



Citation: *KB v Canada Employment Insurance Commission*, 2024 SST 211

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

## Decision

**Appellant:** K. B.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (487666) dated November 27, 2023 (issued by Service Canada)

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**Tribunal member:** Gerry McCarthy  
**Type of hearing:** Teleconference  
**Hearing date:** January 16, 2024  
**Hearing participant:** Appellant  
**Decision date:** January 17, 2024  
**File number:** GE-23-3349

## Decision

[1] The appeal is dismissed.

[2] The Appellant has to pay back \$2,000.00 of the Employment Insurance Emergency Response Benefit (EI ERB) advance payment he received.

[3] However, the Appellant confirmed during the hearing that the \$2,000.00 advance payment of the EI ERB was already deducted from a credit balance on his Income Tax return.

## Overview

[4] The EI ERB is a new benefit that was created at the beginning of the COVID-19 pandemic.<sup>1</sup> The amount of the EI ERB was \$500.00 per week.<sup>2</sup> But the Canada Employment Insurance Commission (Commission) gave claimants an advance payment of four-weeks of the EI ERB (\$2,000.00) when they first applied.

[5] The Appellant applied for the EI ERB on April 6, 2020. After this, the Commission paid the Appellant the \$2,000.00 advance payment on April 13, 2020. The Commission also paid the Appellant 11-weeks of the EI ERB. In total, the Appellant received \$7,500.00 in the EI ERB.

[6] I have to decide whether the Appellant has to pay back \$2,000.00 of the EI ERB advance payment he received.

[7] The Commission says the Appellant was overpaid \$2,000.00 and should have received only \$5,500.00.

[8] The Appellant says they already deducted the \$2,000.00 EI ERB advance payment from a credit balance on his Income Tax return. However, the Appellant says

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

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

he was looking to get the money back. He says that he should be given a break and not required to pay back the \$2,000.00.

## **Issues**

[9] Should the Appellant have been paid Employment Insurance (EI) regular benefits instead of the EI ERB?

[10] Does the Appellant have to pay back the EI ERB advance payment he received?

## **Analysis**

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

[11] I find the Appellant should have been paid the EI ERB, not EI regular benefits.

[12] Between March 15, 2020, and September 26, 2020, all applications for EI regular benefits were processed as applications for the EI ERB.<sup>3</sup> 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.

[13] The Commission and the Appellant agree that the Appellant's application for EI regular benefits would have resulted in a benefit period beginning on April 5, 2020. This was between March 15, 2020, and September 26, 2020. So, the Appellant received the EI ERB instead of EI regular benefits.

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

[14] I find the Appellant has to pay back the EI ERB advance payment he received.

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<sup>3</sup> See sections 153.5(3)(a), 153.8(5) and 153.1310 of the EI Act.

[15] Between March 15, 2020, and October 3, 2020, claimants could apply for the EI ERB for two-weeks at a time.<sup>4</sup> The law allowed the Commission to pay claimants the EI ERB before it would normally pay it.<sup>5</sup>

[16] The Commission paid the Appellant the \$2,000.00 advance payment as soon as he first applied. This was equal to four-weeks of the EI ERB. The Commission planned to recover this advance payment by holding back four-weeks of benefits later on—usually the 13th, 14th, 18th, and 19th weeks of benefits claimed.

[17] The Commission says that, because of the advance payment, the Appellant received a total of 15-weeks of benefits but should have received only 11-weeks of benefits. The Commission wasn't able to recover \$2,000.00 of the advance payment, because the Appellant worked full-time weeks outside the weeks he was eligible for the EI ERB. As a result, the Appellant was overpaid \$2,000.00 in the EI ERB.

[18] The Appellant agrees that he was paid the \$2,000.00 advance payment and 11-weeks of the EI ERB. He confirmed he received 8-weeks of EI ERB from April 5, 2020, to May 30, 2020, and three-weeks of EI ERB from August 23, 2020, to September 12, 2020. The Appellant says that he stopped claiming the EI ERB after 11-weeks (in total) and wasn't eligible for any more weeks of the EI ERB.

[19] I find the Appellant was paid a total of 15-weeks of the EI ERB, but he should have received only 11-weeks of benefits. This is because he received the advance payment of \$2,000.00 which was equal to four-weeks of benefits.

[20] Since the Appellant received four more weeks of the EI ERB than he should have received, he was overpaid \$2,000.00.

[21] The Commission tried to see if the Appellant had any eligible weeks for EI ERB that might offset his overpayment. However, the Commission determined the Appellant

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<sup>4</sup> See sections 153.7(1) and 153.8 of the EI Act.

<sup>5</sup> See section 153.7(1.1) of the EI Act.

had no other eligible weeks in the EI ERB period that could be applied to offset the overpayment.

[22] I reviewed the Appellant's Record of Employment to see if he might have any eligible weeks to offset his overpayment (GD3-31). However, I agree with the Commission that the overpayment could not be reduced by any number of weeks. In short, there were no windows where the Appellant's earnings didn't exceed \$1,000.00.

[23] The law says that, if someone received more of the EI ERB than they were eligible for, they have to pay back the overpayment.<sup>6</sup> So, the Appellant has to pay back this amount. As mentioned, the Appellant already confirmed his overpayment of \$2,000.00 was deducted from a credit balance on his Income Tax Return.

[24] The Appellant is asking for a write-off of the overpayment based on fairness. He says he paid taxes and made contributions to the EI program his entire life, but rarely claimed EI benefits. In summary, the Appellant says he should be given a break and not required to pay back the \$2,000.00 advance payment.

[25] I recognize the Appellant was frustrated, unhappy, and displeased about his overpayment. However, I can only apply the law that is set out in the *Employment Insurance Act* and *Employment Insurance Regulations*. I can't change or re-fashion the law or give the Appellant another decision, even if I genuinely sympathize with his situation.<sup>7</sup>

[26] Furthermore, I have no authority to write-off the Appellant's overpayment.<sup>8</sup> But the Commission can decide to write off an overpayment in certain situations—for example, if paying it back would cause the Appellant undue hardship. So, the Appellant can ask the Commission to write off his overpayment. Nevertheless, the Appellant has

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<sup>6</sup> See sections 43 and 153.1301 of the EI Act.

<sup>7</sup> See *Canada (Attorney General) v Hamm*, 2011 FCA 205; and *Granger v Canada Employment and Immigration Commission*, A-684-85.

<sup>8</sup> See sections 153.1306, 153.1307, and 113 of the EI Act.

confirmed that his overpayment was already deducted from a credit balance on his Income Tax return.

[27] Finally, I wish to emphasize again that I have no authority to reduce or write-off the Appellant's overpayment even for compassionate reasons.<sup>9</sup>

## **Conclusion**

[28] The Appellant has to pay back \$2,000.00 of the EI ERB advance payment he received.

[29] This means the appeal is dismissed.

*Gerry McCarthy*

Member, General Division – Employment Insurance Section

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<sup>9</sup> *Villeneuve v Canada (Attorney General)*, 2005 FCA 440; *Mosher v Canada (Attorney General)*, 2002 FCA 355; and *Filiatrault v Canada (Attorney General)*, A-874-97.