



[TRANSLATION]

Citation: *DL v Canada Employment Insurance Commission*, 2023 SST 1975

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

## **Decision**

**Appellant:** D. L.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (448730) dated October 25,  
2023 (issued by Service Canada)

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**Tribunal member:** Josée Langlois

**Type of hearing:** Videoconference

**Hearing date:** December 21, 2023

**Hearing participant:** Appellant

**Decision date:** December 21, 2023

**File number:** GE-23-3125

## Decision

[1] The appeal is dismissed.

[2] The Appellant has to pay back the \$2,000 he received as an advance payment of the Employment Insurance Emergency Response Benefit (EI ERB).

## Overview

[3] At the beginning of the COVID-19 pandemic, a new benefit called the EI ERB was created.<sup>1</sup> The amount paid for this benefit was \$500 per week.<sup>2</sup> But the Canada Employment Insurance Commission (Commission) decided to pay four weeks of benefits in advance (\$2,000) to first-time EI ERB claimants before June 15, 2020.

[4] The Appellant applied for the EI ERB on March 23, 2020. The Commission paid him an advance of \$2,000 on April 6, 2020. The Commission also paid the Appellant four weeks of the EI ERB. In total, the Appellant received \$4,000 in EI ERB.

[5] I have to decide whether the Appellant has to pay back the \$2,000 he received as an advance payment of the EI ERB.

[6] The Commission says that the Appellant was overpaid \$2,000. He should have received only \$2,000.

[7] The Appellant disagrees. He says that he didn't make any errors and doesn't understand why he should now have to pay back this amount. He says that he is being penalized for formalities he isn't responsible for.

[8] I have to decide whether the Appellant has to pay back the \$2,000 advance payment.

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<sup>1</sup> Part VIII.4 of the *Employment Insurance Act* (Act) sets out the rules for the Employment Insurance Emergency Response Benefit.

<sup>2</sup> See section 153.10(1) of the Act.

## Issue

[9] Does the Appellant have to pay back the \$2,000 EI ERB advance payment?

## Analysis

### **Does the Appellant have to pay back the EI ERB advance payment?**

[10] I find that the Appellant has to pay back the EI ERB advance payment.

[11] From March 15 to October 3, 2020, claimants could apply for the EI ERB for two weeks at a time.<sup>3</sup> The *Employment Insurance Act* (Act) allowed the Commission to pay these benefits before they would normally have been paid.<sup>4</sup>

[12] The Commission paid the Appellant the advance of \$2,000 immediately after his first application, which means that he received this amount on April 6, 2020. This amount corresponded to four weeks of the EI ERB. The Commission planned to recover this advance by later withholding four weeks of benefits, at weeks 13, 14, 18, and 19.

[13] The Commission says that, because of the advance payment, the Appellant received a total of eight weeks of benefits, when he should have received only four. The Commission could not recover \$2,000 of the advance payment because the Appellant wasn't entitled to benefits for the weeks the Commission expected to recover that amount. So, the Appellant was overpaid \$2,000.

[14] The Appellant disagrees with the Commission. He admits that he received the \$2,000 advance payment and four weeks of the EI ERB. He says that he stopped applying for these benefits after four weeks and wasn't eligible for any more weeks of the EI ERB because he started working again during the week of April 19, 2020.

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<sup>3</sup> See sections 153.7(1) and 153.8 of the Act.

<sup>4</sup> See section 153.7(1.1) of the Act.

[15] But he argues that he isn't responsible for this error and he disagrees with [translation] "bearing" all the blame. He explains that he did what his employer told him to do and that he doesn't think he made any errors.

[16] I find that the Appellant received a total of four weeks of the EI ERB from March 22, 2020, to April 18, 2020, and that is the number of weeks he was entitled to.

[17] He received a \$500 payment on each of these dates:

- March 22, 2020
- March 29, 2020
- April 5, 2020
- April 12, 2020.

[18] He also received a \$2,000 advance payment on April 6, 2020.

[19] This is because the \$2,000 was for four payments of \$500 that were to be made later in the benefit period, at weeks 13, 14, 18, and 19.

[20] As the Commission explains, given that the Appellant applied for only four weeks of the EI ERB, the four payments of \$500 corresponding to the \$2,000 that should have been paid to him later in his benefit period weren't recovered because he was no longer eligible for the EI ERB on those dates.

[21] In other words, if the Appellant had continued to receive emergency benefits beyond week 19, he would not have received them at weeks 13, 14, 18, and 19 because the payments for those weeks had been paid to him in the form of an advance on April 6, 2020.

[22] Since the Appellant received four weeks of the EI ERB that he wasn't entitled to, he was overpaid \$2,000.

[23] The Act says that if you receive more EI ERB than you were entitled to, you have to pay back the amount you were overpaid.<sup>5</sup> So, the Appellant has to pay back this amount.

[24] I can't write off the Appellant's overpayment.<sup>6</sup> While I understand his explanations that he acted properly and isn't to blame, in this case, I don't have to consider whether he acted as a reasonable person would have, given that this is about the Appellant's eligibility for the EI ERB.

[25] I understood that, in his view, it was rather the Commission that had made an error. But the Act allowed the Commission to pay an advance of benefits during that period. The Commission may decide to write off an overpayment in certain circumstances, for example, if repaying it would cause undue hardship. So, the Appellant can ask the Commission directly to write off the overpayment—that is, cancel the debt. Otherwise, he can enter into a payment agreement.

## **Conclusion**

[26] The Appellant has to pay back the \$2,000 EI ERB advance payment.

[27] The appeal is dismissed.

Josée Langlois  
Member, General Division – Employment Insurance Section

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<sup>5</sup> See sections 43 and 44 of the Act.

<sup>6</sup> See sections 153.1306, 153.1307, and 113 of the Act.