

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

Decision

Appellant: M. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (464062) dated November 1, 2022 (issued by Service Canada)

Tribunal member: Jean Yves Bastien

Type of hearing: Teleconference

Hearing date: March 9, 2023

Hearing participant: Appellant

Decision date: March 10, 2023

File number: GE-22-3735

Decision

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

[2] The Appellant must repay the \$2,000.00 Employment Insurance Emergency Response Benefit (EI ERB) he wasn't entitled to receive.

[3] The Commission did not correctly determine the Appellant's entitlement to EI ERB in his last two-week. It should have paid him 1 more week of EI ERB benefit.

Overview

[4] The Appellant applied for employment insurance (EI) sickness benefits on March 22, 2020. Amendments to the Employment Insurance Act (Act) were made because of the COVID-19 pandemic. A new benefit called the EI Emergency Response Benefit (EI ERB) was created. The Law required that his claim be established as an EI ERB claim.

[5] The Commission says the Appellant was paid a grand total of \$7500.00 in EI ERB benefits in 2020. An advance EI ERB payment of \$2000.00 paid on April 6, 2020, then 11 weeks of EI ERB payments at \$500.00 per week from March 22, 2020, to June 6, 2020. This added up to another \$5,500.00.¹

[6] The Appellant

[7] The Appellant went back to work on June 6, 2020, and remained employed until December 2020 when he says he was forced to retire because of age. The Appellant says he went back on EI regular benefits then.

[8] Later, the Commission conducted a *retrospective review* of the Appellant's file and determined that he had not been on benefits long enough for the EI ERB advance to be recovered. The Commission said that the Appellant was overpaid by \$2000.00

¹ See pages GD3-16 – GD3-17 of the appeal file.

[9] On February 2, 2022, The Commission issued the Appellant a Notice of Debt for \$2,000.00. This was twenty-two months after the EI ERB advance had been paid and just over a year since the Appellant had retired.²

[10] The Appellant disagrees. The Appellant says that this was the first time that he had heard that he was on the “CERB” and the first time that he was made aware that he owed money.

[11] He says he applied for EI sickness benefits, not EI ERB and the Commission never told him that he was being paid EI ERB. The Appellant says that he did nothing wrong and returned to work as soon as he could. He says the application for “CERB” was done without his knowledge and that he should not have to pay for the Commission’s mistake.

[12] The Appellant wonders why it took so long for the Commission to figure out that he owed money. He says that if they had informed him of any overpayment while he was working, he could have afforded to pay it back. Now that the Appellant is retired, his only income comes from CPP and OAS. He finds himself in financial distress.

Issue

[13] Was the Appellant overpaid EI ERB?

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

Analysis

[15] 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, 2020.³

² See page GD3-20 of the appeal file.

³ 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.

[16] The Appellant applied for EI benefits on March 22, 2020. By law, he received the EI ERB.⁴ He didn't have to specifically apply for EI ERB, his claim was automatically converted. He had no choice or say in the matter.

[17] The weekly amount of the EI ERB was \$500.⁵

[18] 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, he was paid \$2,000 of EI ERB as an advance on future weeks of EI ERB.⁶ This means he was paid four weeks of EI ERB when he received the \$2,000 EI ERB advance.

[19] The Appellant was also paid a total of eleven weeks of EI ERB from March 22, 2020, to June 6, 2020.⁷

[20] The Commission says it paid the Appellant the \$2,000 as an "advance payment." This was the equivalent of four weeks of payments of EI ERB. The Commission created an internal work-around or "procedural disentitlement" where they planned to recover the advances paid to everyone by not paying those people the weekly \$500 EI ERB benefit in weeks 13-14 and weeks 18-19.

[21] Had he been unemployed in weeks 12-13 and 17-18 the Appellant would not have received any EI ERB in those weeks and the \$2,000 advance would have been recovered by the Commission. But, since the Appellant was back at work and off EI ERB after 11 weeks of benefits, the Commission's plan didn't work, and they were unable to recover the \$2,000 advance from future EI ERB payments.

[22] The Appellant was entitled to eleven weeks of EI ERB. This is how many weeks he was unemployed and for which he submitted claim reports. But, when I add together the EI ERB advance of four weeks and the eleven weeks of EI ERB the Appellant was paid from March 22, 2020, to June 6, 2020, I see the Appellant received a total of fifteen

⁴ See section 153.8 of the EI Act.

⁵ See section 153.10(1) of the EI Act.

⁶ See page GD3-17 in the appeal file.

⁷ See page GD3-16 in the appeal file.

weeks of EI ERB. This means the Appellant received four weeks of EI ERB he was not entitled to receive.⁸

[23] The law says that an Appellant has to repay benefit money paid by the Commission to which he was not entitled.⁹ The courts have upheld the principle that an Appellant who receives benefit money that they were not entitled to receive must repay it

[24] The Commission sent the Appellant a formal “Notice of Debt” on February 19, 2022, saying that he owed \$2,000.00¹⁰ This was nearly two years after the overpayment was made.

[25] The Appellant now lives on a combination of his CPP and OAS benefits which add up to about \$1,300 per month. He says that it costs him at least \$1,700 per month in expenses to live. He says that he is about \$400 to \$500 “in the hole” every month. The Appellant says that he is financially strapped that it is impossible for him to pay this large and unexpected debt and that being forced repay the amount would result in financial hardship to him.

[26] As tempting as it may be in some cases, I am not permitted to re-write the law or to interpret it in a manner that is contrary to its plain meaning.¹¹ I must follow the law and render decisions based on the relevant legislation and precedents set by the courts.

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

[28] Part VIII.4 of the EI Act is called “Emergency Response Benefit”. This Part was created to lay out the “rules” on how the ERB was to be given out and what to do if certain situations came up.

⁸ 15 weeks paid minus 11 weeks entitled = 4 weeks overpaid

⁹ See section 43 of the EI Act.

¹⁰ See pages GD3-20 to GD3-23 of the appeal record.

¹¹ *Canada (Attorney General) v. Kneé*, 2011 FCA 301.

[29] In its representations to the Tribunal called “Relevant Sections of the Employment Insurance Act and Regulations” the Commission quotes the section of the law dealing with “*Write-off of amounts wrongly paid*”¹² There are a few special situations where the Commission has the *discretion* to write off debts. Including:

- S 153.1306 (1)(f)(ii) - undue hardship to the debtor
- S. 153.1306 (2)(a) - no error by the debtor AND (2)(b)(ii) - retrospective review initiated by the Commission.

The Appellant can ask the Commission to write off the debt

[30] I do not have the jurisdiction to write off a debt,¹³ or even to tell the Commission to use its discretion to write off a debt. But 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 decision, the Appellant may ask the Federal Court to review the decision.

Conclusion

[31] 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 the \$2,000 EI ERB advance.

[32] The appeal is dismissed.

Jean Yves Bastien
Member, General Division – Employment Insurance Section

¹² See Part VIII.4, S. 153.1306 of the EI Act

¹³ See *Canada (Attorney General) v. Villeneuve* 2005 FCA 440; *Buffone v. Canada (Minister of Human Resources Development)*, A-666-99.