



[TRANSLATION]

Citation: *LT v Canada Employment Insurance Commission*, 2024 SST 409

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: L. T.
Representative: F. L.

Respondent: Canada Employment Insurance Commission
Representatives: Marcus Dirnberger and Yanick Bélanger

Decision under appeal: General Division decision dated November 15, 2023
(GE-23-3046)

Tribunal member: Pierre Lafontaine

Type of hearing: In writing
Decision date: April 22, 2024
File number: AD-23-1090

Decision

[1] The appeal is dismissed. The Claimant has to pay back the \$1,500 overpayment of the Employment Insurance Emergency Response Benefit (EI ERB).

Overview

[2] The Appellant (Claimant) applied for Employment Insurance (EI) benefits from March 22, 2020. The Respondent (Commission) then paid her an advance of \$2,000. The Commission also paid the Claimant a total of 11 weeks of the EI ERB. In total, the Claimant received \$7,500 in EI ERB.

[3] After verifying, the Commission asked the Claimant to pay back the \$2,000. The Claimant asked the Commission to reconsider, but it upheld its initial decision. The Claimant appealed the reconsideration decision to the General Division.

[4] The General Division found that the Claimant was entitled to 12 weeks of the EI ERB. It found that the Claimant had to pay back the \$1,500 EI ERB advance payment.

[5] The Claimant was granted permission to appeal the General Division decision to the Appeal Division. She argues that the General Division ignored the facts and made an error of law when it found that she had to pay back the \$1,500.

[6] I have to decide whether the General Division made an error in deciding that the Claimant has to pay back the \$1,500 EI ERB overpayment.

[7] I am dismissing the Claimant's appeal.

Issue

[8] Did the General Division make an error when it decided that the Claimant had to pay back the \$1,500 EI ERB advance payment?

Analysis

Appeal Division's mandate

[9] The Federal Court of Appeal has determined that the Appeal Division's mandate is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act*.¹

[10] The Appeal Division acts as an administrative appeal tribunal for decisions made by the General Division and does not exercise a superintending power similar to that exercised by a higher court.

[11] So, unless the General Division failed to observe a principle of natural justice, made an error of law, or based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, the Tribunal must dismiss the appeal.

Did the General Division make an error when it decided that the Claimant had to pay back the \$1,500 EI ERB overpayment?

[12] The Claimant argues that the General Division ignored the facts and made an error of law when it found that she had to pay back the \$1,500. The Claimant is hearing-impaired. She essentially argues that she could have applied for benefits after July 14, 2020, after a failed return to work given the health measures in place during the pandemic. She did not receive all the amounts owed to her.

[13] The law says that a claimant is eligible for the EI ERB if they stop working for at least seven consecutive days within the two-week period for which they claimed the benefit.²

¹ *Canada (Attorney General) v Jean*, 2015 FCA 242; *Maunder v Canada (Attorney General)*, 2015 FCA 274.

² See section 153.9(1)(a)(iv) of the *Employment Insurance Act* (Act).

[14] The General Division found that the Claimant received 15 weeks (\$7,500) of the EI ERB but was entitled to 12 weeks (\$6,000). This resulted in an overpayment of \$1,500. The General Division found that the Claimant had to pay back the \$1,500.

[15] The evidence shows that the Claimant went back to work for her employer from June 8, 2020, to July 14, 2020.³ She later chose not to return to work after July 14 and to retire.⁴ The Claimant did not apply for the EI ERB after her employment ended. The law says that no new EI ERB claims can be made after December 2, 2020.⁵

[16] I note that the legislation in force during the pandemic allows the Commission to reconsider whether a person received an amount under the EI ERB that they were not eligible for. The law is clear that the Claimant has to pay back the overpayment.⁶

[17] I have great sympathy for the Claimant, who tried to return to work during the pandemic rather than stay home. However, the law does not allow for any discrepancies or give the Tribunal any discrepancies to write off the amount to be repaid. Such an application must be made directly to the Commission, which has exclusive jurisdiction to write off a debt owed to it under the law.⁷

[18] I have no choice but to find that the General Division made no error when it found that the law requires the Claimant to pay back the \$1,500 EI ERB overpayment.

Conclusion

[19] The appeal is dismissed. The Claimant has to pay back the \$1,500 EI ERB overpayment.

Pierre Lafontaine
Member, Appeal Division

³ See GD3-17.

⁴ See GD-3-35

⁵ See section 153.8(2) of the Act.

⁶ See sections 52 and 153.6(1)(a) of the Act.

⁷ See section 56 of the *Employment Insurance Regulations*.