



Citation: *JL v Canada Employment Insurance Commission*, 2023 SST 1708

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

Decision

Appellant: J. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (495537) dated April 14, 2023 (issued by Service Canada)

Tribunal member: Glenn Betteridge

Type of hearing: Teleconference

Hearing date: July 18, 2023

Hearing participant: Appellant

Decision date: July 25, 2023

File number: GE-23-1256

Decision

[1] J. L. is the Appellant in this appeal. I am dismissing his 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 eligible for.¹ In other words, he was overpaid.

[3] He has to pay back the overpayment (\$2,000). This is the amount of the EI ERB advance payment, which he isn't allowed to keep.

Overview

[4] The Appellant worked as an injection molding specialist for X (employer). In March 2020, his employer laid him off because of the COVID-19 pandemic.

[5] So he applied for Employment Insurance (EI) regular benefits.

[6] Soon after he applied, the Commission paid him the EI ERB (an advance payment of \$2,000). Then it paid him 9 weekly payments of \$500 each.

[7] He went back to work in late May 2020.

[8] About two years later, the Commission decided the Appellant wasn't legally eligible for 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 should not have to pay the Commission back. He applied for EI regular benefits—not the CERB (in other words, the EI ERB). He didn't ask the Commission to deposit the \$2,000 in his bank account. He doesn't have the money to

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 Canada Employment Insurance Commission (Commission) ran the EI ERB program under changes 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 writes "CERB" in letters to appellants when it's actually referring to the EI ERB, which is confusing.

pay it back. He spent it on bills, groceries, and other living expenses. He is struggling financially.

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] The federal government made temporary changes to the *Employment Insurance Act* (EI Act) in response to the COVID-19 pandemic.² One of those changes was to create the EI ERB. Here are the EI ERB rules that are important for this appeal:

- Between March 15 and September 26, 2020, the Commission had to treat applications for EI regular and sickness benefits as applications for the EI-ERB.
- Any person could apply for the EI ERB for a two-week period, and they had to follow the Commission's rules and give it the information it needed to decide their application.³
- The usual EI ERB weekly benefit the Commission paid was \$500.⁴
- The Commission made EI ERB advance payments of \$2,000 to eligible people as soon as possible after they applied for EI.⁵
- The Commission decided it would recover the \$2,000 advance payment by not paying a person a \$500 weekly EI ERB benefit in 4 separate weeks (in weeks 13, 14, 18, and 19).⁶

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

³ See sections 153.8(1) and (3) of the EI Act.

⁴ See section 153.10 of the EI Act.

⁵ See section 153.7(1.1) of the EI Act.

⁶ This was an internal procedure that the Commission used based on its authority to pay the EI ERB **in advance** under section 153.7(1.1) of the EI Act.

[12] The changes to the law also allowed the Commission to go back and review a person's eligibility for the EI ERB—**up to 36 months after** they got an EI ERB payment.⁷ And they allowed it to set up and collect an overpayment if a person got more EI ERB than they were eligible for.⁸

What the Commission and the Appellant say

[13] The Commission says the Appellant isn't eligible for the EI-ERB advance payment of \$2,000. This is an overpayment he has to pay back.

[14] The Commission says it paid the Appellant an EI ERB advance payment of \$2,000 (covering 4 weeks) plus 9 weekly payments of \$500.⁹ So he got a total of 13 weeks of the EI ERB (\$6,500).

[15] The Commission says the Appellant proved he was eligible for 9 weekly EI ERB payments (\$4,500). 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 the EI ERB.

[17] Because he was no longer getting the EI ERB, the Commission could not recover the advance payment (\$2,000) by holding back weekly benefits in weeks 13, 14, 18, and 19. So it's an overpayment that he has to pay back.¹⁰

[18] The Appellant agrees he went back to work and stopped receiving the EI ERB after 9 weeks.¹¹ But he says he should not have to pay back the overpayment.¹²

⁷ See sections 153.6(1), (2), and (3) of the EI Act.

⁸ See sections 153.6(1), (2), and (3) of the EI Act. Those sections apply and adapt the Commission's authority under sections 43 (**claimant liability for overpayment**), 44 (**claimant liability to return overpayment**), and 47 (**paying a debt owed to the Crown**) to the EI ERB.

