



[TRANSLATION]

Citation: *GA v Canada Employment Insurance Commission*, 2023 SST 1987

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

## Decision

**Appellant:** G. A.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (446678) dated June 19, 2023  
(issued by Service Canada)

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**Tribunal member:** Marc St-Jules  
**Type of hearing:** Teleconference  
**Hearing date:** January 9, 2024  
**Hearing participant:** Appellant  
**Decision date:** January 23, 2024  
**File number:** GE-23-2021

## Decision

[1] The appeal is dismissed. The Social Security Tribunal of Canada (Tribunal) disagrees with the Appellant (Claimant).

[2] The Canada Employment Insurance Commission (Commission) has shown that it paid the Appellant more of the Employment Insurance Emergency Response Benefit (EI ERB) than he was eligible for. In other words, he was overpaid.

[3] He has to pay back the \$2,000 overpayment. This is the amount of the EI ERB advance payment he received.

## Overview

[4] On March 24, 2020, the Appellant applied for Employment Insurance (EI) regular benefits.<sup>1</sup>

[5] The Commission determined the Appellant was eligible for the EI ERB. The Commission paid him an advance payment of \$2,000 on April 6, 2020.<sup>2</sup> The Commission also paid him six weeks of the EI ERB.

[6] About a year and a half later, the Commission decided that the Appellant wasn't eligible for the full payment he had received. It sent him a letter explaining its decision.<sup>3</sup> A notice of debt for \$2,000 was included with the letter.

[7] The Appellant disagrees that he has to pay back the \$2,000 overpayment. His arguments are discussed below in more detail.

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<sup>1</sup> See GD3-3 to GD3-14.

<sup>2</sup> See GD3-17.

<sup>3</sup> See GD3-21 and GD3-22.

## **Matters I have to consider first**

### **The type of hearing was changed**

[8] The Appellant initially asked for a hearing in writing. He added that he worked with the public, so it would be difficult to attend in person or by videoconference. However, when a hearing is in writing, the appellant isn't able to ask questions.

[9] A letter was sent to the Appellant on October 12, 2023.<sup>4</sup> The purpose of the letter was to inform the Appellant that a hearing could be held outside normal business hours. The letter gave the Appellant the option to change his preference to a telephone hearing.

[10] The Appellant replied on October 31, 2023.<sup>5</sup> He said that he now wanted a telephone hearing. As a result, the hearing was changed to a telephone hearing.

### **The case conference didn't take place**

[11] To discuss the type of hearing, I had invited the Appellant to a case conference scheduled for November 6, 2023.<sup>6</sup> I also wanted more information about his availability, to schedule a hearing. This would possibly avoid having to adjourn the hearing.

[12] However, the Appellant contacted the Tribunal on October 31, 2023.<sup>7</sup> In his email, he said that he now wanted a telephone hearing and that he would not be available on November 6, 2023. As a result, the case conference was cancelled.<sup>8</sup>

### **The Appellant asked for two adjournments**

[13] A notice of hearing was sent to the Appellant.<sup>9</sup> The hearing was scheduled for 6 p.m. on December 5, 2023.

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<sup>4</sup> See GD5.

<sup>5</sup> See GD10.

<sup>6</sup> See GD9.

<sup>7</sup> See GD10.

<sup>8</sup> See GD11.

<sup>9</sup> See GD1.

[14] On December 5, 2023, the Tribunal received an adjournment request. The Appellant was sick with COVID-19.<sup>10</sup> In the interests of natural justice, a new hearing was scheduled for December 19, 2023. So, on December 7, 2023, a notice was sent for a hearing on December 19, 2023.<sup>11</sup>

[15] On December 19, the Tribunal got another adjournment request. The Appellant was still sick with COVID-19. In the interests of natural justice, a new hearing was scheduled for January 9, 2024. So, on December 22, 2023, a notice was sent for a hearing at 6 p.m. on January 9, 2024.

