



Citation: *AA v Canada Employment Insurance Commission*, 2023 SST 1407

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

Decision

Appellant: A. A.

Respondent: Canada Employment Insurance Commission
Representative: Jessica Grant

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (489332) dated June 29, 2022
(issued by Service Canada)

Tribunal member: Angela Ryan Bourgeois

Type of hearing: Videoconference
Hearing date: November 4, 2022
Hearing participants: Appellant
Appellant's representative
Respondent's representative

Decision date: March 20, 2023
File number: GE-22-2496

Decision

[1] I am dismissing the appeal but modifying the amount of the overpayment.

[2] The Appellant (Claimant) was overpaid \$8,713 (not \$9,713) in Employment Insurance (EI) Emergency Response Benefits (ERB). She must repay the overpayment.

Overview

[3] This appeal is about whether the Claimant was overpaid EI ERB benefits, and if so, whether she has to repay them.

[4] The Claimant applied for EI sickness benefits on March 30, 2020.

[5] The Canada Employment Insurance Commission (Commission) paid her EI ERB benefits because EI sickness benefits weren't available then. This was due to the temporary changes the government had made to the *Employment Insurance Act* (EI Act).

[6] The Commission paid the Claimant \$9,713 in EI ERB benefits. It now says she wasn't eligible for the benefits. It wants her to repay all the EI ERB benefits it paid her.¹

[7] The Claimant says she was forced to say home. She applied for EI-ERB benefits. When she returned to work, she called Service Canada to cancel her benefits. She was told she could keep receiving the benefits as long as she continued to claim her earnings. She didn't know she had to claim her hourly rate premiums, overtime pay, and vacation pay. She says she didn't get away with any extra amount of money because she paid taxes on these amounts. She says the Commission shouldn't have continued to pay her if she wasn't entitled to the benefits.

¹ See Notices of Debt on pages GD3-153 and GD3-156 of the appeal file. All page references are to the appeal file.

Issue

[8] Was the Claimant overpaid EI ERB benefits? If so, does she have to repay the overpayment?

Analysis

[9] In 2020, in response to the COVID-19 pandemic, the Government of Canada amended the EI Act. The changes meant:

- EI regular and EI sickness benefits were not available between March 15, 2020, and September 27, 2020.²
- The Commission processed claims for EI sickness benefits as a claim for EI ERB benefits.
- Everyone was paid the same weekly benefit rate of \$500.³
- The Commission was allowed to pay benefits in advance.⁴

[10] So, when someone applied for EI sickness benefits, like the Claimant did, they received EI ERB benefits, not EI sickness benefits, at the weekly rate of \$500.

[11] For a period, when a claim for EI ERB benefits was established, the Commission immediately paid the claimant four weeks of benefits in advance (4 x \$500 = \$2,000).⁵

Was the Claimant eligible for EI ERB benefits?

– What makes a claimant eligible for EI ERB benefits

[12] The law says that a person is eligible for EI ERB benefits if they meet all of these conditions:

² See section 153.8(5) of the *Employment Insurance Act* (EI Act).

³ See section 153.10(1) of the EI Act.

⁴ See section 153.7(1.1) of the EI Act.

⁵ This practice stopped as of June 14, 2020.

- (i) Live in Canada
- (ii) Are at least 15 years old
- (iii) Have insurable earnings of \$5,000 or more in 2019, or in the preceding 52 weeks
- (iv) Cease working for at least seven consecutive days within the two-week period in respect of which they claimed the benefit
- (v) Have no income from employment or self-employment for the consecutive days on which they cease working⁶

[13] There is no dispute that the Claimant meets the first three conditions for all the weeks she claimed EI ERB benefits.

[14] The question is whether she meets the last two conditions.

[15] But even if she doesn't meet the last two conditions (iv or v), the Claimant will still be eligible for EI ERB benefits as long as her earnings aren't more than \$1,000 over a period of four weeks. I'll discuss this more exception below, but first I will make my findings about her income.

– **The Claimant's income**

[16] It is difficult to determine the Claimant's income for each week because her pay periods don't coincide with EI weeks. Despite knowing when she worked, her rate of pay varies, so it isn't a simple matter of multiplying hours worked by a set hourly rate.

[17] I have accepted the Claimant's income from the chart she gave the Commission.⁷ There are a few weeks where there appear to be discrepancies from her pay stubs.⁸ For example, for the weeks of March 30 to April 12, and May 25 to June 7,

⁶ See section 153.9(1)(a) of the EI Act.

⁷ See chart starting on page GD3-144.

⁸ I accepted the work calendars and pay stubs (GD10) she provided after the hearing because they helped clarify her income and work hours. The Commission didn't object to the late documents and had a chance to provide a response. See GD11 and GD12.

her pay stubs were higher than what she reported on her chart. But I find that those discrepancies are due to her pay weeks not coinciding with the EI weeks as she worked on the last day of both of these pay periods which are outside that EI week.

