



Citation: *GE v Canada Employment Insurance Commission*, 2023 SST 1807

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

Decision

Appellant: G. E.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (448025) dated April 3, 2023 (issued by Service Canada)

Tribunal member: Glenn Betteridge
Type of hearing: Teleconference
Hearing date: July 4, 2023
Hearing participant: Appellant
Decision date: July 5, 2023
File number: GE-23-1066

Decision

[1] I am dismissing G. E.'s appeal.

[2] The Canada Employment Insurance Commission (Commission) has shown it paid him more Employment Insurance Emergency Response Benefits (EI-ERB) than he was legally entitled to get.¹ In other words, he was overpaid.

[3] He has to pay back the overpayment (\$2,000).

[4] The Tribunal has no power to write off the overpayment. The Commission does. Based on the Appellant's testimony about financial hardship, the Commission should seriously consider writing off the Appellant's overpayment.

Overview

[5] G. E. (the Appellant) worked as a general labourer for a laboratory company (employer). His last day of work before being laid off was in early June 2020. Then he applied for Employment Insurance (EI) regular benefits.

[6] The Commission paid him the EI-ERB—an advance payment (\$2,000) soon after he applied **and** then 9 weekly payments of \$500.

[7] After 9 weeks he went back to work and stopped getting the EI-ERB.

[8] About two years later the Commission decided the Appellant was not legally entitled to keep the EI-ERB advance payment. It sent him a decision letter explaining why, and a notice of debt for \$2,000.

[9] The Appellant says he shouldn't owe the Commission \$2,000. He applied for EI regular benefits—not the EI-ERB. He followed the rules and went back to work as soon

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 EI Commission ran the EI-ERB program under amendments 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 wrote "CERB" in letters to appellants when it is referring to the EI-ERB, which is confusing.

as he could. If he had known there would be an overpayment, he would have returned the EI-ERB advance payment when he got it.

Issue

[10] Does the Appellant have to pay back the EI-ERB advance payment (\$2,000)?

Analysis

The EI Emergency Response Benefit (EI-ERB)

[11] In response to the COVID-19 pandemic, the federal government made temporary changes to the *Employment Insurance Act* (EI Act).² One of those changes was to create the EI-ERB. Here are the relevant EI-ERB rules:

- the Commission had to treat applications for EI regular and sickness benefits as applications for the EI-ERB³
- any person could apply for the EI-ERB for a two-week period, and had to follow the Commission's rules and give it the information it needed to decide their application⁴
- the usual EI-ERB weekly benefit the Commission paid was \$500 per week⁵
- the Commission made \$2,000 EI-ERB advance payments to eligible people, as soon as possible after they applied for EI⁶

² See Part VIII.4 (Employment Insurance Emergency Response Benefit) of the EI Act.

³ Under changes to the EI Act, the Commission had no authority to create a benefit period for regular benefits between March 15, 2020 and September 26, 2020. Claimants had to be treated as if they made claims for the EI-ERB. 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.

⁴ See sections 153.8(1) and (3) of the EI Act. The Commission could pay the EI-ERB to eligible people for 2-week periods between March 15, 2022 to October 3, 2020.

⁵ See EI Act section 153.10.

⁶ See EI Act section 153.7(1.1).

- 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)⁷

[12] The changes to the law also allowed the Commission to go back and review a person's entitlement to EI-ERB—**up to 36 months after** they got an EI-ERB payment.⁸ And to create and collect an overpayment where a person got more EI-ERB than they were entitled to get.⁹

What the Commission and the Appellant say

[13] The Commission says the Appellant got an EI-ERB advance payment of \$2,000 that he isn't legally entitled to keep. And this is an overpayment he has to pay back.¹⁰

[14] The Commission says it paid the Appellant an EI-ERB advance payment of \$2,000 (covering 4 weeks), plus 9 weekly payments of \$500.¹¹ So he got a total of 13 weeks (\$6,500) of EI-ERB.

[15] The Commission says the Appellant proved he was eligible for 9 weekly EI-ERB payments. He did this by filing reports with the Commission for those 9 weeks.

[16] The Commission says the Appellant went back to work after 9 weeks. And he stopped filing reports. So it says he hasn't proven he is eligible for any more weeks of EI-ERB.

⁷ This was an internal procedure used by the Commission based in its authority to pay the EI ERB **in advance** under EIA section 153.7(1.1). The Commission decided to make an advance payment equal to 4 weeks of EI-ERB. Then make no payment in 4 weeks later on (13, 14, 18, and 19) to recover the advance payment.

⁸ See EI Act section 153.6(1), (2), and (3). That section applies and adapts the Commission's authority under section 52 to the EI-ERB. Section 52 of the EI Act says, in part, "the Commission may reconsider a claim for benefits **within 36 months after the benefits have been paid** or would have been payable."

⁹ See EI Act section 153.6(1), (2), and (3). That section applies and adapts the Commission's authority under sections 43 (**claimant liability for overpayment**), 44 (**claimant liability to return overpayment**), and 47 (**overpayment a debt owed to the Crown**) to the EI-ERB.

