



Citation: *Estate of DS v Canada Employment Insurance Commission*, 2023 SST 1835

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

Decision

Appellant:	Estate of D. S.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (526754) dated May 4, 2023 (issued by Service Canada)
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Tribunal member:	Glenn Betteridge
Type of hearing:	In person
Hearing date:	August 31, 2023
Hearing participant:	Appellant's representative
Decision date:	September 11, 2023
File number:	GE-23-1442

Decision

[1] The Estate of D. S. is the Appellant in this appeal (Estate). I will refer to D. S. as D. S. The Estate was represented by D. S.'s husband. I will refer to him as B. S.

[2] I am dismissing the Estate's appeal.

[3] The Estate hasn't shown D. S. was eligible to keep the Employment Insurance Emergency Response Benefit (EI ERB) advance payment she received.¹ In other words, the Canada Employment Insurance Commission (Commission) overpaid D. S.

[4] So the Estate has to pay back the EI ERB advance payment (\$2,000).

Overview

[5] D. S. was laid off from work due to the COVID pandemic.

[6] On March 25, 2020, she applied for EI benefits.

[7] The Commission paid D. S. the EI ERB. Shortly after D. S. applied, it paid her an advance payment of \$2,000. Then it paid her 12 weekly payments of \$500.

[8] D. S. told the Commission she went back to work full-time the week of June 14, 2020.

[9] In May 2022, the Commission decided D. S. wasn't legally eligible for the EI ERB advance payment. It sent D. S. a decision letter explaining why and a notice of debt for \$2,000.

[10] D. S. filed a reconsideration request in July 2022. She died in November 2022. Her Estate appealed the Commission's reconsideration decision to the Tribunal.

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 Canada Employment Insurance Commission (Commission) ran the EI ERB program under changes 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 often writes "CERB" in letters to appellants when it's actually referring to the EI ERB, which is confusing.

[11] The Estate disagrees with the Commission's overpayment decision. B. S. says his wife intended to appeal the decision. He knows she had a good reason. But because she is now deceased, he doesn't know that reason.

Issue

[12] I have to decide whether the Estate has to pay back the EI ERB advance payment (\$2,000).

Analysis

[13] It's up to someone who applies for an EI benefit to show they are eligible for that benefit.²

[14] In this appeal, the Estate has to prove D. S. was eligible for the EI ERB the Commission paid her, including the advance payment. The Estate has to prove this on a balance of probabilities. In other words, the Estate has to show it's more likely than not D. S. was eligible for all the weeks of EI ERB she received.

The EI Emergency Response Benefit (EI ERB)

[15] The federal government made temporary changes to the *Employment Insurance Act* (EI Act) in response to the COVID-19 pandemic.³ One of those changes was to create the EI ERB. Here are the EI ERB rules that are important for this appeal:

- Between **March 15, 2020, and September 26, 2020**, the Commission had to treat applications for EI regular and sickness benefits as applications for the EI ERB.⁴

² See sections 48(1) and 48(2) of the EI Act.

³ See Part VIII.4 (Employment Insurance Emergency Response Benefit) of the EI Act.

⁴ The Commission had to process regular and sickness benefits claims as EI-ERB claims. And any benefits paid during this period had to be paid as EI-ERB benefits, with a few exceptions for some types of benefits other than regular and sickness benefits.

- Any person could file a claim for the EI ERB for a two-week period, and they had to follow the Commission's rules and give it the information it needed to decide their application.⁵
- To be eligible for the EI ERB, a person had to show, among other things, they stopped working for 7 days, and had no income or earned \$1,000 or less over a four-week period.⁶
- The usual EI ERB weekly benefit the Commission paid was \$500.⁷
- The Commission made EI ERB advance payments of \$2,000 to eligible people as soon as possible after they applied for EI.⁸
- The Commission decided it would recover the \$2,000 advance payment by not paying a person a weekly EI ERB benefit in 4 weeks (weeks 13, 14, 18, and 19).⁹

[16] The changes to the law also allowed the Commission to go back and review a person's eligibility for the EI ERB **up to 36 months after** they got an EI ERB payment.¹⁰ And the Commission could set up and collect an overpayment if a person got more EI ERB than they were eligible for.¹¹

⁵ See sections 153.8 (1) and (3) of the EI Act. The Commission could pay the EI ERB to eligible people for two-week periods between **March 15, 2020, to October 3, 2020**.

⁶ See sections 153.9 (1) and 153.9 (4) of the EI Act. To be eligible for the EI ERB, a person had to show that, among other things, they ceased working for at least seven days within a two-week period **and** had no income in those seven days **or** had \$1,000 or less in income over a period of four weeks that succeed each other in chronological order but not necessarily consecutively.

⁷ See section 153.10 of the EI Act.

⁸ See section 153.7 (1.1) of the EI Act.

⁹ This was an internal procedure that the Commission used based on its authority to pay the EI ERB **in advance** under section 153.7 (1.1) of the EI Act..

¹⁰ See sections 52, 153.6 (1), (2), and (3) of the EI Act.

¹¹ See sections 153.6 (1), (2), and (3) of the EI Act. Those sections apply and adapt the Commission's authority under sections 43 (**claimant liability for overpayment**), 44 (**claimant liability to return overpayment**), and 47 (**paying a debt owed to the Crown**) to the EI ERB.

What the Commission and the Appellant say

[17] The Commission says D. S. wasn't eligible to keep the EI-ERB advance payment of \$2,000. This is an overpayment D. S. (and now her Estate) has to pay back.

[18] The Commission says it paid D. S. the EI ERB.¹² It paid her an advance payment of \$2,000 (covering 4 weeks). Plus it paid her 12 weekly payments of \$500 (covering March 22 to June 13, 2020). D. S. proved she was eligible for the 12 weekly payments by filing reports with the Commission for those weeks.

