



Citation: *JO v Canada Employment Insurance Commission*, 2023 SST 1410

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: J. O.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (464028) dated October 21, 2022 (issued by Service Canada)

Tribunal member: Raelene R. Thomas

Type of hearing: In person

Hearing date: May 15, 2023

Hearing participant: Appellant

Decision date: May 29, 2023

File number: GE-22-3773

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant must repay the Employment Insurance Emergency Response Benefit (EI ERB) he was not entitled to receive.

Overview

[3] The Appellant applied for employment insurance (EI) benefits on March 30, 2020. Within days of applying, he received \$2,000 as an advance payment of the first four weeks of the EI ERB. He also received 10 weeks of EI ERB from March 22, 2020 to May 29, 2020.

[4] The Commission says it would have recovered the \$2,000 advance by not paying the Appellant benefits for four weeks at a later date. The four weeks of benefits would equal \$2,000. However, in the Appellant's case he returned to work and did not receive EI ERB long enough for the Commission to recover the \$2,000. So, it now says the Appellant has an overpayment of \$2,000 and must repay that amount.

[5] The Appellant disagrees. He says he received the \$2,000 and then got a second cheque four weeks later for \$2,000. He called Service Canada and was told this was perfectly normal and it was enough to cover the waiting period.¹ The Appellant says he knows other people who received the same amounts and have not been asked to repay it. He cannot afford to repay the \$2,000 at this time.

Issue

[6] Was the Appellant overpaid EI ERB?

[7] If so, does he have to repay the overpayment?

¹ Service Canada delivers the Canada Employment Insurance Commission's program.

Analysis

[8] In response to the COVID-19 pandemic, the government made temporary changes to the law to help people access benefits. This included offering emergency response benefits between March 15, 2020, and October 3, 2020.²

[9] When the government introduced the emergency response benefit there were two programs available. People who were qualified to receive EI benefits and applied for benefits using the EI system received EI ERB. People who were not qualified to receive EI benefits and applied using the Canada Revenue Agency website received the Canada Emergency Response Benefit (CERB). Sometimes the government and the Commission use the term “CERB” when they are really talking about the EI ERB. Both terms are in the appeal file. In my decision, I call the benefits the Appellant received, EI ERB.

[10] The Appellant applied for EI benefits on March 30, 2020. By law, he received the EI ERB.³

[11] The weekly amount of the EI ERB was \$500.⁴

[12] The appeal file has an attestation certificate that shows the amounts of EI ERB the Appellant was paid. It shows that on April 6, 2020, the Appellant was paid \$2,000 of EI ERB as an advance on future weeks of EI ERB.⁵ This means he was paid four weeks of EI ERB when he received the \$2,000 EI ERB advance.

[13] The Appellant testified he received a payment for \$2,000 and a few weeks later he received another payment for \$2,000. The appeal file shows the second payment for \$2,000 of EI ERB was issued on April 17, 2020 for the period from March 22, 2020 to April 18, 2020.⁶ The appeal file shows the Appellant was also paid six more weeks of

² See section 153.8(1) of the *Employment Insurance Act* (EI Act). This is how I refer to the law that applies to this appeal.

³ See section 153.8 of the EI Act.

⁴ See section 153.10(1) of the EI Act.

⁵ See page GD3-31 in the appeal file

⁶ The appeal file shows \$2,000 EI ERB was paid on April 17, 2020 for the 4-week period from March 22, 2022 to April 18, 2020.

EI ERB in bi-weekly payments of \$1,000 each. He was paid the additional six weeks of EI ERB for the period April 19, 2020 to May 29, 2020.⁷

[14] When I asked him, the Appellant said he could not recall if he received a payment of \$1,000 on each of May 1, May 15 and May 29, 2020.⁸ He said he would have to go back three years to check his bank statements, but he did not provide any evidence to show that he did not receive the money.

[15] The information about the EI ERB payments the Appellant received is in attestation certificates. The EI Act says I am required to accept the Attestation Certificate as evidence of the amounts paid to the Appellant.⁹

[16] The Commission says it paid the Appellant \$2,000 as an “advance payment.” This was the equivalent of four weeks of payments for future weeks of EI ERB. The Commission intended to recover the advance by not paying the Appellant EI ERB for four weeks in the future. Had he been unemployed in the 12th, 13th, 17, and 18th weeks after March 22, 2020 he would not have received any EI ERB in those weeks and the \$2,000 advance EI ERB would have been paid back. But, since the Appellant was working in those weeks and did not claim EI ERB for those weeks, the Commission was unable to recover the EI ERB advance.

[17] The Appellant was entitled to 10 weeks of EI ERB. This is how many weeks he was unemployed and that he submitted claim reports for. But, when I add together the EI ERB advance of four weeks and 10 weeks EI ERB the Appellant was paid for the period from March 22, 2020, to May 10, 2020 I see the Appellant received a total of 14 weeks of EI ERB. This means the Appellant received four weeks of EI ERB he was not entitled to receive.¹⁰

⁷ See page GD3-35 in the appeal file.

⁸ The payments on April 17, May 1, May 15 and May 30, 2022 are listed at page GD3-35 in the appeal file and are attached to an attestation certificate dated December 2, 2022 at page GD3-34.

⁹ See section 134 of the EI Act. It says a document appearing to be certified by the Commission or a person employed in the administration of the EI Act stating the amount of any benefits or other amount paid to or owing by any person is evidence of the facts appearing in the document without further proof.

¹⁰ 14 weeks of payments - 10 weeks of unemployment = 4 weeks overpaid

[18] The Appellant says he called Service Canada when he received the second payment of \$2,000 to make sure he was entitled to it. He said he was told by a Service Canada officer the money was to cover the waiting period and to the end of the month. The Appellant testified he knows of 10 other people who received the advance but have not been asked to repay it. He says he cannot afford to repay this money.

[19] The law says a claimant (appellant) is liable to repay benefit money paid to him by the Commission to which he was not entitled.¹¹ The courts have upheld the principle that a claimant (appellant) who receives benefit money that they were not entitled to receive must repay the amount.¹²

[20] As tempting as it may be in some cases (and this may well be one), I am not permitted to re-write the law or to interpret it in a manner that is contrary to its plain meaning.¹³ I must follow the law and render decisions based on the relevant legislation and precedents set by the courts.

[21] As a result, I find the Appellant must repay the \$2,000 in EI ERB benefits he was not entitled to receive.

– **The Appellant can ask the Commission to write off the debt**

[22] I do not have the jurisdiction to write off a debt.¹⁴ Nothing in my decision prevents the Appellant from writing the Commission directly to ask it to reduce or write off the debt. If he is not satisfied with the Commission's response, he may appeal to the Federal Court of Appeal.

¹¹ See section 43 of the EI Act.

¹² See *Lanuzo v Canada (Attorney General)*, 2005 FCA 324. This is how I refer to the courts' decisions that apply to the circumstances of this appeal.

¹³ *Canada (Attorney General) v. Knee*, 2011 FCA 301.

¹⁴ See *Canada (Attorney General) v. Villeneuve* 2005 FCA440; *Buffone v. Canada (Minister of Human Resources Development)*, A-666-99.

Conclusion

[23] The Appellant received four more weeks of EI ERB than he was entitled to receive when he was paid the \$2,000 EI ERB advance. He must repay \$2,000 EI ERB advance.

[24] The appeal is dismissed.

Raelene R. Thomas
Member, General Division – Employment Insurance Section