[16] The Appellant was at the January 9, 2024, hearing as expected. So, the hearing took place with the Appellant being able to testify.

### **I will accept post-hearing documents**

[17] At the hearing, the Appellant testified that some dates seemed incorrect. He said he was unemployed from March 16, 2020, to May 24, 2020. He said that because of this, he got the correct amount of benefits.

[18] The Appellant was told that according to the information on file, he was unemployed from March 25, 2020, and went back to work on May 4, 2020. He was told that the date of March 25, 2020, had come from two sources. One of them was his application for benefits.<sup>12</sup> The other was the Record of Employment.<sup>13</sup> They both indicate March 24, 2020, as the last day worked.

[19] Concerning the date of his return to work, it came from a report from the Appellant. According to his reports, provided by the Commission, he went back to work full-time on May 4, 2020, [as reported] on May 10, 2020.<sup>14</sup>

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<sup>10</sup> See GD13.

<sup>11</sup> See GD14.

<sup>12</sup> See GD3-3 to GD3-14.

<sup>13</sup> See GD3-15 and GD3-16.

<sup>14</sup> See GD8-23.

[20] The Appellant disagreed. He had prepared notes. They say that it is clear he was unemployed until May 24, 2020. He would review the documents and provide supporting evidence.

[21] The Appellant had to provide any additional submissions by Monday, January 15, 2024.<sup>15</sup>

[22] I have decided to accept the document he then sent me, for two reasons:

- I gave him an opportunity to provide this information.
- The dates he worked are relevant to the issue I have to decide.

[23] The Appellant replied on January 17, 2024.<sup>16</sup> I will consider his reply in my decision.

### **Information was requested from the Commission**

[24] The Appellant sent a statement of account for his debt.<sup>17</sup> The statement shows a balance of \$0. The minimum payment is also \$0.

[25] The Appellant says this proves that the overpayment is \$0 and that he doesn't owe the Commission.

[26] On January 10, 2024, under section 53 of the *Social Security Tribunal Rules of Procedure*, I sent an Investigation and Report request asking the Commission for additional arguments about the statement of account.

[27] The Commission replied on January 11, 2024.<sup>18</sup> It says that the Appellant didn't provide the entire statement. It agrees that the part he provided indicates \$0. But this is

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<sup>15</sup> The Appellant was then given more time to reply.

<sup>16</sup> See GD22.

<sup>17</sup> See GD17.

<sup>18</sup> See GD19.

because recovery of the amount he owes has been suspended while he is appealing. The Commission provided a copy of the full statement.<sup>19</sup>

[28] The Appellant was given an opportunity to reply. He replied on January 17, 2024. I will consider these documents and arguments in my decision.

## Issue

[29] Should the Appellant have been paid EI regular benefits instead of the EI ERB?

[30] If so, I must then decide whether the Appellant has to pay back the \$2,000 EI ERB advance payment he received.

## Analysis

### Should the Appellant have been paid EI regular benefits instead of the EI ERB?

[31] The Appellant received the EI ERB. That is what the law required.

[32] In response to the COVID-19 pandemic, the federal government made **temporary changes** to the *Employment Insurance Act* (Act).<sup>20</sup> One change the government made was to create the EI ERB. Here are the EI ERB rules that are important for this appeal:

- **Between March 15, 2020, and September 26, 2020**, the Commission had to process applications for EI **regular and sickness** benefits **as applications for the EI ERB**.<sup>21</sup>

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<sup>19</sup> See GD19.

<sup>20</sup> See Part VIII.4 (Employment Insurance Emergency Response Benefit) of the *Employment Insurance Act* (Act).

<sup>21</sup> Under the changes to the Act, the Commission had no authority to establish a benefit period for regular or sickness benefits between March 15, 2020, and September 26, 2020. The Commission had to process these types of claims as EI ERB claims. And any benefits paid during this period had to be paid as EI ERB, except for certain types of benefits other than regular and sickness benefits. **See sections 153.8(1) and 153.8(3) of the Act**. The Commission could pay the EI ERB to eligible people for two-week periods between March 15, 2020, and October 3, 2020.