[18] These are my findings about her income:

Week starting	Income	
March 29 ⁹	\$696	
April 5	\$630	
April 12	\$1,544	
April 19	\$1,433	
April 26	\$147	Eligible for EI ERB
May 3	\$0	Eligible for EI ERB
May 10	\$457	
May 17	\$507	
May 24	\$61	
May 31	\$586	
June 7	\$1,888	
June 14	\$1,023	
June 21	\$1,535	
June 28	\$702	
July 5	\$1,276	
July 12	\$1,151	
July 19	\$1,449	
July 26	\$724	
August 2	\$819	
August 9	\$1,690	
August 16	\$1,576	
August 23	\$1,055	
August 30	\$638	
September 6	\$1,531	
September 13	\$1,581	
September 20	\$1,780	
September 27	\$1,370	

⁹ All references to dates where the year isn't indicated are to the year 2020.

– **The Claimant’s eligibility for EI ERB**

[19] The Claimant isn’t eligible for EI ERB for the period starting on **March 29 and ending on April 25** because she doesn’t have a period where she wasn’t working for seven consecutive days **and** for which she has no income from employment. She has income from employment in each of these weeks. The exception doesn’t apply because during that four-week period her income is more than \$1,000.

[20] For the two-week period from **April 26 to May 9**, the Claimant is eligible for EI ERB benefits. This is because during this two-week period she has seven consecutive days without work or income. She doesn’t have to rely on the exception for her eligibility.¹⁰ So she is eligible for two weeks of EI ERB benefits (2 weeks x \$500=\$1,000).

[21] For the period from **May 10, 2020, to October 3, 2020**, the Claimant has no weeks without income from employment so she can only be eligible for EI ERB if she falls within the exception. She doesn’t fall within the exception. This is because there are no four-weeks periods where her income from employment is \$1,000 or less.

– **The exception**

[22] The Commission provided detailed arguments about how I should decide the Claimant’s eligibility for EI ERB benefits, and how I should calculate the four-week periods for the exception.

[23] Section 153.9(4) of the EI Act reads:

If a claimant receives income, whether from employment or self-employment, the total of which does not exceed \$1,000 over a period of four weeks that succeed each other in chronological order but not necessarily consecutively and in respect of which the employment insurance emergency response benefit is paid, the

¹⁰ I agree with the Tribunal member’s approach in *J.E. v Canada Employment Insurance Commission*, 2021 SST 924. I followed a similar approach in *K.H. v Canada Employment Insurance Commission*, 2022 SST 1037. Despite having carefully considered the Commission’s submissions, I am not persuaded to change my application of the exception.

claimant is deemed to meet the requirements of subparagraphs (1)(a)(iv) and (v), of paragraph (1)(b) or of subparagraph (1)(c)(iv), as the case may be.

[24] The exception is clear that the total income of a claimant cannot be more than \$1,000 in a four-week “period.”

[25] The Commission says that the four-week period can span more than four weeks. It skips weeks when EI-ERB benefits aren’t paid.¹¹

[26] I know other Tribunal members might agree with the Commission. But I do not.

[27] I find section 153.9(4) means that a claimant meets conditions (iv) and (v) if:

- a) The claimant receives income from employment or self-employment
- b) The income is \$1,000 or less over a four-week period
- c) The four-week period is chronological
- d) The income in the period of four weeks doesn’t have to be in consecutive weeks
- e) EI ERB benefits must have been paid during that four-week period

[28] I find that the four-week period is a block of four weeks. A “period” is a length of time with one start and one end. It doesn’t start, stop and start again. If it did, it wouldn’t be one period but multiple periods. I can’t accept the Commission’s interpretation because I can’t find that a period of four weeks can be longer than four weeks.

– **How much the Claimant received in EI ERB benefits**

[29] The evidence shows that the Claimant received \$9,713 in EI ERB benefits. This is the amount shown on her T4E statement and also on the Itemized Statement of Benefits Paid.¹²

¹¹ See page GD6-10.

¹² See pages GD3-130 and GD3-132.

– **The Claimant was overpaid \$8,713**

[30] The Claimant was overpaid EI ERB benefits. She is eligible for \$1,000 (2 weeks x \$500), but she received \$9,713. This means that she has been overpaid \$8,713 in EI ERB benefits.

[31] She must repay the overpayment. The law is clear that overpaid benefits must be repaid.¹³ It doesn't matter why the overpayment happened.¹⁴

[32] So the Claimant must repay \$8,713.

– **Overpayment**

[33] The Tribunal doesn't have the authority to write off the Claimant's overpayment.¹⁵

[34] The Claimant still has a few options.

[35] She could ask the Commission to forgive all or part of her overpayment due to financial hardship.¹⁶

[36] She could talk to the Canada Revenue Agency (1-866-864-5823) about repayment options.¹⁷

Conclusion

[37] The Claimant is eligible for \$1,000 in EI ERB benefits. She must repay the \$8,713 that she received and isn't eligible for.

[38] The appeal is dismissed with this modification to the overpayment amount.

Angela Ryan Bourgeois

Member, General Division – Employment Insurance Section

¹³ See section 44 of the EI Act (as adapted by section 153.1301 of the EI Act).

¹⁴ The Claimant says the Commission shouldn't have paid her the benefits if she wasn't eligible for them. Even so, she still has to repay the overpayment.

¹⁵ Write-off decisions are made by the Commission. Appeals of write-off decisions are not reviewed by the Tribunal. See section 153.1307 of the EI Act, which adapts section 112.1 of the EI Act.

¹⁶ See section 153.1306 of the EI Act.

¹⁷ This information is found on the Notice of Debt on page GD3-153.