



Citation: *TK v Canada Employment Insurance Commission*, 2023 SST 1910

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

Decision

Appellant: T. K.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (595200) dated May 31, 2023 (issued by Service Canada)

Tribunal member: Glenn Betteridge

Type of hearing: Teleconference

Hearing date: August 22, 2023

Hearing participant: Appellant

Decision date: August 24, 2023

File number: GE-23-1670

Decision

[1] T. K. is the Appellant in this appeal. I am dismissing her appeal.

[2] The Canada Employment Insurance Commission (Commission) has shown it paid her more Employment Insurance Emergency Response Benefits (EI ERB) than she was eligible for.¹ In other words, she was overpaid.

[3] When the Commission made its decision, the amount of the overpayment was \$2,000.² This was the amount of the EI ERB advance payment she received but wasn't eligible to keep.

Overview

[4] The Appellant worked in client services for X (employer). In March 2020, her employer laid her off because of a COVID-19 pandemic shutdown.

[5] On March 31, 2020, she applied for EI regular benefits.³

[6] The Commission decided she was eligible for the EI ERB. The Commission paid her an advance payment (\$2,000) soon after she applied. Then paid her 10 weeks of EI ERB benefits.

[7] In June 2020 she went back to work.

[8] About two years later, the Commission decided the Appellant wasn't legally eligible for the EI ERB advance payment. It sent her a decision letter explaining why and a notice of debt for \$2,000.

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 is actually referring to the EI ERB, which is confusing.

² This decision doesn't deal with the recovery of the debt by the Commission or the Canada Revenue Agency (CRA). The Appellant may have already paid back some or all of the debt. The CRA or Commission may have held back payments the Appellant was otherwise entitled to get.

³ See her EI application, at GD3-14.

[9] The Appellant disagrees with the Commission. She says she tried to pay back the advance payment right after she got it. But no one would take it. She says the Commission should have deducted it from her first weeks of EI benefits. The Commission's decision to set up and recover the EI ERB \$2,000 overpayment is retaliation.

Issue

[10] I have to decide whether the Appellant has to pay back the EI ERB advance payment (\$2,000).

Analysis

[11] Its up to someone who applies for an EI benefit to show they are eligible for that benefit.

[12] In this appeal, the Appellant has to show it's more likely than not she eligible for the EI ERB for all the weeks she received it. In other words, she has to prove her eligibility on a balance of probabilities.

The EI Emergency Response Benefit (EI ERB)

[13] In response to the COVID-19 pandemic, the federal government made temporary changes to the *Employment Insurance Act* (EI Act).⁴ 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 treat applications for EI regular and sickness benefits as applications for the EI ERB.⁵

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

⁵ Under changes to the EI Act, **the Commission had no authority to create 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 benefits, with a few exceptions for some types of benefits other than regular and sickness benefits.

- 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.⁶
- The usual EI ERB weekly benefit the Commission paid was \$500.⁷
- The Commission made EI ERB advance payments of \$2,000 to eligible people as soon as possible after they applied for EI.⁸
- The Commission decided it would recover the \$2,000 advance payment by not paying a person a weekly EI ERB benefit in 4 separate weeks (weeks 13, 14, 18, and 19).⁹

[14] 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.¹⁰ And the Commission could set up and collect an overpayment if a person got more EI ERB than they were eligible for.¹¹

⁶ See sections 153.8(1) and (3) of the EI Act. The Commission could pay the EI ERB to eligible people for two-week periods between March 15, 2020 to October 3, 2020.

⁷ See section 153.10 of the EI Act.

⁸ See section 153.7(1.1) of the EI Act.

⁹ 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..

¹⁰ See sections 52, 153.6(1), (2), and (3) of the EI Act.

¹¹ 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.

What the Commission and the Appellant say

[15] The Commission says it paid the Appellant an EI ERB advance payment of \$2,000. Then it paid the Appellant 10 weeks of EI ERB, based on the reports she filed.¹²

[16] The Commission says after 10 weeks the Appellant went back to work and was no longer eligible for the EI ERB.¹³ This meant the Commission could not recover the EI ERB advance payment (\$2,000) by holding back weekly benefits in weeks 13, 14, 18, and 19.

[17] So the Commission says the advance payment is an overpayment, which she has to pay back.¹⁴

[18] The Appellant disagrees with the Commission.¹⁵

[19] She says she met the criteria to get CERB (in other words, the EI ERB). When she got the EI ERB advance payment, she tried to pay it back. But no one would take it. The Commission called her and told her it was switching her from CERB to EI regular benefits. She went back to work at the end of May or in June 2020. But some of her pay was coming from the Canada Emergency Wage Subsidy her employer got. Then she got COVID and could not work.

[20] The Appellant says the Commission should have deducted the EI ERB advance payment from her first weeks of EI benefits. She filed her taxes for 2020 and 2021 and there was nothing about being overpaid the CERB. And it took the Commission almost two years to respond to her reconsideration request.

¹² See the Commission's EI ERB screenshot and Full Text Screens-Payment showing it paid the Appellant the \$2,000 EI ERB advance payment, and 10 weekly EI ERB payments, at GD3-22 to GD3-24. That evidence says it paid her the advance payment on April 6, 2020, and weekly payments for the weeks of April 5, 2020 through June 7, 2020.

¹³ The Commission says the Appellant contacted the Commission on June 24, 2020 to advise that she started to receive CEWS from her employer and returned to work on June 14, 2020. See GD4-1. And see the Commission's notes of that call at GD3-25.