- Individuals who wanted benefits first had to apply for benefits. Then, they had to complete biweekly reports to prove their eligibility for benefits.
- The weekly rate for the EI ERB was \$500.<sup>22</sup>

[33] So, if someone applied for EI regular benefits and their benefit period started during that time, they would have received the EI ERB instead of EI regular benefits.

[34] The Appellant applied for regular benefits. I accept this as fact. There is no evidence to contradict this. However, the Commission paid him the EI ERB.

[35] At the hearing, the Appellant said that his employment ended on March 10, 2020. But he has now confirmed that he agrees with the date of March 24, 2020.

[36] I find March 24, 2020, to be the more likely date, for the following reasons:

- The Appellant applied for benefits on March 24, 2020. His application indicates March 24, 2020, as his last day worked.<sup>23</sup>
- The Record of Employment indicates March 24, 2020, as the last day worked.
- The Appellant now agrees that his last day worked was March 24, 2020.

[37] So, I accept this date as fact.

[38] This was between March 15, 2020, and September 26, 2020. So, the Appellant received the EI ERB instead of EI regular benefits.

[39] For the above reasons, I find that the Appellant was eligible for the EI ERB, not EI regular benefits. This is what the law required.

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<sup>22</sup> See section 153.10(1) of the Act.

<sup>23</sup> See GD3-3 to GD3-14.

## **Was the Appellant overpaid the EI ERB?**

[40] Yes. My analysis in the following paragraphs explains why the overpayment is valid and supported by law.

[41] The Commission was allowed to make EI ERB advance payments of \$2,000 to eligible people as soon as possible after they applied for EI.<sup>24</sup>

[42] The Commission decided it would recover the \$2,000 advance payment by holding back four specific weeks of EI ERB payments.<sup>25</sup> In most cases, it recovered the \$2,000 after paying 12 weeks of benefits. For most claimants, the recovery was in weeks 13 and 14 of their claims. After that, they weren't paid in weeks 18 and 19.

[43] The law also allowed the Commission to review a person's eligibility for the EI ERB up to 36 months after they got an EI ERB payment.<sup>26</sup> The Commission could assess an overpayment if a person got more benefits than they were eligible for.<sup>27</sup>

### **– What the Commission says**

[44] The Commission says it paid the Appellant an EI ERB advance payment of \$2,000. Then it paid him six weeks of the EI ERB after he had completed electronic reports.<sup>28</sup> The Commission says this means it paid him \$5,000 or 10 weeks of benefits.

[45] The Commission says the Appellant should have received only \$3,000 or six weeks of benefits. It says he was eligible for six weeks because he didn't work from March 25, 2020, to May 3, 2020.

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<sup>24</sup> See section 153.7(1.1) of the Act.

<sup>25</sup> This was an internal procedure that the Commission used in connection with its authority to make an EI ERB advance payment under section 153.7(1.1) of the Act.

<sup>26</sup> See sections 52, 153.6(1), 153.6(2), and 153.6(3) of the Act.

<sup>27</sup> See sections 153.6(1), 153.6(2), and 153.6(3) of the 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.

<sup>28</sup> See GD3-17 and GD3-18. There are screenshots from the Commission showing it paid the Appellant the \$2,000 EI ERB advance payment and six weekly EI ERB payments.



[46] According to the Appellant's reports, he went back to work on May 4, 2020.<sup>29</sup> This meant that his benefits stopped. This also meant the Commission could not recover the \$2,000 advance payment as explained above.

[47] The Commission now says that the \$2,000 is an overpayment and that the Appellant has to pay it back.<sup>30</sup>

– **What the Appellant says**

[48] The Appellant disagrees that he has to pay this money back.<sup>31</sup> He testified receiving \$5,500. He says that he should have received \$5,000, since he was unemployed from March 16, 2020, to May 24, 2020.

