



[TRANSLATION]

Citation: *HC v Canada Employment Insurance Commission*, 2024 SST 207

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

## Decision

**Appellant:** H. C.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (449449) dated November 14, 2023 (issued by Service Canada)

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**Tribunal member:** Manon Sauvé

**Type of hearing:** Teleconference

**Hearing date:** February 6, 2024

**Hearing participant:** Appellant

**Decision date:** February 13, 2024

**File number:** GE-23-3589

## Decision

[1] The appeal is allowed.

[2] The Appellant doesn't have to pay back the \$2,000 she received as an advance payment of the Employment Insurance Emergency Response Benefit (EI ERB).

## Overview

[3] The Appellant works seasonally in an outfitting business. She was supposed to go back to work on April 20, 2020. But, because of the COVID-19 pandemic, the employer resumed operations on May 21, 2020.

[4] 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.

[5] The Appellant applied for the EI ERB on April 30, 2020.

[6] The Commission established a benefit period. On June 15, 2020, the Commission paid her \$2,000.

[7] The Appellant didn't complete her claims for benefits because she went back to work on May 21, 2020. She thought the \$2,000 represented the four weeks of unemployment.

[8] On November 13, 2021, the Commission asked the Appellant to pay back the \$2,000. Because she hadn't completed her claims for benefits, the Commission found that the Appellant wasn't entitled to benefits.

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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 EI ERB advance payment?

## Analysis

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

[11] The Appellant works for an outfitter. She was supposed to go back to work on April 20, 2020, but that date was pushed because of health measures introduced during the pandemic.

[12] She applied for benefits. A [benefit] period was established effective April 20, 2020. The Appellant went back to work on May 21, 2020.

[13] On June 15, 2020, the Commission paid the Appellant \$2,000. This amount corresponded to four weeks of the EI ERB. The Commission planned to recover this advance by withholding four weeks of benefits later, usually weeks 13, 14, 18, and 19 of benefits claimed.

[14] The Commission is asking the Appellant to pay back the benefits she was paid because she didn't complete her claims for each week of unemployment. The Commission told her that she had to complete her claims to be entitled to benefits. But the Appellant didn't complete her claims.

[15] The Appellant says that she didn't know she was eligible for the EI ERB when she received her check for \$2,000 in June 2020 for her four weeks of unemployment. She thought that her claim had been approved, since the Commission paid her four weeks of benefits after her period of unemployment.

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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.

[16] After reviewing the file and considering the parties' arguments, I am of the view that the Appellant doesn't have to pay back the \$2,000 the Commission says she owes. In making my finding, I considered sections 153.7(1) and 153.8(1) of the *Employment Insurance Act*:

**153.7 (1)** An employment insurance emergency response benefit is payable to a claimant who makes a claim under section 153.8 and who is eligible for the benefit. [...] **(1.1)** The Commission may pay the employment insurance emergency response benefit in advance of the customary time for paying it.

**153.8 (1)** Any claimant may, in the form and manner established by the Minister, make a claim for the employment insurance emergency response benefit for any two-week period starting on a Sunday and falling within the period beginning on March 15, 2020 and ending on October 3, 2020.

[17] In its fluid interpretation, the Commission argued before this Tribunal's Appeal Division that it could establish the form for making Employment Insurance (EI) claims.<sup>5</sup>

[18] This means that the Appellant was eligible for four weeks of the EI ERB. She received four weeks of EI benefits. So, she doesn't have to pay back the \$2,000.

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<sup>5</sup> See *GB v Employment Insurance Commission*, SST AD-23-778; and *LG v Employment Insurance Commission*, SST AD-23-895. There were agreements between the parties.

[19] The table below explains how benefits payable to the Appellant were calculated.

Week	Week starting	Benefits paid	Income	Eligible 153.9(1) - 2 weeks A	Eligible 153.9(4) - 4 weeks B	Weeks counter	Eligible with A or B
1	April 19, 2020	\$	\$	yes	no		\$500
2	April 26, 2020	\$	\$	yes	no		\$500
3	May 3, 2020	\$	\$	yes	no		\$500
4	May 10, 2020	\$	\$	yes	no		\$500
5	May 17, 2020	\$	\$	no	no		\$
6	May 24, 2020	\$	\$	no	no		\$
7	May 31, 2020	\$	\$	no	no		\$
8	June 7, 2020	\$	\$	no	no		\$
9	June 14, 2020	\$2,000	\$	no	no		\$
10	June 21, 2020	\$	\$	no	no		\$
11	June 28, 2020	\$	\$	no	no		\$
12	July 5, 2020	\$	\$	no	no		\$
13	July 12, 2020	\$	\$	no	no		\$
14	July 19, 2020	\$	\$	no	no		\$
15	July 26, 2020	\$	\$	no	no		\$
16	August 2, 2020	\$	\$	no	no		\$
17	August 9, 2020	\$	\$	no	no		\$
18	August 16, 2020	\$	\$	no	no		\$
19	August 23, 2020	\$	\$	no	no		\$
20	August 30, 2020	\$	\$	no	no		\$
21	September 6, 2020	\$	\$	no	no		\$
22	September 13, 2020	\$	\$	no	no		\$
23	September 20, 2020	\$	\$	no	no		\$
24	September 27, 2020	\$	\$	no	no		\$
25	October 4, 2020	\$	\$	no	no		\$
26	October 11, 2020	\$	\$	no	no		\$
27	October 18, 2020	\$	\$	no	no		\$
28	October 25, 2020	\$	\$	no	no		\$
Total paid		\$2,000		Eligibility total			\$2,000

[20] So, the Appellant wasn't overpaid the EI ERB. She doesn't have to pay back the \$2,000 advance payment.

## **Conclusion**

[21] The Appellant doesn't have to pay back the \$2,000 EI ERB payment she received.

[22] This means that the appeal is allowed.

Manon Sauvé

Member, General Division – Employment Insurance Section