¹⁴ See the decision letter (a form letter) and notice of debt the Commission sent to the Appellant, at GD3-27 to GD3-30.

¹⁵ This is what the Appellant said in her testimony, in her appeal (GD2), and in her reconsideration request (at GD3-24 to GD3-26).

[21] The Appellant says the Commission's decision to set up and recover the \$2,000 overpayment is retaliation against her. She challenged the Commission's decision to count her workers' compensation benefits (reported on her T4E) as income—which led to a \$20,500 overpayment. But she asked for a reconsideration. And the Commission reversed its decision. She says because she was successful, the Commission came after the \$2,000 overpayment.

[22] Finally, the Appellant says when she called the Canada Revenue Agency (CRA) in April 2023 her account balance was zero. She hasn't been able to find work since her employer dismissed her in 2021. And she hasn't been able to get EI benefits because of the debt the Commission and CRA told her she owes. They told her they would take her EI benefits to payoff her debt. She has been spending her savings. The Commission has caused her stress for seven months. She says she is getting screwed over left and right, for being honest and telling the truth. This isn't fair and she can't afford to pay back the \$2,000.

The Commission's overpayment decision is correct

[23] Most of the Appellant's evidence isn't relevant to a legal issue I have to decide. The Appellant believes the Commission set up the EI ERB overpayment to retaliate against her. I understand the timing of the Commission's decisions makes this seem true. But even if this is true, I have to decide whether the Commission correctly applied the law about the EI ERB to the Appellant's claim for EI benefits. I don't have the legal power to punish the Commission. Or to order it to compensate her for the significant stress she has suffered through.

[24] The Appellant says the Commission switched her to EI regular benefits after it paid her the EI ERB advance payment. The Commission's evidence says otherwise. I prefer the Commission's evidence that shows it paid her 10 weeks of EI ERB. The Commission's evidence is detailed and is taken from her computerized EI case file. I have no reason to doubt it. And other than the Appellant's memory of a phone conversation in April 2020, there is no evidence that goes against the Commission's evidence about this.

[25] I accept the Appellant's evidence about two legal issues I have to decide. I accept that she received the EI ERB advance payment (\$2,000). That is what the Commission's evidence shows. And I accept that she went back to work in May or June 2020. Her testimony about her return to work is supported by the Commission's evidence. It shows her last EI ERB payment was for the week of June 7, 2020.¹⁶ I have no reason to doubt that.

[26] 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 she owes.¹⁷ I have no reason to doubt the Commission's evidence about these two things. And there is no evidence that goes against it.

[27] So based on the evidence I have accepted, I find:

- The Appellant applied for EI benefits, and soon after the Commission paid her the EI ERB advance payment (\$2,000).
- The Appellant proved she was eligible for 10 weeks of the EI ERB (\$5,000), which the Commission paid her.
- The Appellant went back to work on June 14, 2020, after 10 weeks on the EI ERB, and wasn't eligible for any more weeks of EI ERB.¹⁸
- This meant the Commission could not recover the EI ERB advance payment in weeks 13, 14, 18, and 19.

¹⁶ See GD3-22 and GD3-24. The Commission included a record of employment in its reconsideration file, which shows the Appellant's employer paid her for a pay period that started June 7, 2020. See GD3-19.

¹⁷ See the Commission's representations, at GD4-1 and GD4-3.

¹⁸ The Commission says it looked at the Appellant's earnings after she went back to work in June 2020. It says she had zero weeks of eligibility she could use to pay back the \$2,000 advance payment she received. See the Commission's representations at GD4-1 and GD4-3. To be eligible for the EI ERB, a person had to show that, among other things, they ceased working for at least seven days within a two-week period **and** had no income in those seven days **or** had \$1,000 or less in income over a period of four weeks that succeed each other in chronological order but not necessarily consecutively. See sections 153.9(1) and 153.9(4) of the EI Act.

[28] So I find that the Appellant received four weeks (\$2,000) of EI ERB she wasn't legally eligible for. (This is the EI ERB advance payment.) This became an overpayment she had to pay back.

The Tribunal can't write off the overpayment

[29] The overpayment is a debt the Appellant owes to Employment and Skills Development Canada (ESDC). ESDC is the federal department responsible for the Commission.

[30] I acknowledge how unfair the overpayment seems to the Appellant. It has caused a lot of financial and mental stress for her. Over the past year, she has spent so much time and energy challenging the Commission decisions.

[31] Unfortunately for the Appellant, I have to follow the law.¹⁹ I have no power to make my decision based on fairness, compassion, or financial hardship.

[32] The Commission can write off all or part of an overpayment.²⁰ The Tribunal doesn't have the legal power to do that.²¹ So if the Appellant hasn't already asked the Commission to write off her overpayment, she can do that.

[33] The CRA collects debts for some federal government departments, including ESDC. The Appellant can get more information about **payment plans** and **debt relief** from the [CRA webpage on the collection of EI ERB overpayments](#), or by calling toll-free 1-800-864-5823.²²

¹⁹ See *Canada (Attorney General) v Knee*, 2011 FCA 301.

²⁰ The 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.

²¹ Section 112.1 of the EI Act says this. And section 153.1307 says section 112.1 applies to EI-ERB overpayments.

²² The CRA hyperlink is 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.

Conclusion

[34] The Appellant hasn't shown she was eligible for the \$2,000 EI ERB advance payment. So this is an overpayment.

[35] The law says she has to repay that overpayment (\$2,000).

[36] So I have to dismiss her appeal.

Glenn Betteridge
Member, General Division – Employment Insurance Section