



Citation: *JR v Canada Employment Insurance Commission*, 2023 SST 477

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

Decision

Appellant: J. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (464034) dated October 26, 2022 (issued by Service Canada)

Tribunal member: Glenn Betteridge

Type of hearing: Videoconference

Hearing date: March 14, 2023

Hearing participant: Appellant

Decision date: May 2, 2023

File number: GE-22-3721

Decision

[1] I am dismissing J. R.'s appeal.

[2] The Canada Employment Insurance Commission (Commission) has shown it paid him more Employment Insurance Emergency Response Benefits (EI-ERB) than he was legally entitled to get.¹ In other words, he was overpaid.

[3] He has to pay back the \$2,000 overpayment—the amount of the EI-ERB advance payment.

Overview

[4] J. R. (the Appellant) stopped working because of the COVID-19 pandemic (COVID).

[5] He applied for EI benefits.

[6] The Commission paid him the EI-ERB—an advance payment (\$2,000) soon after he applied **and** then \$500 a week for the next 11 weeks.

[7] After 11 weeks he went back to work and stopped getting the EI-ERB.

[8] 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 the \$2,000.

[9] The Appellant says the Commission has no right to ask for the money back. So there should be no overpayment and debt.

¹ 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 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 appellants when it is referring to the EI-ERB, which is confusing.

Issue

[10] Does the Appellant have to pay back the EI-ERB advance payment of \$2,000?

Analysis

Temporary changes to *Employment Insurance Act* during COVID

[11] During COVID the federal government made temporary changes to the *Employment Insurance Act* (EI Act).² The following changes are important to this appeal:

- the Commission had to treat applications for EI regular benefits as applications for the EI-ERB³
- the usual EI-ERB weekly benefit the Commission paid was \$500 per week⁴
- the Commission was given the power to make EI-ERB advance payments, and used that power to make \$2,000 advance payments⁵
- the Commission was able to pay a maximum of 28 weeks of EI-ERB to a person (including the \$2,000 advance payment, which covered 4 weeks)⁶
- the Commission was given the power to decide to recover the \$2,000 advance payment from a person by not paying them a weekly EI-ERB benefits for 4 weeks (in weeks 13, 14, 18 and 19)⁷

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

³ Under changes to the EI Act, the Commission had no power to create a benefit period for regular benefits between March 15, 2020 and September 26, 2020. Claimants were deemed to have made claims for the EI-ERB. And any benefits paid during this period were deemed to be EI-ERB benefits.

⁴ See EI Act section 153.10.

⁵ See EI Act section 153.7(1.1).

⁶ A claimant's "week 1" depended on when they applied for EI benefits.

⁷ This was an internal procedure used by the Commission based in its power to pay the EI ERB in advance under EIA section 153.7(1.1). The Commission decided to make an advance payment for these four weeks, then make no payment when each of the four weeks came around.

[12] The changes to the law also gave the Commission the power to review a person's entitlement to EI-ERB.⁸ And to create and collect an overpayment where a person got more EI-ERB than they were entitled to get.⁹

What the Commission and the Appellant say

[13] The Commission says the Appellant got 4 weeks (\$2,000) of EI-ERB benefits he is not legally entitled to keep. And this is an overpayment he has to pay back.¹⁰

[14] The Commission says it paid the Appellant an EI-ERB advance payment of \$2,000 (covering 4 weeks), plus 11 weekly payments of \$500.¹¹ So he got a total of 15 weeks (\$7,500) of EI-ERB.

[15] The Commission says the Appellant proved he was eligible for 11 weekly EI-ERB payments. He did this by filing reports with the Commission for those 11 weeks.

[16] The Commission says the Appellant went back to work after 11 weeks. So it couldn't recover the EI-ERB advance payment (\$2,000) by holding back weekly benefits in weeks 13, 14, 18, and 19.

[17] The Appellant says the Commission has no right to ask for the money back, for four reasons:¹²

- he applied for EI regular benefits, not the EI-ERB, and the Commission put him on the EI-ERB without telling him
- it never told him about the advance payment and recovery rules

⁸ See EI Act section 153.6(1), (2), and (3). That section applies and adapts the Commission's powers 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".

