



Citation: *DC v Canada Employment Insurance Commission*, 2023 SST 1790

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: D. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (576352) dated July 4, 2023 (issued by Service Canada)

Tribunal member: Raelene R. Thomas

Type of hearing: Teleconference

Hearing date: September 5, 2023

Hearing participant: Appellant

Decision date: September 25, 2023

File number: GE-23-2086

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.¹

[2] The Appellant must repay the Employment Insurance Emergency Response Benefit (EI ERB) advance he was not entitled to receive.

Overview

[3] The Appellant applied for employment insurance (EI) benefits on April 28, 2020. Within days of applying, he received \$2,000 as an advance payment of the first four weeks of the EI ERB. He also received 10 weeks of EI ERB for the period April 26, 2020 to July 4, 2020.

[4] The Commission says it would have recovered the \$2,000 advance by not paying the Appellant benefits for four weeks at a later date. The four weeks of benefits would equal \$2,000. However, in the Appellant's case he returned to work and did not receive EI ERB long enough for the Commission to recover the \$2,000. So, it now says the Appellant has an overpayment of \$2,000 and must repay that amount.

[5] The Appellant disagrees. He says when he lost his job due to the COVID-19 pandemic he applied for benefits as he was told to do. He did not receive the EI ERB in error. He was not working when he applied for and claimed EI ERB. The Appellant says while he has returned to work, he is not making as much and does not have the money to repay the \$2,000 EI ERB advance.

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¹ The *Employment Insurance Act* (EI Act) calls a person who applies for employment insurance (EI) benefits a "claimant." A person who appeals a decision of the Commission is called an "Appellant."

Issue

[6] Was the Appellant overpaid EI ERB?

[7] If so, does he have to repay the overpayment?

Analysis

[8] In response to the COVID-19 pandemic, the government made temporary changes to the law to help people access benefits. This included offering emergency response benefits between March 15, 2020, and October 3, 2020.²

[9] When the government introduced the emergency response benefit there were two programs available. People who were qualified to receive EI benefits and applied for benefits using the EI system received EI ERB. People who were not qualified to receive EI benefits and applied using the Canada Revenue Agency website received the Canada Emergency Response Benefit (CERB). Sometimes the government and the Commission use the term “CERB” when they are really talking about the EI ERB. Both terms are in the appeal file. In my decision, I call the benefits the Appellant received, EI ERB.

[10] The Appellant applied for EI benefits on April 28, 2020. By law, he received the EI ERB.³

[11] The weekly amount of the EI ERB was \$500.⁴

[12] The appeal file has an attestation certificate that shows the amounts of EI ERB the Appellant was paid. It shows that on May 4, 2020, the Appellant was paid EI ERB \$2,000 of EI ERB as an advance on future weeks of EI ERB.⁵ This means he was paid four weeks of EI ERB when he received the \$2,000 EI ERB advance. The

² See section 153.8(1) of the *Employment Insurance Act* (EI Act). This is how I refer to the law that applies to this appeal.

³ See section 153.8 of the EI Act.

⁴ See section 153.10(1) of the EI Act.

⁵ See page GD3-22 in the appeal file.

attestation certificate also shows the Appellant was also paid 10 more weeks of EI ERB in bi-weekly payments for the period from April 26, 2020 to July 4, 2020.⁶

[13] The information about the EI ERB payments the Appellant received is in attestation certificates. The EI Act says I am required to accept the Attestation Certificate as evidence of the amounts paid to the Appellant.⁷

[14] The Appellant returned to work the week of July 5, 2020.⁸

[15] The Commission says it paid the Appellant \$2,000 as an “advance payment.” This was the equivalent of four weeks of payments for future weeks of EI ERB. The Commission intended to recover the advance by not paying the Appellant EI ERB for four weeks in the future. Had he been unemployed in the 13th, 14th, 18th, and 19th weeks after April 26, 2020 he would not have received any EI ERB in those weeks and the \$2,000 advance EI ERB would have been paid back. But, since the Appellant was working in those weeks and did not claim EI ERB for those weeks, the Commission was unable to recover the EI ERB advance.

[16] The Appellant was entitled to 10 weeks of EI ERB. This is how many weeks he was unemployed and that he submitted claim reports for. But, when I add together the EI ERB advance of 4 weeks and 10 weeks EI ERB the Appellant was paid for the period from April 26, 2020 to July 4, 2020 I see the Appellant received a total of 14 weeks of EI ERB. This means the Appellant received 4 weeks of EI ERB he was not entitled to receive.⁹

[17] The Appellant submitted he applied for EI ERB because he lost his job due to the COVID-19 pandemic. He says he did everything correctly, he did not and is not trying to defraud anyone. He did not determine if he was eligible for EI ERB. So why, he argues, is he getting this bill now? The Appellant feels he is being punished for

⁶ See page GD3-22 in the appeal file.

⁷ See section 134 of the EI Act. It says a document appearing to be certified by the Commission or a person employed in the administration of the EI Act stating the amount of any benefits or other amount paid to or owing by any person is evidence of the facts appearing in the document without further proof.

⁸ See page GD3-38 in the appeal file.

⁹ 14 weeks of payments - 10 weeks of unemployment = 4 weeks overpaid

returning to work. He explained that although he has returned to work, his income has been reduced and he does not have the money to repay the \$2,000.

[18] The law says a claimant (appellant) is liable to repay benefit money paid to him by the Commission to which he was not entitled.¹⁰ The courts have upheld the principle that a claimant (appellant) who receives benefit money that they were not entitled to receive must repay the amount.¹¹

[19] As tempting as it may be in some cases (and this may well be one), I am not permitted to re-write the law or to interpret it in a manner that is contrary to its plain meaning.¹² I must follow the law and render decisions based on the relevant legislation and precedents set by the courts.

[20] As a result, I find the Appellant must repay the \$2,000 in EI ERB benefits she was not entitled to receive.

– **The Appellant can ask the Commission to write off the debt**

[21] I recognize the repayment of the EI ERB advance has significant financial consequences for the Appellant. But I do not have the jurisdiction to write off a debt.¹³

[22] Nothing in my decision prevents the Appellant from writing the Commission directly to ask it to reduce or write off the debt. If he is not satisfied with the Commission's response, he may appeal to the Federal Court.¹⁴

¹⁰ See section 43 of the EI Act.

¹¹ See *Lanuzo v Canada (Attorney General)*, 2005 FCA 324. This is how I refer to the courts' decisions that apply to the circumstances of this appeal.

¹² *Canada (Attorney General) v. Knee*, 2011 FCA 301.

¹³ See *Canada (Attorney General) v. Villeneuve* 2005 FCA440; *Buffone v. Canada (Minister of Human Resources Development)*, A-666-99.

¹⁴ Click Representing Yourself at <https://www.fct-cf.gc.ca/en/home>

Conclusion

[23] The Appellant received four more weeks of EI ERB than he was entitled to receive when he was paid the \$2,000 EI ERB advance. He must repay \$2,000 EI ERB advance.

[24] The appeal is dismissed.

Raelene R. Thomas
Member, General Division – Employment Insurance Section