



[TRANSLATION]

Citation: *LT v Canada Employment Insurance Commission*, 2023 SST 2030

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: L. T.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (447687) dated October 4, 2023 (issued by Service Canada)

Tribunal member: Charline Bourque

Type of hearing: In writing

Decision date: November 15, 2023

File number: GE-23-3046

Decision

[1] The appeal is dismissed with modification.

[2] The Appellant has to pay back the advance payment received under the Employment Insurance Emergency Response Benefit (EI ERB). However, the Commission failed to pay her benefits for the week of June 7, 2020, when she was entitled to them. So, the overpayment that the Appellant has to pay back is \$1,500.

Overview

[3] At the beginning of the COVID-19 pandemic, a new benefit called the EI ERB was created.¹ The amount paid for this benefit was \$500 per week.² But the Canada Employment Insurance Commission (Commission) decided to pay four weeks of the EI ERB (\$2,000) in advance to first-time claimants.

[4] The Appellant applied for the EI ERB on March 22, 2020. The Commission then paid her an advance of \$2,000. The Commission also paid the Appellant 11 weeks of the EI ERB. In total, the Appellant received \$7,500 in EI ERB.

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

[6] The Commission says that the Appellant was overpaid by \$2,000. She should have received only \$5,500.

[7] The Appellant disagrees. She says that she is hearing-impaired and went back to work after receiving the EI ERB, but she found that she was unable to work with masks, since she only understands lip-reading given her limitations. Had she known she would have to pay back the \$2,000, she would never have returned to work.

¹ Part VIII.4 of the *Employment Insurance Act* (Act) sets out the rules for the Employment Insurance Emergency Response Benefit.

² See section 153.10(1) of the Act.

Matter I have to consider first

Hearing in writing

[8] The Appellant said she wanted a hearing in writing.³

[9] So, the Tribunal proceeded in writing to comply with the Appellant's request.

Issue

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

Analysis

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

[11] I find that the Appellant has to pay back the EI ERB advance payment. But the amount she owes is \$1,500, not \$2,000.

[12] From March 15, 2020, to October 3, 2020, claimants could apply for the EI ERB for **two weeks at a time**.⁴ The law allowed the Commission to pay these benefits before they would normally have been paid.⁵

[13] The Commission paid the Appellant the advance of \$2,000 immediately after her first claim. This amount corresponded to four weeks of the EI ERB. The Commission planned to recover this advance by later withholding four weeks of benefits, usually at weeks 13, 14, 18, and 19.

[14] The Commission says that, because of the advance, the Appellant received a total of 15 weeks of benefits, when she should have received only 11. The Commission could not recover the advance payment because the Appellant didn't apply for benefits for the weeks the Commission planned to recover that amount. So, the Appellant was overpaid \$2,000.

³ See the notice of appeal (GD2-12).

⁴ See sections 153.7(1) and 153.8 of the Act.

⁵ See section 153.7(1.1) of the Act.

[15] The Appellant agrees that she received the advance of \$2,000 and 11 weeks of the EI ERB. She said that she stopped applying for these benefits because she went back to work.

[16] I find that the Appellant received a total of 15 weeks of the EI ERB, but she should have received 12 weeks. This is because claimants applied for two weeks of benefits at a time.⁶ So, since the Appellant was claiming benefits for the week of May 31, 2020, she was automatically eligible for benefits for week 2—the week of June 7, 2020.

[17] The following table shows the benefits the Appellant was entitled to:

Week	Week starting	Benefits paid	Eligible 153.9(1) - 2 weeks	Eligible week
1	March 22, 2020	\$500	yes	\$500
2	March 29, 2020	\$500	yes	\$500
3	April 5, 2020	\$2,500	yes	\$500
4	April 12, 2020	\$500	yes	\$500
5	April 19, 2020	\$500	yes	\$500
6	April 26, 2020	\$500	yes	\$500
7	May 3, 2020	\$500	yes	\$500
8	May 10, 2020	\$500	yes	\$500
9	May 17, 2020	\$500	yes	\$500
10	May 24, 2020	\$500	yes	\$500
10	May 31, 2020	\$500	yes	\$500
12	June 7, 2020	\$	yes	\$500
Total paid		\$7,500	Total eligible weeks	\$6,000

Overpayment	\$1,500
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[18] Since the Appellant received 15 weeks (\$7,500) of the EI ERB but was entitled to 12 weeks (\$6,000), she was overpaid \$1,500.

⁶ See sections 153.7(1) and 153.8 of the Act.

[19] The law says that if you receive more EI ERB than you were entitled to, you have to pay back the amount you were overpaid.⁷ So, the Appellant has to pay back this amount.

[20] The Appellant is asking for a different result for reasons of justice. She says that she returned to work instead of staying on Employment Insurance and had to leave her job because of the difficulties it represented for her, since she is hearing-impaired. She could not understand people by lip-reading when they were wearing a mask.

[21] I can only apply the law as it is set out in the *Employment Insurance Act* and the *Employment Insurance Regulations*. While I understand the Appellant's situation, I can't change the law or make a different decision.⁸

[22] I can't write off the Appellant's overpayment.⁹ However, the Commission may decide to write off an overpayment in certain circumstances, for example, if repaying it would cause undue hardship. So, the Appellant can ask the Commission to write off the overpayment. Or she can contact the Canada Revenue Agency to make a payment arrangement.

Conclusion

[23] The Appellant has to pay back the \$1,500 EI ERB overpayment.

[24] The appeal is therefore dismissed with modification.

Charline Bourque
Member, General Division – Employment Insurance Section

⁷ See sections 43 and 44 of the Act.

⁸ See *Canada (Attorney General) v Hamm*, 2011 FCA 205; and *Granger v Canada Employment and Immigration Commission*, A-684-85.

⁹ See sections 153.1306, 153.1307 and 113 of the Act.