



Citation: *SB v Canada Employment Insurance Commission*, 2023 SST 1793

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

# **Decision**

**Appellant:** S. B.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (491246) dated October 13, 2022 (issued by Service Canada)

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**Tribunal member:** Ambrosia Varaschin

**Type of hearing:** Teleconference

**Hearing date:** May 30, 2023

**Hearing participant:** Appellant

**Decision date:** June 7, 2023

**File number:** GE-22-3929

## Decision

[1] The appeal is allowed.

[2] The Appellant does not have a \$2,000 overpayment.

## Overview

[3] The Appellant applied for Employment Insurance Emergency Response Benefits (ERB) on April 9, 2020, and established a claim as of April 12, 2020. Since her benefit period began after March 15, 2020, her claim is governed by the sections of the *Employment Insurance Act* (Act) that relate to the ERB program.<sup>1</sup>

[4] The Appellant submitted reports every two weeks and received \$500 weekly ERB benefits from April 12, 2020, to October 3, 2020.

[5] On August 21, 2020, the Appellant reported that she had worked a total of 32 hours from August 4-7, and earned \$512.

[6] On August 24, 2020, the Appellant reported that she had worked a total of 40 hours from August 10-14, and earned \$640.

[7] The Canada Employment Insurance Commission (Commission) says that her employment earnings created an overpayment of \$2,000 because the Appellant didn't qualify for ERB for 4 weeks.

[8] It says that the calculation of overpayments was done manually after the ERB program had ended, and that is why it is retroactively disentitling the Appellant.

[9] The Appellant disagrees because she was told when she reported her income that they didn't affect her benefits and they wouldn't need to be repaid. She also says that the Commission has said it was applying different laws to her claim each time it reviewed her file and that isn't fair.

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<sup>1</sup> See section 153.5(2)(b) of the *Employment Insurance Act*.

[10] The Appellant also says that she made a good faith effort to not to be overpaid and it's the Commission's fault that this has happened. She says this debt has caused her considerable stress and financial hardship for her.

## Issues

[11] Did the Appellant receive 4 weeks of ERB benefits that she wasn't entitled to?

## Analysis

[12] The law says that ERB benefits are payable to a claimant who makes a claim and who is eligible for the benefit.<sup>2</sup> The amount of the benefit for a week is \$500.00.<sup>3</sup>

[13] If a claimant received ERB benefits they weren't eligible for, or received more ERB benefits than they were entitled to, they are liable to pay back those amounts.<sup>4</sup>

[14] Eligibility for ERB benefits is determined in 2-week periods, and requires a claimant to have:

- 7 consecutive days of unemployment and no income from employment for those days.<sup>5</sup>

### OR

- Less than \$1,000.00 of income from employment over a period of 4 weeks in chronological (but not necessarily consecutive) order during which the ERB benefit is paid.<sup>6</sup>

[15] Subsection 153.9(4) of the *Act* **does not** say a claimant is ineligible for ERB benefits if they earn more than \$1,000.00 over 4 weeks.

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<sup>2</sup> See section 153.7(1) of *Employment Insurance Act*.

<sup>3</sup> See section 153.10(1) of the *Employment Insurance Act*.

<sup>4</sup> See section 153.1301 of the *Employment Insurance Act*.

<sup>5</sup> See paragraph 153.9(1)(a)(iv) and (v) of the *Employment Insurance Act*.

<sup>6</sup> See subsection 153.9(4) of the *Employment Insurance Act*.

[16] In other words, claimants are eligible for ERB benefits if they have no income for 7 consecutive days in a 2-week period or if they earn less than \$1,000 in a 4-week period.

[17] Subsection 153.6(3) of the *Act* says that “no other provision of this *Act* or of any regulations made under it applies in respect of a claim for the employment insurance emergency response benefit unless a contrary intention appears.”

[18] Subsection 153.6(1) sets out the specific provisions of the *Act* that apply to ERB claims, with adaptations. Section 19 of the *Act*, which sets out deducting earnings from benefits, is not identified as a provision that applies to ERB benefits. Section 36 of the *Employment Insurance Regulations*, which deals with the allocation of earnings to claims, is also not identified as a provision that applies to ERB benefits.<sup>7</sup>

[19] Since legislation cannot be interpreted “in a manner contrary to its plain meaning,”<sup>8</sup> I must conclude that income is not to be allocated to ERB claims and there is to be no deduction of earnings the \$500.00 benefit rate. As long as the income or unemployment eligibility criteria are met, the full \$500.00 weekly benefit is to be paid, even if a claimant had wages.<sup>9</sup>

[20] The Appellant testified, and the Commission’s evidence confirms, that she worked for her employer from August 4-7, and August 10-14.

[21] I find, for the 2-week period beginning on July 16, 2020, and ending on August 8, 2020, the Appellant was unemployed for the first 8 days.<sup>10</sup> So, she is eligible for ERB benefits for these 2 weeks.

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<sup>7</sup> See subsection 153.6(1) of the *Employment Insurance Act*.

<sup>8</sup> See *Attorney General of Canada v Knee*, 2011 FCA 301.

<sup>9</sup> This statutory interpretation is supported by the Tribunal decisions *JE v Canada Employment Insurance Commission*, 2021 SST 924 and *Canada Employment Insurance Commission v JE*, 2022 SST 201.

<sup>10</sup> See GD03-14.

[22] I find, for the 2-week period beginning on August 9, 2020, and ending on August 22, 2020, the Appellant was unemployed for the last 7 days.<sup>11</sup> So, she is eligible for ERB benefits for these 2 weeks.

[23] So, I find that the Appellant was not overpaid by \$2,000.00.

## **Conclusion**

[24] The appeal is allowed. The Appellant was not overpaid ERB benefits.

Ambrosia Varaschin  
Member, General Division – Employment Insurance Section

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<sup>11</sup> See GD03-16.