



Citation: *BM v Canada Employment Insurance Commission*, 2024 SST 201

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

Decision

Appellant: B. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (519540) dated June 8, 2023 (issued by Service Canada)

Tribunal member: Nathalie Léger

Type of hearing: Videoconference

Hearing date: January 12, 2024

Hearing participant: Appellant

Decision date: January 14, 2024

File number: GE-23-1679

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant cannot now claim unclaimed weeks of Employment Insurance Emergency Response Benefits (ERB) because of the December 2, 2020, legislative deadline. This means that his claim for ERB cannot be antedated to March 15, 2020.

Overview

[3] The Appellant applied for ERB benefits on April 24, 2020. A claim was established as of April 19, 2020. In June 2022, he asked that his application be treated as though it was made earlier, on March 15, 2020. The Canada Employment Insurance Commission (Commission) has already refused this request.

[4] The Commission says that the Appellant's request cannot be granted because he made it well after the December 2, 2020, legislative deadline.

[5] The Appellant disagrees and says he should get as much benefit as everyone else. He says he was not familiar with the employment insurance benefits process and that it is unfair that he cannot get all the benefits he would have been entitled to receive.

Issue

[6] Can the Appellant's claim for ERB be antedated to March 15, 2020?

Analysis

[7] The Appellant wants his claims for ERB benefits to be treated as though it was made earlier, on March 15, 2020. This is called antedating (or, backdating) the claim.

[8] When the COVID pandemic hit, the government put in place a number of measures aimed at providing quick and efficient ways to provide assistance to those who lost their jobs because of it.

[9] The ERB and the Canada Emergency Response Benefits (CERB) were put in place at the same time, for different clienteles. They offered essentially the same

benefits, but one was managed by the Commission and the other by the Canada Revenue Agency.

[10] The rules governing the ERB are found in sections 153.7 to 153.11 of the Employment Insurance Act (Act). Neither the Commission nor the Tribunal can change these rules.¹

[11] The ERB benefits were payable from March 15, 2020, to October 3, 2020. No claim for those benefits could be made after December 2, 2020.² To make sure relief arrived quickly, the Commission made \$2,000 ERB advance payments in many cases soon after a claimant applied.³

[12] The Act says that the Commission has 36 months to review a person's entitlement to ERB, and request repayment if a person is found to have received funds they weren't entitled to.⁴

[13] The Appellant says he did not apply for ERB before April 24, 2020, because he thought his lay-off would not last long. He also said at the hearing that since he did not know how to claim those benefits, he asked an agent for help. The agent should have made sure that he got as much benefit as he was entitled to.

[14] In June 2022, he was asked to repay part of the advance payment. This advance payment is usually recuperated on four specific weeks of benefits. In the case of the Appellant, three of the four weeks were recuperated. The first could not be recuperated because the Appellant received earnings during that week and no benefits. This created an overpayment.

[15] The Commission agreed, in 2023, to offset this overpayment by antedating one week of benefit. The Appellant now claims that if the Commission antedated one week

¹ See the following decisions: *Canada (Procureur général) c. Hamm*, 2011 CAF 205 and *Pike v. Canada (Attorney General)*, 2019 FC 13.

² See section 153.8(2) of the Act.

³ See section 153.7(1.1) of the EI Act.

⁴ See section 153.6, and section 153.1303, of the EI Act which adapts section 52 of the EI Act and allows the Commission this time to reconsider claims.

of benefits, there is nothing preventing them from granting him all the weeks he is asking for.

[16] What the Commission did when it chose to offset one week of overpayment against one unpaid week of ERB benefits is the result of a discretionary decision. The Commission has been doing this only in cases where an overpayment could be offset against one or more unpaid weeks of benefits.

[17] The Act says that no claim for ERB benefits can be made after December 2, 2020. I do not have the power to change this deadline. I also do not have the power to decide a case in equity.⁵ This means that I cannot change or disregard a clear section of the Act for the simple reason that I am of the opinion that the Appellant deserves it in some ways.

[18] I do understand that this situation is very frustrating. The claim for overpayment was made long after benefits were granted and sometimes, errors have been made. But, as I said before, even if I have empathy for the Appellant, I do not have the power to change the law.

Conclusion

[19] The law is clear and I do not have the power to change the December 2, 2020, deadline for claiming ERB benefits. This means that the Appellant's claim cannot be antedated.

[20] The appeal is dismissed.

Nathalie Léger

Member, General Division – Employment Insurance Section

⁵ See *Wegener c. Canada (Attorney General)*, 2011 CF 137 and *Pannu c Canada (Procureur général)*, 2004 CAF 90.