



Citation: *SM v Canada Employment Insurance Commission*, 2024 SST 192

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

## Decision

**Appellant:** S. M.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (588375) dated July 21, 2023 (issued by Service Canada)

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**Tribunal member:** Emily McCarthy  
**Type of hearing:** Teleconference  
**Hearing date:** January 22, 2024  
**Hearing participant:** Appellant  
**Decision date:** January 25, 2024  
**File number:** GE-23-3428

## Decision

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

[2] The Canada Employment Insurance Commission (Commission) has shown that it paid the Appellant more Employment Insurance Emergency Response Benefits (EI ERB) than he was eligible to receive. In other words, he was overpaid.

[3] The \$1500 overpayment is valid and has to be paid back. This is the amount of the EI ERB advance payment he received and is not entitled to keep.

## Overview

[4] In March 2020 the Appellant was laid off. He applied for EI regular benefits on March 23, 2020.<sup>1</sup>

[5] The Commission determined the Appellant was eligible for EI ERB. He received \$3500 or seven weeks of EI ERB from March 22 until May 9, 2020.

[6] The Commission also gave the Appellant an advance payment of \$2,000 on April 6, 2020.<sup>2</sup>

[7] In total, the Appellant received \$5500 in EI ERB.

[8] Since the Commission decided that the Appellant was only eligible for 7 weeks of EI ERB, that is \$3500, and he had received \$5500, it calculated that the Appellant was overpaid \$2000 in EI ERB benefits. It issued a Notice of Debt for \$2000 on June 25, 2022.<sup>3</sup>

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<sup>1</sup> See GD3-14.

<sup>2</sup> See GD3-17.

<sup>3</sup> See GD3-22 to GD3-25.

[9] The Appellant asked the Commission to reconsider its decision that he had an EI ERB overpayment of \$2000. During the reconsideration process, the Commission looked at the Appellant's reports. It decided that the Appellant would have been eligible for, but did not claim, EI ERB benefits in the week of May 10, 2020. Since he was eligible for EI ERB during that week, but hadn't been paid, the Commission reduced the \$2000 overpayment by \$500.<sup>4</sup> This resulted in a \$1500 overpayment.<sup>5</sup>

[10] The Appellant is appealing the \$1500 overpayment.

[11] The Commission says that the Appellant was overpaid \$1500 in EI ERB.

[12] The Appellant disagrees. He says that he has had a difficult time getting information from the Canada Revenue Agency (CRA) and from the Commission. He doesn't trust that the Commission's most recent decision about his overpayment is correct.

[13] The Appellant also says that as a result of the Notice of Debt, the CRA withheld his income tax refund. He wasn't given an opportunity to request a repayment plan for the \$1500 overpayment.

[14] Finally, he says that his T4 doesn't reflect the change in his income, and he has been unfairly required to pay tax on income that he has repaid.

## **Issue**

[15] Does the Appellant have to pay back the EI ERB advance payment he received?

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<sup>4</sup> See GD3-31 to GD3-34.

<sup>5</sup> See GD3-30 and GD3-34.

## Analysis

### The EI Emergency Response Benefit (EI ERB)

[16] In response to the COVID-19 pandemic, the federal government made temporary changes to the *Employment Insurance Act* (EI Act).<sup>6</sup> One change the government made was to create the EI ERB:

- The weekly rate for the EI ERB was standardized at \$500.<sup>7</sup>
- The Commission made EI ERB advance payments of \$2,000 to eligible people as soon as possible after they applied for EI.<sup>8</sup>
- The Commission decided it would recover the \$2,000 advance payment by not paying a person the weekly EI ERB benefit in 4 separate weeks.<sup>9</sup>

[17] 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 received an EI ERB payment.<sup>10</sup> The Commission could set up and collect an overpayment if a person got more EI ERB than they were eligible for.<sup>11</sup>

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

[18] Yes. The evidence shows the Commission paid the Appellant an EI ERB advance payment of \$2,000 on April 6, 2020. The Appellant also received 7 weeks of EI ERB up to the week ending May 9, 2020.

