



Citation: *JO v Canada Employment Insurance Commission*, 2024 SST 310

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

Decision

Appellant: J. O.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (443440) dated November 2, 2023 (issued by Service Canada)

Tribunal member: Gerry McCarthy

Type of hearing: Videoconference

Hearing date: January 17, 2024

Hearing participant: The Appellant and Commission
did not attend the hearing

Decision date: January 19, 2024

File number: GE-23-3422

Decision

[1] The appeal is dismissed with modification. This means the Appellant has to pay back \$500.00 of the Employment Insurance Emergency Response Benefit (EI ERB) advance payment she received.

Overview

[2] The EI ERB is a new benefit that was created at the beginning of the COVID-19 pandemic.¹ The amount of the EI ERB was \$500.00 per week.² But the Canada Employment Insurance Commission (Commission) gave claimants an advance payment of four-weeks of the EI ERB (\$2,000.00) when they first applied.

[3] The Appellant applied for regular Employment Insurance (EI) benefits on March 18, 2020. The Commission considered the application for EI ERB. After this, the Commission paid the Appellant the \$2,000.00 advance payment on April 6, 2020.

[4] The Appellant returned to work in March 2020. The Appellant received zero weeks of EI ERB from March 15, 2020 to March 28, 2020. In total, the Appellant received \$2,000.00 in the EI ERB (which was the advance payment issued on April 6, 2020).

[5] The Commission initially reconciled the Appellant's claim and reduced her overpayment to \$1,000.00. However, the Commission now says the Appellant has three eligible weeks in the EI ERB period that could be applied to offset her overpayment. The Commission says those eligible weeks were from March 15, 2020, to April 4, 2020. The Commission further says the Appellant's overpayment could be reduced to \$500.00.

[6] I have to decide whether the Appellant has to pay back \$500.00 of the EI ERB advance payment of \$2,000.00 she received.

¹ Part VIII.4 of the *Employment Insurance Act* (EI Act) sets out the rules that apply to the Employment Insurance Emergency Response Benefit.

² See section 153.10(1) of the EI Act.

[7] The Commission recommends the Appellant had three eligible weeks in the EI ERB period that could be applied to offset the overpayment to \$500.00.

[8] The Appellant writes that because of the timing of her decision she was denied income tax deduction options for COVID-19 benefits.

Matters I have to consider first

The Appellant wasn't at the hearing

[9] The Appellant wasn't at the hearing. I waited 20-minutes for the Appellant to attend the teleconference hearing, but the Appellant didn't connect. The Tribunal further called the Appellant on the day of the hearing and left a voice mail message about the hearing.

[10] A hearing can go ahead without the Appellant if the Appellant received the Notice of Hearing.³ I think the Appellant received the Notice of Hearing because she was sent a Notice of Hearing on December 28, 2023, and there was no indication the notice wasn't received. So, the hearing took place when it was scheduled but without the Appellant.

Issues

[11] Should the Appellant have been paid EI regular benefits instead of the EI ERB?

[12] Does the Appellant have to pay back \$500.00 of the EI ERB advance payment she received?

³ Section 58 of the *Social Security Tribunal Rules of Procedure* sets out this rule.

Analysis

Should the Appellant have been paid EI regular benefits instead of the EI ERB?

[13] I find the Appellant should have been paid the EI ERB, not EI regular benefits.

[14] Between March 15, 2020, and September 26, 2020, all applications for EI regular benefits were processed as applications for the EI ERB.⁴ So, if someone applied for EI regular benefits and their benefit period started during that time, they would have received the EI ERB instead of EI regular benefits.

[15] The Commission has indicated the Appellant's application for EI regular benefits would have resulted in a benefit period beginning on March 15, 2020. This was between March 15, 2020, and September 26, 2020. So, the Appellant received the EI ERB instead of EI regular benefits.

Does the Appellant have to pay back \$500.00 of the EI ERB advance payment?

[16] I find the Appellant has to pay back \$500.00 of the EI ERB advance payment she received.

[17] Between March 15, 2020, and October 3, 2020, claimants could apply for the EI ERB for two-weeks at a time.⁵ The law allowed the Commission to pay claimants the EI ERB before it would normally pay it.⁶

[18] The Commission paid the Appellant the \$2,000.00 advance payment as soon as she first applied. This was equal to four-weeks of the EI ERB. The Commission planned to recover this advance payment by holding back four weeks of benefits later on—usually the 13th, 14th, 18th, and 19th weeks of benefits claimed.

⁴ See sections 153.5(3)(a), 153.8(5) and 153.1310 of the EI Act.

⁵ See sections 153.7(1) and 153.8 of the EI Act.

⁶ See section 153.7(1.1) of the EI Act.

[19] The Commission says that, because of the advance payment, the Appellant received a total of 4-weeks of benefits but should have received only zero weeks of benefits. The Commission wasn't initially able to recover \$2,000.00 of the advance payment because the Appellant returned to work in March 2020.

[20] However, the Commission has recommended (based on a recent Federal Court of Appeal decision)⁷ that the Appellant had three eligible weeks in the EI ERB period that could be applied to offset her overpayment. Those eligible weeks were from March 15, 2020, to April 4, 2020. Consequently, the Commission has submitted the Appellant's overpayment could be reduced to \$500.00.

[21] I have reviewed the "EI – ERB Advanced Payment Worksheet" for the Appellant to see if she had any further eligible weeks that could be applied to offset her overpayment (GD3-45).

[22] I recognize the Appellant answered "yes" to the question of whether she returned to work on March 30, 2020 (GD3-39). Based on the information provided in the advance payment worksheet, I agree with the Commission that the Appellant had three eligible weeks that could be applied to offset her overpayment. So, the Appellant's overpayment can be reduced to \$500.00.

[23] The law says that, if someone received more of the EI ERB than they were eligible for, they have to pay back the overpayment.⁸ So, the Appellant has to pay back the \$500.00. I recognize the Appellant wrote in her Notice of Appeal that because of the timing of her decision she was denied income tax deduction options for COVID-19 benefits (GD2). However, I can only apply the law that is set out in the *Employment Insurance Act* and *Employment Insurance Regulations*. I can't change the law or give the Appellant another decision, even if I sympathize with her situation.⁹

⁷ *Gagnon and St. Louis* (A-278-22 and A-279-22).

⁸ See sections 43 and 153.1301 of the EI Act.

⁹ See *Canada (Attorney General) v Hamm*, 2011 FCA 205; and *Granger v Canada Employment and Immigration Commission*, A-684-85.

[24] The Appellant's overpayment now been reduced to \$500.00. However, I can't write off the remaining overpayment.¹⁰ The Commission can decide to write off an overpayment in certain situations—for example, if paying it back would cause the Appellant undue hardship. So, the Appellant can ask the Commission to write off her reduced overpayment. Or, she can contact the Canada Revenue Agency (CRA) to discuss payment arrangements.

Conclusion

[25] The Appellant has to pay back \$500.00 of the EI ERB advance payment she received.

[26] This means the appeal is dismissed with modification.

Gerry McCarthy

Member, General Division – Employment Insurance Section

¹⁰ See sections 153.1306, 153.1307, and 113 of the Act.