



Citation: *AJ v Canada Employment Insurance Commission*, 2025 SST 60

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

## **Decision**

**Appellant:**

A. J.

**Respondent:**

Canada Employment Insurance Commission

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**Decision under appeal:**

Canada Employment Insurance Commission  
reconsideration decision (449843) dated November 26,  
2024 (issued by Service Canada)

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**Tribunal member:**

Gerry McCarthy

**Type of hearing:**

Teleconference

**Hearing date:**

January 22, 2025

**Hearing participant:**

Appellant

**Decision date:**

January 23, 2025.

**File number:**

GE-25-31

## Decision

[1] The appeal is dismissed.

[2] The Appellant has to pay back \$2,000.00 of the Employment Insurance Emergency Response Benefit (EI ERB) advance payment she received.

## Overview

[3] The EI ERB is a new benefit that was created at the beginning of the COVID-19 pandemic.<sup>1</sup> The amount of the EI ERB was \$500.00 per week.<sup>2</sup> 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.

[4] The Appellant applied for Employment Insurance (EI) sickness benefits on April 6, 2020. Between March 15, 2020, and September 26, 2020, all applications for EI sickness benefits were processed as applications for the EI ERB.<sup>3</sup> After this, the Commission paid the Appellant the \$2,000.00 advance payment on April 13, 2020. The Commission also paid the Appellant eight-weeks of the EI ERB from April 5, 2020, to May 30, 2020. In total, the Appellant received \$6,000.00 in the EI ERB.

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

[6] The Commission says the Appellant was overpaid \$2,000.00 and should have received only \$4,000.00.

[7] The Appellant says her financial circumstances have changed since 2020 and she retired in December 2023. She further says that four-years have passed since she learned about the EI ERB overpayment.

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

<sup>2</sup> See section 153.10(1) of the EI Act.

<sup>3</sup> See sections 153.5(3)(a), 153.8(5) and 153.1310 of the EI Act.

## Issues

[8] Should the Appellant have been paid EI sickness benefits instead of the EI ERB?

[9] Does the Appellant have to pay back the EI ERB advance payment she received?

## Analysis

### **Should the Appellant have been paid EI sickness benefits instead of the EI ERB?**

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

[11] As mentioned, between March 15, 2020, and September 26, 2020, all applications for EI sickness benefits were processed as applications for the EI ERB.<sup>4</sup> So, if someone applied for EI sickness benefits and their benefit period started during that time, they would have received the EI ERB instead of EI sickness benefits.

[12] The Commission and the Appellant agree that her application for EI sickness benefits would have resulted in a benefit period beginning on April 5, 2020. This was between March 15, 2020, and September 26, 2020. So, the Appellant received the EI ERB instead of EI sickness benefits.

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

[13] I find the Appellant has to pay back the EI ERB advance payment she received.

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

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

<sup>5</sup> See sections 153.7(1) and 153.8 of the EI Act.

<sup>6</sup> See section 153.7(1.1) of the EI Act.

[15] 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.

[16] The Commission says that, because of the advance payment, the Appellant received a total of 12-weeks of benefits but should have received only eight-weeks of benefits. The Commission wasn't able to recover \$2,000.00 of the advance payment, because the Appellant returned to work on June 1, 2020. As a result, the Appellant was overpaid \$2,000.00 in the EI ERB.

[17] The Appellant agrees that she was paid the \$2,000.00 advance payment and eight-weeks of the EI ERB. She says that she stopped claiming the EI ERB after May 30, 2020.

[18] I find the Appellant was paid a total of 12-weeks of the EI ERB and should have received only eight-weeks of benefits. This is because the Appellant returned to work on June 1, 2020, and the Commission wasn't able to recoup any of the advance payment later in the Appellant's claim.

[19] I recognize the Commission reviewed the Appellant's earnings to see if she would have been eligible for EI ERB (after June 1, 2020) to offset her overpayment (GD3-99 to GD3-100). However, the evidence shows the Appellant's income exceeded \$1,000.00 over the four-week periods she could have claimed EI ERB after June 1, 2020.

[20] Since the Appellant received four more weeks of the EI ERB than she should have received, she was overpaid \$2,000.00.

[21] 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>7</sup> So, the Appellant has to pay back this amount. On this matter, I wish to emphasize that I must apply the law to the

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<sup>7</sup> See sections 43 and 153.1301 of the EI Act.

evidence before me. In other words, I cannot ignore or re-fashion the law even for compassionate reasons.<sup>8</sup>

## The Appellant's Overpayment

[22] I realize the Appellant testified that her financial circumstances have changed since 2020 because she retired in December 2023. I further recognize the Appellant wrote in her Notice of Appeal that she didn't have the funds to pay back the overpayment (GD2). I genuinely sympathize with the Appellant. However, I have **no authority** to write-off the Appellant's overpayment.<sup>9</sup> But the Commission can decide to write-off an overpayment in certain situations—for example, if paying it back would cause the Appellant undue hardship.

[23] So, the Appellant can ask the Commission to write-off her overpayment. Or, she can contact the Canada Revenue Agency (CRA) to discuss fair payment arrangements.

## Additional Testimony from the Appellant

[24] I further recognize the Appellant testified that four-years had passed since she learned about the EI ERB overpayment. During the hearing, the Appellant confirmed she received the Commission's initial decision and Notice of Debt approximately one-month before she filed her request for reconsideration on December 23, 2021. So, the Commission had provided a decision within 18-months of when the Appellant returned to work on June 1, 2020. However, I can't explain why the Commission took so long to contact the Appellant after she filed her request for reconsideration. Still, the Commission has 36-months to review a claim and they were within that timeframe when they issued the Appellant's initial decision in November 2021.

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<sup>8</sup> *Knee v Canada (Attorney General)*, 2011 FCA 301.

<sup>9</sup> *Villeneuve v Canada (Attorney General)*, 2005 FCA 440; *Mosher v Canada (Attorney General)*, 2002 FCA 355; and *Filiatrault v Canada (Attorney General)*, A-874-97).

[25] Finally, I recognize the Appellant explained that the CRA had transferred funds from her various rebates to Employment Insurance. Specifically, the Appellant indicated that \$370.07 had been transferred to Employment Insurance. This would appear to be monies directed to her EI ERB overpayment. In any event, the Appellant can contact the Commission for an update on her overpayment amount or speak directly with the CRA on this matter.

## **Conclusion**

[26] The Appellant has to pay back \$2,000.00 of the EI ERB advance payment she received

[27] This means the appeal is dismissed.

*Gerry McCarthy*

Member, General Division – Employment Insurance Section