



[TRANSLATION]

Citation: *NG v Canada Employment Insurance Commission*, 2024 SST 1563

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: N. G.

Respondent: Canada Employment Insurance Commission
Representative: Claude Germain

Decision under appeal: General Division decision dated
September 23, 2024 (GE-24-2967)

Tribunal member: Pierre Lafontaine

Type of hearing: Videoconference
Hearing date: December 17, 2024
Hearing participants: Appellant
Respondent's representative

Decision date: December 18, 2024
File number: AD-24-630

Decision

[1] The appeal is allowed in part. The amount of the Employment Insurance Emergency Response Benefit (EI ERB) overpayment is reduced to \$1,500.

Overview

[2] The Appellant (Claimant) applied for Employment Insurance (EI) benefits on March 19, 2020. A claim for the EI ERB was established. On April 6, 2020, the Respondent (Commission) made a \$2,000 advance payment to the Claimant.

[3] The Commission is now asking the Claimant to pay back the \$2,000. The Commission says that the Claimant received 15 weeks of EI ERB while she was unemployed for 11 weeks. This means that she has to pay back the \$2,000 benefit overpayment. The Claimant disagreed and appealed to the Tribunal's General Division.

[4] The General Division found that the Claimant was eligible for 11 weeks of the EI ERB at the rate of \$500 for a total of \$5,500. It found that the Claimant received a total of \$7,500. The General Division found that she had to pay back the Commission the \$2,000.

[5] The Claimant was given permission to appeal the General Division's decision. She argues that it was up to the Commission to properly pay her the EI ERB. She did not want the EI ERB, she wanted regular benefits. The Claimant argues that she cannot afford to pay back the amount requested and asks the Commission to focus on the real fraudsters.

[6] I am allowing the Claimant's appeal in part.

Issue

[7] Did the General Division make an error when it found that the Claimant had to pay back the \$2,000 advance EI ERB payment the Commission made to her?

Analysis

[8] The Claimant argues that it was up to the Commission to properly pay her the EI ERB. She did not want the EI ERB, she wanted regular benefits. The Claimant argues that she cannot afford to pay back the amount requested and asks the Commission to focus on the real fraudsters.

[9] As the General Division noted, the government introduced temporary measures during the pandemic. From March 15 to September 26, 2020, all claims for regular benefits were treated as EI ERB claims.¹ So, if a claimant applied for regular benefits and their benefit period started during that period, they received the EI ERB. The law did not let you choose benefits during that period.

[10] Before the General Division, the Claimant acknowledged receiving the \$2,000 advance and 11 weeks of the EI ERB, for a total of \$7,500 in EI ERB. She reported going back to work on June 1, 2020.

[11] The General Division found that the Claimant was eligible for 11 weeks of the EI ERB at the rate of \$500 for a total of \$5,500. It found that the Claimant received a total of \$7,500. The General Division found that she had to pay back the Commission the \$2,000.

[12] It is well established that the EI ERB was paid for two-week periods.² The Claimant meets the condition set out in the law of having no income for at least seven consecutive days during the period from May 24 to June 6, 2020. She is eligible for both weeks of this two-week period, even though she went back to work on June 1, 2020. But she received only one week of EI ERB. This reduces the overpayment to \$1,500.

[13] So, the General Division made an error when it found that the Claimant had to pay back the Commission the \$2,000.

[14] So, I am justified in intervening.

¹ See sections 153.5(3)(a), 153.8(5) and 153.1310 of the *Employment Insurance Act* (Act).

² See sections 153.8(1) and 153.9(1) of the Act.

Remedy

[15] Since the parties had the opportunity to present their respective positions before the General Division, I am of the view that the record is complete. So, I will give the decision that the General Division should have given.

[16] The evidence shows that the Claimant was eligible for 12 weeks of the EI ERB but that she received 15 weeks of the EI ERB. This resulted in a \$1,500 overpayment. So, she has to pay back the Commission the \$1,500.

[17] The Claimant is asking for the debt to be written off because it is causing her serious financial harm. Unfortunately, I do not have that power.

[18] The law gives the Commission exclusive jurisdiction to decide whether to forgive a debt owed to it under the law. It does not give the Tribunal any discretion to write off the amount to be repaid, even for compassionate reasons.

Conclusion

[19] The appeal is allowed in part. The Claimant has to pay back the \$1,500 EI ERB overpayment to the Commission.

[20] Given the Claimant's submissions that the EI ERB overpayment is causing her serious financial hardship, I recommend that the Commission consider writing off or cancelling off the debt.

Pierre Lafontaine
Member, Appeal Division