



Citation: *ZL v Canada Employment Insurance Commission*, 2023 SST 1916

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

Decision

Appellant: Z. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (413063) dated July 6, 2021
(issued by Service Canada)

Tribunal member: Manon Sauvé

Type of hearing: In person

Hearing date: March 31, 2023

Hearing participant: Appellant

Decision date: August 8, 2023

File number: GE-21-1376

Decision

[1] The appeal is dismissed.

[2] The Appellant received work-sharing benefits. He wasn't eligible for the Employment Insurance (EI) Emergency Response Benefit (ERB).

Overview

[3] The Appellant worked for the employer until April 2, 2020. On April 10, 2020, he made an initial claim for sickness benefits. His claim was established effective April 4, 2020. He went back to work on April 19, 2020.

[4] On June 9, 2020, the Canada Employment Insurance Commission (Commission) called the Appellant to tell him that his Record of Employment was missing for his claim established April 5, 2020. There was no answer.

[5] On September 16, 2020, the Appellant made a new initial claim. The Commission cancelled the claim because of the active claim commencing on April 4, 2020.

[6] The Commission refused a new claim because the Appellant was receiving work-sharing benefits.

[7] The Appellant disagrees with the Commission's decision. He says that he wasn't participating in work-sharing between August 23, 2020, and September 5, 2020.

Matter I have to consider first

[8] I gave the Appellant time to file documents. I also allowed the parties to make additional arguments.

Issue

[9] Was the Appellant participating in work-sharing in August 2020?

Analysis

[10] In March 2020, in response to the COVID-19 pandemic, the Government of Canada made changes to the *Employment Insurance Act*. These changes meant that:

- EI regular benefits weren't available between March 15, 2020, and September 26, 2020¹
- the Commission processed claims for EI regular benefits as claims for the EI ERB
- the weekly rate for the EI ERB was the same for everyone: \$500²
- the Commission was allowed to pay benefits in advance³

[11] So, when someone applied for EI regular benefits, like the Appellant did, they received the EI ERB, not EI regular benefits, at the weekly rate of \$500.

[12] In addition, when a claim for the EI ERB was established, the Commission immediately paid the claimant four weeks of benefits in advance.

[13] On September 16, 2020, the Appellant made a new initial claim because he had COVID-19 again. On December 1, 2020, the Commission refused to pay him the EI ERB because he had been receiving EI work-sharing benefits from August 30, 2020. The Commission asked him to pay back the \$2,000 advance payment.

[14] The Appellant disagrees with the Commission. He says he started work-sharing after August 2020. In addition, he didn't work between April 5, 2020, and April 19, 2020, because he had COVID-19.

¹ See section 153.8(5) of the *Employment Insurance Act* (Act).

² See section 153.10(1) of the Act.

³ See section 153.7(1.1) of the Act.

[15] The evidence shows that the Appellant claimed sickness benefits in April 2020 because he had COVID-19.⁴ I assume he received the \$2,000 advance payment. I don't have evidence of this, but the parties admit it.

[16] In June 2020, the Commission tried to contact the Appellant because he hadn't completed his claim. He didn't answer.

[17] On September 16, 2020, the Appellant claimed work-sharing benefits.⁵ The Commission later cancelled the claim because of the active EI ERB claim. Then, on December 1, 2020, it told the Appellant that he was no longer eligible for the EI ERB. But, a claim for EI work-sharing benefits was to be established. The Appellant had to submit a Record of Employment for the period ending August 28, 2020.

[18] According to the Commission, when the Appellant applied for the EI ERB, he received an advance payment of \$2,000. He has to pay it back.

[19] I agree with the Commission. When the Appellant applied for benefits on September 16, 2020, he was participating in work-sharing. The evidence shows the employer concluded a work-sharing agreement with employees that began on August 30, 2020, and ended on January 15, 2022.⁶

[20] On the other hand, I understand the Appellant. It isn't clear whether he must pay back the \$2,000 advance payment. Also, in its arguments, the Commission talks about an antedate (backdate) request. It can't allow an antedate of the Appellant's claimant reports because the deadline to claim the EI ERB was December 2, 2020.

[21] But the issue is work-sharing. In my view, the Appellant wasn't eligible for the EI ERB, since he received earnings and should have been receiving work-sharing benefits.⁷

⁴ See GD3-3 to GD3-18.

⁵ See GD3-26 to GD3-35.

⁶ See GD3-43 to GD3-48.

⁷ See section 153.9(2) of the Act.

Conclusion

[22] The Appellant received work-sharing benefits. He wasn't eligible for the EI ERB.

[23] This means that the appeal is dismissed.

Manon Sauvé

Member, General Division – Employment Insurance Section