[49] The Appellant provided a statement of account.<sup>32</sup> He says that it supports that the overpayment has been resolved. It shows a total balance of \$0, and the minimum payment is also \$0.

[50] The Appellant provided more information after the hearing.<sup>33</sup> He changed his position on one particular fact. He now agrees that his benefits started on March 24, 2020. He maintains his position that he was eligible for benefits until May 24, 2020.

[51] The Appellant says the benefits changed his tax rate. As a result, he paid more tax. He adds that he lost his entitlement to the GST and QST rebates because of the benefits.

[52] The Appellant also addresses the statement of account in his reply. He says the statement is contradictory. The Commission says in one section that the debt is \$2,000, but another section shows a balance of \$0. The Commission talks about the statement

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<sup>29</sup> See GD8-23.

<sup>30</sup> See the decision letter and notice of debt the Commission sent to the Appellant at GD3-20 to GD3-23 in the appeal record.

<sup>31</sup> The Appellant said this in his notice of appeal (see GD2 in the appeal record) and in his request for reconsideration (see GD3 in the appeal record).

<sup>32</sup> See GD17.

<sup>33</sup> See GD22.

in its reply.<sup>34</sup> It says that the Appellant didn't provide the entire statement. It adds that recovery was suspended from August 3, 2023, because of his appeal.

– **Eligibility dates**

[53] I prefer the Commission's submissions about the eligibility dates, namely that the Appellant was unemployed from March 25, 2020, to May 3, 2020. He now agrees that his last day worked was March 24, 2020, as the Commission states. So, I accept that the Appellant's last day worked was March 24, 2020.

[54] The Appellant says that he was actually unemployed and that his benefits stopped on May 24, 2020. I am not persuaded. I find that May 4, 2020, is the date he actually went back to work. The following paragraphs explain why.

[55] I have looked at the Appellant's report for the period from April 26, 2020, to May 9, 2020.<sup>35</sup> This is where he indicated, at GD8-23, that he had gone back to work on May 4, 2020. That report was submitted on May 10, 2020.

[56] There are a few reasons why I prefer the date of May 4, 2020:

- First, this is the date the Appellant himself provided. His reports can be consulted and are found in GD8.
- Second, the Appellant has admitted to being wrong before. He was wrong when he testified that he was actually unemployed from March 10, 2020. Later, he admitted he was mistaken. He might also be wrong about when he went back to work.

[57] I think this was an error on the Appellant's part. This doesn't make me doubt his honesty. I don't find that this was an attempt to get more than he was eligible for.

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<sup>34</sup> See GD19.

<sup>35</sup> See GD8-22 to GD8-28.

[58] Unfortunately, the evidence the Appellant gave the Tribunal doesn't change my decision. I recognize that he paid income tax on the EI benefits he received. But the law says that when a claimant has to pay back EI benefits, they have to pay back the gross amount—the amount before tax. The Federal Court of Appeal agrees.<sup>36</sup>

[59] When a claimant pays back an overpayment, the Commission issues a tax form. The form is then available so that taxes can be reconciled when the claimant does their annual tax return.

[60] I am also aware that income has an impact on GST and QST. Unfortunately, I can't consider this argument. The Appellant's income will be lower in the year the repayment is made.

– **The Appellant also says that he received \$5,500, not \$5,000**

[61] The EI ERB was in effect for a limited time. As noted above, it was available for claims made between March 15, 2020, and September 26, 2020. The information from the Commission is only about the EI ERB overpayment, so if there is any information about benefits paid before or after the EI ERB, the Tribunal doesn't have it.

[62] I could accept that the Appellant actually got \$5,500. But I prefer the Commission's amount of \$5,000, for the following reasons:

- Benefits may have been paid before or after the EI ERB. The amount of \$5,000 asserted by the Commission relates only to the EI ERB.
- Accepting the amount of \$5,500 would make the overpayment higher than what both parties assert.
- I have documents that support the amount of \$5,000. I don't have documents that support the amount of \$5,500. The Appellant's testimony is for 2020. He may be mistaken.

