



Citation: *JG v Canada Employment Insurance Commission*, 2024 SST 1169

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: J. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (447877) dated March 14, 2024 (issued by Service Canada)

Tribunal member: Catherine Shaw

Type of hearing: Teleconference

Hearing date: September 12, 2024

Hearing participant: Appellant

Decision date: September 13, 2024

File number: GE-24-2586

Decision

[1] The appeal is allowed in part.

[2] The Appellant has to pay back \$1,000. This is because he was paid more of the Employment Insurance Emergency Response Benefit (EI ERB) than he was entitled to receive.¹

[3] The Canada Employment Insurance Commission (Commission) said the Appellant had to pay back \$2,000. But, it had already recovered \$500 of the advance payment he received and he was entitled to one more week of EI ERB than he was paid. This means he was only overpaid \$1,000.

Overview

[4] The EI ERB is a new benefit that was created at the beginning of the COVID-19 pandemic.² The amount of the EI ERB was \$500 per week.³ But the Commission gave claimants an advance payment of four weeks of the EI ERB when they first applied.

[5] The Appellant applied for the EI ERB on April 4, 2020. Shortly after this, the Commission paid the Appellant the \$2,000 advance payment. The Commission also paid the Appellant ten weeks of the EI ERB. In total, the Appellant received \$7,000 in the EI ERB.

[6] The Commission initially said the Appellant was overpaid \$2,000, now it says that he was entitled to one more week of the EI ERB, so he was only overpaid \$1,500.

¹ When the government introduced the emergency response benefit there were two programs available. People who were qualified to receive EI benefits and applied for benefits using the EI system received EI ERB. People who were not qualified to receive EI benefits and applied using the Canada Revenue Agency website received the Canada Emergency Response Benefit (CERB). Sometimes the government and the Commission use the term “CERB” when they are really talking about the EI ERB. Both terms are in the appeal file. In my decision, I call the benefits the Appellant received EI ERB.

² Part VIII.4 of the *Employment Insurance Act* (Act) sets out the rules that apply to the EI ERB.

³ See section 153.10(1) of the Act.

[7] The Appellant disagrees and says that he applied for the benefit in good faith. He was laid off due to COVID-19. He says that he should never have received the EI ERB, as he didn't really qualify for EI benefits. If he has to pay back anything, it should only be the difference between his lost income and the benefits he received, about \$700.

Issue

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

Analysis

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

[9] I find that the Appellant has to pay back \$1,000 of the EI ERB advance payment he received.

[10] Between March 15, 2020, and October 3, 2020, claimants could apply for the EI ERB for two weeks at a time.⁴ The law allowed the Commission to pay claimants the EI ERB before it would normally pay it.⁵

[11] The Commission paid the Appellant the \$2,000 advance payment as soon as he 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.

[12] The Commission says that, because of the advance payment, the Appellant received a total of fourteen weeks of benefits (\$7,000) but should have received only ten weeks of benefits (\$5,000). The Commission says the Appellant is eligible for an additional week of benefits, which it can use to recover \$500 of the advance payment. It wasn't able to recover the remaining \$1,500 of the advance payment because the Appellant had returned to work and was no longer eligible for the EI ERB.

⁴ See sections 153.7(1) and 153.8 of the Act.

⁵ See section 153.7(1.1) of the Act.

[13] The Appellant doesn't dispute that he was paid the \$2,000 advance payment and ten weeks of the EI ERB.

How many weeks of EI ERB was the Appellant eligible to receive?

[14] I find the Appellant was eligible to receive twelve weeks of EI ERB.

[15] Eligibility for the EI ERB was determined in two-week periods. Because the Appellant worked during one of the weeks that he claimed, I have to determine whether he was eligible to receive EI ERB in those weeks.

[16] There were two paths to be eligible for the EI ERB:

- a) In the **first path**, you are eligible for the EI ERB for the two-week period if you didn't work for at least seven days in a row **and** had no income from employment during those seven days within that two-week period.⁶
- b) In the **alternate path**, you are eligible for the EI ERB for the two-week period if you had no more than \$1,000 in income over a period of four weeks.⁷

[17] The two-week period for the first path is the two-week claim period for which the entitlement is being considered. Because the Appellant started his claim for the EI ERB on April 5, 2020, I am counting the two-week periods from that date.

[19] The Appellant applied for benefits on April 4, 2020. The appeal file has a table which shows the report weeks, a description of the benefits paid, and the amount paid.⁸ It shows that the Appellant was paid ten weeks of benefits from April 5, 2020, to June 13, 2020. In the eleventh week, starting June 14, 2020, it shows that \$500 was deducted from the Appellant's EI ERB payment.