¹⁰ See the decision letter and Notice of Debt at GD3-19 to GD3-22.

¹¹ See the Commission's representation at GD4-3. The Commission says it paid him 9 weekly EI-ERB payments from the period from June 14, 2020 through August 15, 2020.

[17] Because he was no longer getting the EI-ERB, the Commission couldn't recover the advance payment (\$2,000) by holding back weekly benefits in weeks 13, 14, 18, and 19. So this is an overpayment, which he has to pay back.

[18] The Appellant agrees he went back to work and stopped receiving the EI-ERB after 9 weeks. But he says he shouldn't have to pay back the overpayment.¹²

[19] He says he applied for EI **regular** benefits—not the EI-ERB—and didn't ask for the advance payment. He followed the rules and went back to work as soon as he could. Having to pay back the money makes him feel he is being punished for going back to work, rather than staying on EI. He would have paid back the advance payment right away if he had known.

[20] The Appellant testified that having to pay back the money will cause serious financial problems for him and his family. They are barely able to make ends meet. They have to decide between food and medication. He has to make monthly payments under a consumer proposal, to avoid bankruptcy. His wife isn't working. And she is already paying back a debt to the Canada Revenue Agency.

The Commission's overpayment decision is correct

[21] I accept the Appellant's evidence. I have no reason to doubt it. He testified in an upfront and detailed way. I have no reason to doubt what he said or wrote in his appeal notice. His evidence was consistent over time. But this doesn't change my decision.

[22] Although the Appellant didn't apply for the EI-ERB, or ask for the advance payment, the Commission had **no legal power to pay him EI regular benefits**. Because he was eligible for EI, and because of the changes to the law during COVID, the Commission **had to pay him the EI-ERB (including the \$2,000 advance payment)**.

¹² The Appellant made these arguments in his notice of appeal (GD2), his reconsideration request (at GD3-23), and in his testimony at the hearing.

[23] I have reviewed the Commission's evidence of the EI-ERB it paid to the Appellant.¹³ I have also reviewed the Commission's calculation of the overpayment it says he owes.¹⁴ I have no reason to doubt the Commission's evidence about these two things. And there is no evidence that goes against it.

[24] The Commission and the Appellant agree on the key facts, and I have confirmed them by reviewing the documents the Commission sent to the Tribunal. So I find the Appellant:

- applied for EI and the Commission paid him the EI-ERB advance payment (\$2,000)
- proved he was eligible and was paid for 9 weeks of EI-ERB
- received a total of 13 weeks of EI-ERB benefits
- went back to work (and wasn't eligible for the EI-ERB) before the Commission could recover the EI-ERB advance payment

[25] So I find the Appellant received four weeks (\$2,000) of EI-ERB he wasn't legally entitled to get. (This reflects the EI-ERB advance payment.) This is an overpayment he owes and has to pay back.

The Tribunal can't write off the overpayment

[26] The overpayment is a debt the Appellant owes to Employment and Skills Development Canada (ESDC).

[27] I acknowledge how unfair the overpayment seems to the Appellant. And the financial stress it is causing him and his spouse. He testified that he is a labourer and makes minimum wage nowadays. And his wife isn't working. If he loses this Appeal they

¹³ See the Commission's screen shots showing it paid the Appellant the \$2,000 EI-ERB advance payment and 9 weeks of EI-ERB, at GD3-13 to GD3-16.

¹⁴ See the Commission's representations at GD4-3, and the Commission's "overpayment breakdown" chart it included the reconsider file, at GD3-18.

will have to decide between food and medication. And there is a significant risk they will lose their housing.

[28] Unfortunately for the Appellant, I have to follow the law.¹⁵ I have no power to make my decision based on general principles of fairness, equity, or compassion.

[29] The Tribunal has no power to write off an overpayment.¹⁶ But the Commission can write off all or part of an overpayment.¹⁷ If the Appellant hasn't already asked the Commission to write off his overpayment, he can do that. He can give details of his family's financial circumstances, including health-related expenses. Based on the Appellant's testimony about financial hardship, the Commission should seriously consider writing off the Appellant's overpayment.

[30] Also, the Canada Revenue Agency collects certain debts on behalf of federal government departments, including ESDC. The Appellant can get more information about **payment plans** and **debt relief** from the [CRA webpage about collection of EI-ERB overpayments](#), or by calling toll-free 1-800-864-5823.

Conclusion

[31] The Commission has proven the Appellant received \$2,000 in EI-ERB payments he isn't legally entitled to keep. This is an overpayment.

[32] The law says the Appellant has to repay that overpayment (\$2,000).

[33] So I have to dismiss his appeal.

Glenn Betteridge

Member, General Division – Employment Insurance Section

¹⁵ See *Canada (Attorney General) v Knee* 2011 FCA 301.

¹⁶ Section 112.1 of the EI Act says this. And section 153.1307 says section 112.1 applies to EI-ERB overpayments.

¹⁷ The Commission was given the authority to write off EI-ERB overpayments under section 153.1306 of the EI Act. That section refers to section 56 of the EI Regulations, which gives the Commission broad authority to write off an overpayment when it would cause undue hardship for a person to repay it.