote on his record of employment. There is no evidence that goes against this.

[24] The Commission seems to agree that he was probably eligible for these additional weeks of EI-ERB. But it couldn't make that decision without reports (or more information) from him to back it up.

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<sup>12</sup> See his appeal notice, at GD2-5. This is also what he said at the hearing.

<sup>13</sup> See copy of Commission's Emergency Response Benefits Screen for the Appellant's claim (GD3-18). And a copy of the Commission's Full Text Screens (payments) made to the Appellant (GD3-19 to GD3-20).

<sup>14</sup> Whether he was eligible for EI-ERB when he returned to work would have depended, in part, on whether he had "**no income**" during a two-week period. Under section 153.9(4) of the EI Act, **a person was deemed to have no income (in other words, treated as if they had no income) if they earned \$1,000 or less over 4 consecutive weeks in chronological (but not necessarily consecutive) order.**

[25] Based on my findings, I will re-calculate the Appellant's eligibility for the EI-ERB. (I am going to ignore the EI-ERB he got in weeks 1 through 7 because the parties agree he was entitled to it.)

[26] Here is my calculation—in other words, my findings:

- the Appellant has proven he was eligible for the \$500 EI-ERB in weeks 8, 9, 10, 11, 12, and 13 (**start with \$3,000**)
- the Commission can recover one week of the advance payment in week 13 (**subtract \$500**)
- the Commission can't recover the other three weeks of the advance payment from weekly benefits, meaning this is an overpayment he owes the Commission<sup>15</sup> (**subtract \$1,500**)
- so, in the end, the Appellant has proven the **Commission owes him \$1,000**

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<sup>15</sup> The Commission can't recover the other 3 weeks of the EI-ERB advance payment from weekly EI-ERB because the Appellant wasn't eligible in weeks 14, 18, and 19. In other words, there is no money for the Commission to recover in those weeks because it didn't owe the Appellant a weekly benefit.

## **Conclusion**

[27] I have made the decision the Commission should have made if the Appellant had given it the information it needed to decide his eligibility for the EI-ERB.

[28] The Appellant has proven that he doesn't owe an overpayment.

[29] The Commission should make sure he is paid back \$2,000. This is the amount of money the CRA deducted from his tax refund to recover the debt the Commission said he owed.

[30] I have also decided the Appellant has proven he is entitled to 2 weeks of EI-ERB (\$1,000), which the Commission should now pay to him.

[31] So I am allowing his appeal.

Glenn Betteridge  
Member, General Division – Employment Insurance Section