⁶ See section 153.9(1) of the EI Act

⁷ See section 153.9(4) of the EI Act

⁸ See GD3-19.

[21] The Commission hasn't explained this deduction. In its other documents, it confirmed that the Appellant was eligible for benefits this week.⁹ That leaves the only explanation for this deduction to be a recovery of the EI ERB advance payment.

[22] The Appellant returned to work the week of June 21, 2020. The Commission didn't pay him EI ERB for that week, but now says he was eligible for benefits in that week, as well.

[23] I agree the Appellant was eligible under the first path for the two-week period of June 14, 2020, to June 27, 2020. He did not work or have income from employment for the entire first week of this period. So, he meets the condition of having no work or income for at least seven consecutive days within this two-week period.

[24] The Appellant was paid the EI ERB advance of \$2,000 and he was paid \$5,000 for ten weeks of EI ERB.

[25] When I add together the EI ERB advance of four weeks and the seven weeks EI ERB the Appellant was paid for the period, I see the Appellant received a total of \$7,000. He was entitled to be paid \$6,000 for the twelve weeks he was eligible for the EI ERB. This means the Appellant was overpaid \$1,000.

[26] In the interest of clearly communicating the Appellant's entitlement to the EI ERB, I have summarized his weeks of entitlement in the table below:

Two-week claim period	Week starting	Was he paid EI ERB?	Amount paid	Was he entitled to EI ERB?	Amount entitled
Advance Payment		Yes	2000		
1	April 5, 2020	Yes	500	Yes	500
	April 12, 2020	Yes	500	Yes	500
2	April 19, 2020	Yes	500	Yes	500
	April 26, 2020	Yes	500	Yes	500

⁹ See GD3-34.

3	May 3, 2020	Yes	500	Yes	500
	May 10, 2020	Yes	500	Yes	500
4	May 17, 2020	Yes	500	Yes	500
	May 24, 2020	Yes	500	Yes	500
5	May 31, 2020	Yes	500	Yes	500
	June 7, 2020	Yes	500	Yes	500
6	June 14, 2020	No	0	Yes	500
	June 21, 2020	No	0	Yes	500
Total			\$7,000		\$6,000

[27] The law says that, if someone received more of the EI ERB than they were eligible for, they have to pay back the overpayment.¹⁰ So, the Appellant has to pay back \$1,000.

Other arguments

[28] The Appellant argues that he should not have to repay the amount of the benefit because he applied for it in good faith, that he wasn't qualified for EI benefits, and that, if anything, the most he should owe is the difference between his lost income and the amount of benefits he received.

– Does he have to repay?

[29] I recognize the Appellant says he shouldn't have been paid the EI ERB because he wasn't qualified for EI benefits. However, the Commission doesn't dispute that the Appellant was qualified for the EI ERB, and examining his argument about whether he should have been paid the EI ERB in the first place would only open the Appellant up to further liability for benefits that he was paid between April and June 2020. So, I will not explore this argument any further.

¹⁰ See sections 43 and 153.1301 of the EI Act.

[30] I understand the Appellant applied for the EI ERB in good faith when he was laid off due COVID-19. Unfortunately, that doesn't mean he can keep the additional \$1,000 in EI ERB that he was paid.

[31] The law says that, if someone received more of the EI ERB than they were eligible for, they have to pay back the overpayment.¹¹ So, the Appellant has to pay back this amount.

[32] In other words, even if he applied for it in good faith, and even if the government did not warn the Appellant that he would need to repay any of the EI ERB that he was overpaid, he still must repay the entire amount that was paid to him that he was not entitled to receive.

[33] In this case, the Commission paid \$7,000 in a benefit amount. An additional \$1,000 in benefits were still paid to him that he was, ultimately, not entitled to receive. So, he must repay that amount.

– **How much does he owe?**

[34] The Appellant says that if he has any overpayment, it should only be the difference between his lost income and the amount of benefits he received. He says his wages would have been \$6,300 for the time he got paid the EI ERB. And he received \$7,000 in benefits. So, he should only owe \$700.

[35] I understand the Appellant's argument, but it cannot succeed. He was entitled to twelve weeks of the EI ERB, and the law is clear that the EI ERB was paid at a rate of \$500 per week. The EI ERB was meant to be a temporary support, in part, for people who had lost their jobs due to COVID-19. It was not meant to replace a claimant's income on a 1:1 ratio. If that is what Parliament wanted the EI ERB to do, they would not have written the law to give a flat benefit rate of \$500 to all claimants.

¹¹ See sections 43 and 153.1301 of the Act.

Conclusion

[36] The Appellant has to pay back \$1,000 of the EI ERB advance payment he received.

[37] This means that the appeal is allowed in part.

Catherine Shaw
Member, General Division – Employment Insurance Section