⁹ See the Commission's representation at GD4-3. The Commission says it paid him 9 weekly EI ERB payments for March 22, 2020, to May 23, 2020.

¹⁰ See the form letter and notice of debt the Commission sent to the Appellant, at GD3-42 to GD3-49.

¹¹ See the report the Appellant filed for May 10 to 23, 2020, at GD3-33 to GD3-38. He reported he started a full-time job on May 19, 2020.

¹² The Appellant made these arguments in his notice of appeal (GD2), his reconsideration request (at GD3-52 and GD3-53), and in his testimony at the hearing.

[19] He says he applied for EI regular benefits—not the CERB (in other words, the EI-ERB). He didn't ask the Commission to deposit the \$2,000 into his bank account. When he saw the deposit, he didn't know what it was for. He spent it on bills (hydro, gas, and mortgage), groceries, car payments, and other living expenses. He didn't take advantage of the EI ERB.

[20] At the hearing, the Appellant testified that he can't afford to pay back \$2,000. He is struggling to live. He has been working for his employer for 29 or 30 years. But he hasn't had a raise in 7 years. He lives pay cheque to pay cheque. By Thursday—when he gets paid—his bank account is in overdraft. Every week, he has to claw himself out of overdraft. He questioned whether the Canadian government really needs the money back from him, when he and so many others in Windsor, Ontario, are struggling.

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 to the Commission, testified about at the hearing, or wrote in his appeal notice. His evidence was consistent over time.

[22] But his evidence doesn't change my decision.

[23] 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 the COVID-19 pandemic, the Commission **had to pay him the EI ERB (including the \$2,000 advance payment)**.

[24] 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

¹³ See the Commission's screenshots showing it paid the Appellant the \$2,000 EI ERB advance payment and 9 weeks of the EI ERB, at GD3-28 to GD3-31.

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.

[25] 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 that the following happened:

- The Appellant applied for EI, and the Commission paid him the EI ERB advance payment (\$2,000).
- The Appellant proved he was eligible for and the Commission paid him 9 weeks of the EI-ERB.
- The Appellant received a total of 13 weeks of EI ERB benefits.
- The Appellant went back to work (and wasn't eligible for the EI ERB) before the Commission could recover the EI ERB advance payment in weeks 13, 14, 18, and 19.

[26] So I find the Appellant received 4 weeks (\$2,000) of the EI ERB he wasn't legally allowed to keep. (This is the EI ERB advance payment.) This is an overpayment he has to pay back.

The Tribunal can't write off the overpayment

[27] The overpayment is a debt the Appellant owes to Employment and Skills Development Canada (ESDC). ESDC is the federal government department that runs the Commission.

[28] I acknowledge how unfair the overpayment seems to the Appellant. But the Tribunal has no power to write off an overpayment.¹⁵

¹⁴ See the Commission's representations at GD4-5.

¹⁵ Section 112.1 of the EI Act says this. And section 153.1307 says section 112.1 applies to EI ERB overpayments.

[29] The Commission can write off all or part of an overpayment.¹⁶ If the Appellant hasn't already asked the Commission to write off his overpayment, he can do that.

[30] The Canada Revenue Agency (CRA) collects debts for federal government departments, including ESDC. The Appellant can get more information about **payment plans** and **debt relief** from the [CRA webpage about the collection of EI ERB overpayments](#), or by calling toll-free 1-800-864-5823.¹⁷

Conclusion

[31] The Commission has proven the Appellant received \$2,000 in EI ERB payments he isn't legally allowed 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

¹⁶ The Commission has the authority to write off EI ERB overpayments under section 153.1306 of the EI Act. That section refers to section 56 of the *Employment Insurance Regulations*, which gives the Commission broad authority to write off an overpayment when it would cause undue hardship for a person to repay it.

¹⁷ Here is the hyperlink to the CRA webpage: www.canada.ca/en/revenue-agency/services/about-canada-revenue-agency-cra/when-you-money-collections-cra/collection-canada-emergency-response-benefit-issued-by-service-canada.html.