[19] So the Commission says D. S. got a total of 16 weeks of the EI ERB (\$8,000).

[20] The Commission says after those 12 weeks, D. S. returned to work and stopped filing reports.¹³ Because D. S. wasn't eligible for the EI ERB after 12 weeks, the Commission could not recover the advance payment (\$2,000) by holding back weekly benefits in weeks 13, 14, 18, and 19. So the entire advance payment is an overpayment.¹⁴

[21] The Estate disagrees with the Commission's overpayment decision.¹⁵

[22] B. S. says his wife intended to appeal the decision. He knows she had a good reason. She went to get help from their MPP—and she wouldn't have done that unless she believed something was wrong.

[23] But because D. S. is deceased, B. S. doesn't know that reason. He says D. S. applied for EI, not CERB (in other words, the EI ERB). And she was legitimately laid off.

[24] In her reconsideration request, D. S. says she can't afford to pay for the government's mistake.¹⁶ During the pandemic she was laid off for 3 months. Since then

¹² See the Commission's screenshots showing it paid the Appellant the \$2,000 EI ERB advance payment and 12 weeks of the EI ERB, at GD3-22. The Commission also included the pay history details, at GD3-26. See also the Commission's representations (GD4).

¹³ See the report she filed with the Commission at GD3-28 through GD3-65. See the report she filed for the two-week period of June 14 to June 27, 2020, at GD3-63 through GD3-65. See also the Commission's notes of its call with DS's employer, at GD3-92.

¹⁴ See the form letter and notice of debt the Commission sent to the Appellant, at GD3-69 to GD3-72.

¹⁵ See the Estate's notice of appeal (GD2).

¹⁶ See the reconsideration request DS filed, at GD3-80 (dated July 8, 2022).

she has been sick and in hospital on and off. So she hasn't been able to work. She is 65 years old and can barely make ends meet with the little pension she has coming in.

[25] B. S. also said he can't afford to pay back the \$2,000 overpayment.

The Commission's overpayment decision is correct

[26] I have reviewed the Commission's evidence of the EI ERB it paid to D. S. I have also reviewed the Commission's calculation of the overpayment it says D. S. (and now the Estate) owes.¹⁷ I have no reason to doubt the Commission's evidence about these two things. And there is no evidence that goes against it.

[27] So I find:

- D. S. applied for EI, and the Commission paid her the EI ERB advance payment (\$2,000).
- D. S. filed reports that proved she was eligible for 12 weekly EI-ERB payments. And the Commission paid D. S. for those weeks.
- So D. S. received a total of 16 weeks of EI ERB benefits.
- D. S. went back to work and stopped filing reports after 12 weeks of getting the EI ERB. So D. S. wasn't eligible for any more EI ERB weekly payments.
- The Commission did not recover the EI ERB advance payment in weeks 13, 14, 18, and 19.

[28] So I find D. S. received 4 weeks (\$2,000) of the EI ERB she wasn't legally allowed to keep. This was the EI ERB advance payment.

[29] This is an overpayment the Estate has to pay back.

¹⁷ See the Commission's representations at GD4-2.

The Estate has to pay back the overpayment

[30] The overpayment is a debt **the Estate owes** to Employment and Skills Development Canada (ESDC). ESDC is the federal government department that runs the Commission.

[31] Unfortunately for the Estate and B. S., I have to follow the law.¹⁸ I have no power to make my decision based on fairness, compassion, or financial hardship. And I don't have the legal authority to write off the debt, in whole or in part.¹⁹

[32] At the hearing, B. S. said he couldn't afford to pay back the debt. I pointed out that when his wife died, her Estate was created. It took over many (and perhaps all) of her financial obligations. **I encouraged B. S. (who is the Estate representative—not the Estate itself) to get legal advice about the Estate's liability to pay back the debt the Estate owes to ESDC.** The Tribunal has a list of organizations that might be able to help him, free of charge if he qualifies for service. Here is the list for Ontario: <https://www.sst-tss.gc.ca/en/your-appeal/organizations-can-help-ontario>.

[33] The Commission can write off all or part of an overpayment.²⁰ The Tribunal doesn't have the legal power to do that. So if the Estate representative (B. S.) hasn't already asked the Commission to write off the Estate's overpayment, he might do that.

[34] Finally, the CRA collects debts for federal government departments, including ESDC. The Estate representative (B. S.) can get more information about **payment plans** and **debt relief** from the [CRA webpage on the collection of EI ERB overpayments](#), or by calling toll-free 1-800-864-5823.²¹

¹⁸ See *Canada (Attorney General) v Knee*, 2011 FCA 301.

¹⁹ Section 112.1 of the EI Act says this. And section 153.1307 says section 112.1 applies to EI-ERB overpayments.

²⁰ The section 153.1306 of the EI Act. That section refers to section 56 of the *Employment Insurance Regulations*, which gives the Commission broad authority to write off an overpayment when it would cause undue hardship for a person to repay it.

²¹ The CRA hyperlink is www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/when-you-money-collections-cra/collection-canada-emergency-response-benefit-issued-by-service-canada.html.

Conclusion

[35] The Estate hasn't proven D. S. was eligible to keep the EI ERB advance payment (\$2,000).

[36] And the Estate hasn't proven the Commission owes D. S. any weekly EI ERB payments it hasn't already paid to D. S.

[37] So the entire advance payment (\$2,000) is an overpayment, which the Estate has to repay.

[38] This means I have to dismiss the Estate's appeal.

Glenn Betteridge
Member, General Division – Employment Insurance Section