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<sup>36</sup> See *Court v Canada (Attorney General)*, 2020 FCA 199.

[63] The Appellant was eligible for the EI ERB. That is what he got from the Commission. My decision is based on the facts before me and the application of the law. There are no exceptions and no room for discretion. I can't interpret or rewrite the Act in a manner that is contrary to its plain meaning, even in the interest of compassion.<sup>37</sup>

[64] I have reviewed the Commission's evidence of the EI ERB it paid to the Appellant. I have also reviewed the Commission's calculation of the overpayment it says he owes.<sup>38</sup>

[65] Based on the facts before me, I find that:

- the Appellant applied for EI benefits, and soon after the Commission gave him the \$2,000 advance payment
- the Commission paid the Appellant \$5,000 in benefits
- the Appellant was unemployed from March 25, 2020, to May 3, 2020, so he was eligible for six weeks of benefits or \$3,000
- since the Appellant went back to work on May 4, 2020, his benefits stopped
- the EI ERB ended on October 3, 2020, so the Commission wasn't able to recover the rest of the advance payment in 2020

[66] I find that the Appellant received \$2,000 in EI ERB he wasn't eligible for. This is an overpayment he has to pay back.

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<sup>37</sup> See *Canada (Attorney General) v Knee*, 2011 FCA 301 at paragraph 9.

<sup>38</sup> See the Commission's submissions in GD4 in the appeal record.

[67] The following table explains the weeks for which benefits were paid:

Week	Week beginning	Benefits paid	Eligibility
1	March 22, 2020	\$500	\$500
2	March 29, 2020	\$500	\$500
3	April 5, 2020	\$2,500	\$500
4	April 12, 2020	\$500	\$500
5	April 19, 2020	\$500	\$500
6	April 26, 2020	\$500	\$500
		\$5,000	\$3,000
Overpayment			\$2,000

[68] I understand that the Appellant finds the situation unfair. However, I can't give the Act a meaning that it doesn't have. And I don't have the power to change the Act.<sup>39</sup>

### **The Tribunal can't write off overpayments**

[69] I have no power to change the overpayment in any way.

[70] I sympathize with the Appellant about the overpayment, but I don't have the power to do anything about it. The law doesn't empower the Tribunal to reduce or remove the Appellant's liability to pay the overpayment amount.<sup>40</sup>

[71] The Appellant is left with two options that he may have already tried:

- He can ask the Commission to consider writing off the debt because of undue hardship.<sup>41</sup> If he doesn't like the Commission's response, he can file a notice

<sup>39</sup> See *Canada (Attorney General) v Knee*, 2011 FCA 301.

<sup>40</sup> See section 112.1 of the Act.

<sup>41</sup> Section 56(1)(f)(ii) of the *Employment Insurance Regulations* (Regulations) gives the Commission the power to write off an overpayment when paying it back would cause the person undue hardship. The Appellant has to contact the Commission and specifically mention section 56 of the Regulations in his write-off request.

of application for judicial review with the Federal Court of Canada, but there is a 30-day time frame for appealing to the Federal Court.

- He can telephone the Debt Management Call Centre at the Canada Revenue Agency (CRA) at 1-866-864-5824 and ask for debt relief due to financial hardship.<sup>42</sup> He will need to provide information about his financial circumstances to prove his situation.

## **Conclusion**

[72] The Commission has proven that the Appellant received \$2,000 in EI ERB he wasn't eligible for.

[73] The law says the Appellant has to repay the overpayment of \$2,000.

[74] I have to dismiss his appeal.

Marc St-Jules

Member, General Division – Employment Insurance Section

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<sup>42</sup> The CRA collects overpayments on behalf of the Commission. The telephone number is also found on the notice of debt and account statements sent to the Appellant.