⁹ See EI Act section 153.6(1), (2), and (3). That section applies and adapts the Commission's powers under sections 43 (claimant liability for overpayment), 44 (claimant liability to return overpayment), and 47 (overpayment debt owed to the Crown) to the EI-ERB.

¹⁰ See the Notice of Debt and the decision letter at GD3-20 to GD3-23.

¹¹ See the Commission's representation at GD4.

¹² See the Appellant's appeal documents at GD2. He also said this at the hearing.

- he shouldn't be punished for going back to work as soon as he could, rather than staying on EI benefits for longer
- he paid income tax on the EI-ERB advance payment, so the government acknowledged that it was his income to keep

The overpayment is correct, and the Appellant has to repay it

[18] I have reviewed the Commission's evidence of the EI-ERB it paid to Appellant. And reviewed its evidence of what he was entitled to get and keep.¹³

[19] I have also reviewed the Commission's calculation of the overpayment it says the Appellant owes.¹⁴

[20] I accept the Commission's evidence. I have no reason to doubt it. And there is no evidence that goes against the Commission's evidence. The Appellant doesn't dispute he received the EI-ERB advance payment (4 weeks) plus 11 weeks of EI-ERB benefits. And he doesn't say he is eligible for any more weeks of the EI-ERB.

[21] Based on the evidence I have accepted, I find the Commission overpaid the Appellant by \$2,000. (This is the amount of the EI-ERB advance payment.)

[22] So the Appellant must pay back the \$2,000 overpayment.¹⁵

¹³ See copy of Commission's Emergency Response Benefits Screen (GD3-33) for the Appellant's claim; and a copy of Commission's Full Text Screens (payments) made to the Appellant (at GD3-35).

¹⁴ See the Commission's representations at GD4.

¹⁵ The Appellant owes this debt to the Commission. The Canada Revenue Agency collects this type of debt on behalf of the Commission and Employment and Skills Development Canada.

The Appellant's arguments

[23] Unfortunately for the Appellant, I have to follow the EI Act when I make this decision.¹⁶ I have no power to decide his appeal based on fairness or equity, or financial need or hardship.

[24] I can't accept his arguments about why he shouldn't have to pay back the overpayment, for the following reasons:

[25] First, the Commission changed his application for EI regular benefits to the EI-ERB because that is what the law told the Commission to do—it had no choice.

[26] Second, the Commission had no legal duty to tell him about the advance payment and recovery rules.

[27] Third, the Commission isn't punishing him for going back to work sooner. It is following what the law says it has to do where a person gets more benefits than they are entitled to get.

[28] Fourth and finally, the Commission has the power to go back and reassess a person's EI claim, for up to three years. And to create and overpayment (and debt) where the person got more benefits than they were entitled to.¹⁷ The fact he filed income taxes (and maybe even paid tax on the EI-ERB he got) doesn't take this power away from the Commission.

¹⁶ See *Canada (Attorney General) v Knee* 2011 FCA 301.

¹⁷ The Commission has the power to go back and review an EI claim. And the power to create and collect an overpayment where a person got more EI benefits than they were entitled to receive. The amount of the overpayment is equal to the difference between the amount of money the person got and the amount they were legally entitled to get.

Only the Commission has the power to write off the overpayment

[29] The Commission has the legal power to write off part or all of an overpayment.¹⁸ The Tribunal doesn't have that power.

[30] So the Appellant can contact the Commission about "write-off" if he hasn't already done that.

[31] An overpayment is a debt the appellant owes to Employment and Skills Development Canada (ESDC).

[32] The Canada Revenue Agency (CRA) collects certain debts on behalf of the federal government departments, including ESDC. The Appellant can get more information about debt relief from the [CRA webpage about collection of EI overpayments](#), or by calling toll-free 1-800-864-5841.

Conclusion

[33] The Commission has proven the Appellant received \$2,000 in EI-ERB payments he isn't entitled to keep. This is an overpayment.

[34] The law says the Appellant has to repay the overpayment of \$2,000.

[35] So I have to dismiss his appeal.

Glenn Betteridge
Member, General Division – Employment Insurance Section

¹⁸ The Commission was given the power to write-off EI-ERB overpayments under section 153.1306 of the EI Act. That section refers to section 56 of the EI Regulations, which gives the Commission broad powers to write off an overpayment when it would cause undue hardship for a claimant to repay it.