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<sup>6</sup> See Part VIII.4 (Employment Insurance Emergency Response Benefit) of the EI Act.

<sup>7</sup> See section 153.10 of the EI Act.

<sup>8</sup> The Commission had the authority to pay the EI ERB in advance under section 153.7(1.1) of the EI Act.

<sup>9</sup> 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. For most cases, this was after paying 12 weeks of benefits.

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

<sup>11</sup> 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.

[19] The Commission provided certified copies of the payment of the \$2000 advance payment and the EI ERB payment history.<sup>12</sup>

[20] The Commission says it planned to recover the \$2000 advance payment after the 12<sup>th</sup> week, and after the 17<sup>th</sup> week by not paying EI ERB benefits during those weeks.<sup>13</sup> But the Appellant didn't receive any EI ERB benefits after week 7 so the Commission didn't recover the advance payment of \$2000 in 2020.

[21] The Appellant provided no information that would refute the Commission's evidence.<sup>14</sup> He agrees that he was paid the \$2,000 advance payment on April 6, 2020, and was paid EI ERB until May 10, 2020. He says that he stopped claiming the EI ERB after May 10, 2020, that is after 7 weeks, because he went back to work.

[22] The Appellant was sent a Notice of Debt for \$2000 on June 25, 2022.

[23] The Appellant asked the Commission to reconsider the overpayment.<sup>15</sup>

[24] When the Commission looked at the overpayment, during the reconsideration process, it found that the Appellant would have been entitled to receive EI ERB benefits (but did not) in the week of May 10, 2020.<sup>16</sup> This week is highlighted in the Commission's EI-ERB Advance Pay Worksheet which shows the Appellant had less than \$1000 in income during a four-week period ending May 16, 2020.<sup>17</sup>

[25] Based on this, the Commission reduced the \$2000 overpayment by \$500 – which is the amount of EI ERB benefits the Appellant would have been eligible to receive in the week of May 10, 2020.<sup>18</sup>

[26] Because the Commission changed the amount of his overpayment after it reconsidered its decision, the Appellant is concerned that there is another mistake in the

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<sup>12</sup> See GD3-17 to GD3-18.

<sup>13</sup> See GD4-3.

<sup>14</sup> See GD2 and GD6 as well as the Appellant's testimony.

<sup>15</sup> See GD3-26 to GD3-27.

<sup>16</sup> See GD3-30.

<sup>17</sup> See GD3-30 and GD3-33.

<sup>18</sup> See GD3-30 and GD3-34.

EI ERB calculation. He says he doesn't trust that the Commission's calculations are correct because it already found an error and reduced the overpayment.

[27] At the hearing we reviewed the EI ERB worksheet provided by the Commission. He didn't dispute the amounts set out in that worksheet. But the Appellant pointed to the time frame in which his earnings were much lower (from August 16 to September 5, 2020). He said that he earned less than \$1000 in those three weeks.

[28] I will consider if the Appellant has shown that he was eligible for the EI ERB from May 17, 2020, until October 3, 2020.

[29] To be eligible for the EI ERB a person has to show one of the following:

- they didn't work for seven consecutive days in a two-week period and had no income for those seven days<sup>19</sup>
- they made \$1000 or less over a four-week period during which they received the EI ERB.<sup>20</sup>

– **Did the Appellant show that he didn't work for seven consecutive days in a two-week period after May 10, 2020?**

[30] From May 10 until October 3, 2020, the Appellant didn't stop working for seven consecutive days in a two-week period. Indeed, he worked every week after May 10, 2020.<sup>21</sup> So, he doesn't meet the requirement in s. 153.9(1) which requires that to be eligible for EI ERB a claimant must have seven consecutive days in which he has stopped working in a two-week period. Section 153.9(1) of the EI Act cannot be used to reduce his overpayment.

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<sup>19</sup> See section 153.9(1) of the EI Act.

<sup>20</sup> See section 153.9(4) of the EI Act.

