



Citation: *KS v Canada Employment Insurance Commission*, 2023 SST 1768

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

Decision

Appellant: K. S.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (559145) dated December 13, 2022 (issued by Service Canada)

Tribunal member: Ambrosia Varaschin
Type of hearing: Teleconference
Hearing date: May 31, 2023
Hearing participant: Appellant
Decision date: June 7, 2023
File number: GE-23-418

Decision

[1] The appeal is dismissed, but I am changing the original decision. The Appellant received benefits he was not entitled to. But, the amount of overpayment is lower than what the Canada Employment Insurance Commission (Commission) decided.

Overview

[2] The Appellant applied for Employment Insurance (EI) Emergency Response Benefits (ERB) on March 18, 2020, and established a claim as of March 15, 2020.¹ Since his benefit period began on or after March 15, 2020, his claim is governed by the sections of the *Employment Insurance Act* (Act) that relate to the ERB program.²

[3] The Appellant received the equivalent of 23 weeks of ERB benefits from March 15, 2020, to September 5, 2020.³

[4] The Appellant was disentitled to benefits after July 20, 2020, because he had returned to work.

[5] The Appellant also received an advanced payment of \$2,000.00 on April 27, 2020.⁴ The \$2,000 advance payment represented 4 weeks of \$500.00 weekly benefits.⁵ The prepayment was specifically for the 13th, 14th, 20th, and 21st week of benefits.

[6] A duplicate payment was made, at the Appellant's request, for the period of July 12-25, 2020, but both payments for that period were deposited to the Appellant's bank account.

[7] This means the Appellant received 27 weeks of benefits in total but was only entitled to 18 weeks of benefits.

¹ See GD4-1.

² See section 153.5(2)(b) of the *Employment Insurance Act*.

³ See GD4-19.

⁴ See GD3-14-15.

⁵ See section 153.10 of the *Employment Insurance Act*.

[8] For the purposes of this appeal, **only the issue of the ERB prepayment** is under review.

[9] The Commission says that the prepayment created an overpayment because the Appellant didn't receive ERB benefits long enough to have both of the "procedural disentitlements" applied to his claims. The Commission automatically disentitled ERB claimants for two weeks after their 12th week and 19th week of benefits to offset the original advanced payment.

[10] Since ERB benefits were only paid to the Appellant for 18 weeks, he didn't have his benefits automatically adjusted after the 19th week of benefits.

[11] The Appellant disagrees because he applied for EI regular benefits not ERB benefits, he didn't know he would need to repay the prepayment if he wasn't entitled to it, and the debt has caused financial distress.

Issue

[12] Was the Appellant entitled to the 4 weeks of ERB benefits that he received in advance?

Analysis

[13] The law says that ERB benefits are payable to a claimant who makes a claim and who is eligible for the benefit.⁶ The amount of the benefit for a week is \$500.00.⁷ The Commission is allowed to pay ERB to claimants in advance.⁸

[14] 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.⁹

⁶ See section 153.7(1) of *Employment Insurance Act*.

⁷ See section 153.10(1) of the *Employment Insurance Act*.

⁸ See section 153.7(1.1) of the *Employment Insurance Act*.

⁹ See section 153.1301 of the *Employment Insurance Act*.

The Appellant didn't apply for ERB benefits

[15] Even though the Appellant applied for regular benefits, the emergency measures taken by the government to help Canadians during the COVID-19 pandemic meant that only ERB benefits were available to him at the time.

[16] When the COVID-19 pandemic began, the government implemented emergency measures that included temporary changes to EI benefits. The law says that anyone eligible for regular benefits with a benefit period starting on or after March 15, 2020, will receive ERB benefits and they are considered to have made a claim for them.¹⁰

[17] Since the Appellant's benefit period started March 15, 2020, he could only receive ERB benefits.

Did the prepayment create an overpayment?

[18] Since the Appellant stopped being eligible for benefits on July 20, 2020, which was his 18th week of benefits, the ERB prepayment created an overpayment of \$1,000.00.

[19] The Commission admits there was an error in the Notice of Debt sent to the Appellant on July 9, 2022. It says that the notice stated the prepayment created an overpayment for the full amount (\$2,000.00) but on July 15, 2022, the Commission changed its decision. The prepayment was partially repaid when the Appellant had his first automatic disentitlement for weeks 13 and 14, from June 7-20, 2020.¹¹

[20] The Appellant stopped being entitled to benefits after week 18, so he didn't receive the second automatic disentitlement for weeks 20 and 21.

[21] That means the overpayment is \$1,000.00 not \$2,000.00.

[22] The Appellant has agreed that the remainder of the overpayments for his claims need to be repaid, but he argues that he shouldn't need to pay back the \$1,000.00

¹⁰ See Sections 153.5 and 153.1310 of the *Employment Insurance Act*.

¹¹ See GD04-4 and GD03-31.

overpayment from the advanced benefit payment. The Appellant says he didn't know he would need to pay this money back because he thought he was receiving regular EI benefits, not ERB benefits.

[23] I don't accept this argument. It has long been recognized that ignorance of the law doesn't allow you to avoid your obligations under the law. This is an essential principle for maintaining legal order.¹²

[24] So, the Appellant is required to repay the \$1,000.00 overpayment because the *Act* says he must.¹³

The Appellant is seeking a write-off of the overpayment

[25] The Commission may consider writing off overpayments for several reasons. For example, the Commission may write off overpayments if:

- The overpayment isn't because of the claimant's error or false or misleading statements.
- The debt is because of a payment of the ERB benefit in excess of \$500 per week.¹⁴

[26] The Commission may also choose to write off an overpayment regardless of when they notified the claimant of a debt for undue hardship.¹⁵

[27] The Appellant has testified that his wife is currently recovering from cancer, so they are relying solely on his income. The EI overpayments have caused him stress and this debt is imposing undue hardship on him.

¹² See CUB 4108: "to allow ignorance of the law to be considered a good reason for acting in an unsanctioned manner or refraining from complying with a legal requirement would create, in my view, a very dangerous precedent which would remove all certainty in the legal relations existing between citizens as well as between a citizen and the state, and would ultimately result in utter confusion as to the mutual rights and duties in the field of civil law," upheld by *Pirotte v Unemployment Insurance Commission*, A-108-76; and *Mihm v The Minister of Manpower and Immigration*, (1970) S.C.R., 348, at para 353.

¹³ See section 153.1301 of the *Employment Insurance Act*.

¹⁴ See section 153.1306 of the *Employment Insurance Act*.

¹⁵ See section 153.1306(1)(f)(ii) of the *Employment Insurance Act*.

[28] I do not have the authority to write off an overpayment, but the Appellant can request that the Commission consider writing off his debt.¹⁶

Conclusion

[29] The appeal is dismissed with modification. The Appellant received advance benefits he was not entitled to. The correct amount of the overpayment is \$1,000.

[30] The Appellant has an overpayment of \$1,000 from the ERB advanced payment.

Ambrosia Varaschin
Member, General Division – Employment Insurance Section

¹⁶ See section 153.1307 of the *Employment Insurance Act*.