<sup>21</sup> See GD3-33

– **Did the Appellant show that he made less than \$1000 in a four-week period after May 17, 2020?**

[31] After May 17, 2020, the Appellant also doesn't have any four-week periods in which he earned less than \$1000.

[32] The Commission looked at the consecutive four-week periods starting on May 17, 2023. It concluded that in each of those four-week periods the Appellant earned more than \$1000.<sup>22</sup>

[33] The law says that the weeks must succeed each other chronologically but need not be consecutive. But even if the most favourable chronologically consecutive weeks with the least income are calculated together (\$702, \$360, \$360, \$180) the claimant's lowest level of income in four weeks is \$1602.<sup>23</sup>

[34] This means the Appellant doesn't qualify for any additional weeks of the EI ERB under section 153.9(4) of the EI Act. This section cannot be used to reduce his overpayment.

– **So, does the Appellant qualify for any other weeks of EI ERB that would reduce his overpayment?**

[35] No. The Appellant doesn't qualify for any additional weeks of the EI ERB under either section 153.9(1) or section 153.9(4) of the EI Act. These sections of the law cannot be used to reduce his overpayment.

[36] This means I find the Appellant received three more weeks of the EI ERB than he should have received. This resulted in an overpayment of \$1500.

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<sup>22</sup> See GD3-33.

<sup>23</sup> See GD3-33.

[37] Based on the evidence before me I find:

- The Appellant applied for EI benefits on March 23, 2020.<sup>24</sup>
- The Commission paid him the \$2000 advance payment on April 6, 2020.<sup>25</sup>
- The Appellant received 7 weeks of EI ERB benefits.<sup>26</sup>
- The Appellant went back to work on May 10, 2020
- The Commission could not recover the advance payment in weeks 12 and 17.<sup>27</sup>
- The Commission calculated an overpayment of \$2000.
- On reconsideration the Commission decided to reduce the overpayment to \$1500 because the Appellant would have been eligible for EI ERB in the week of May 10, 2020.<sup>28</sup>
- The Appellant received 11 weeks of EI ERB but was only eligible for 8 weeks.
- The Appellant was overpaid by three weeks which results in a \$1500 overpayment.

[38] The law says that, if someone received more of the EI ERB than they were eligible for, they have to pay back the overpayment.<sup>29</sup> So, the Appellant has to pay back \$1500.

[39] The Appellant is asking for a different outcome based on fairness. He says he should not be penalised for finding work. He was honest and told the Commission that he was working. At the time there was no mention of an overpayment.

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<sup>24</sup> See GD3-14.

<sup>25</sup> See GD3-17.

<sup>26</sup> See GD3-33.

<sup>27</sup> See GD3-28, GD3-31 and GD4-3..

<sup>28</sup> See GD4-3 and GD3-34.

<sup>29</sup> See sections 43 and 153.1301 of the Act.



[40] But I can only apply the law that is set out in the EI Act and *Employment Insurance Regulations*. I can't change the law or give the Appellant another decision, even if I sympathize with his situation.<sup>30</sup>

## Other matters

[41] The Appellant says that he was treated unfairly by the Canada Revenue Agency (CRA) repayment program. He wasn't given an option to request a repayment plan. Instead, his income tax return of approximately \$1300 was withheld. He says that even if there was an error and he was overpaid he should have been given a chance to decide how to repay the debt.

[42] The actions of the CRA are not something that this Tribunal has jurisdiction over.

[43] The Appellant also says he has been penalised because he has never received an amended T4 for the financial year 2020-2021. He says the calculation and payment of the overpayment should have resulted in the reduction of his income by \$2000 (now \$1500).

[44] Again, the issuance of T4 slips isn't something I have the authority to consider. Nor can I order the Commission to issue an amended T4 to the Appellant.

## Conclusion

[45] The Appellant has to pay back \$1500 of the EI ERB advance payment he received

[46] This means that the appeal is dismissed.

Emily McCarthy  
Member, General Division – Employment Insurance Section

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<sup>30</sup> See *Canada (Attorney General) v Hamm*, 2011 FCA 205; and *Granger v Canada Employment and Immigration Commission*, A-684-85.