



Citation: *RF v Canada Employment Insurance Commission*, 2024 SST 1712

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: R. F.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (611550) dated December 1,
2023 (issued by Service Canada)

Tribunal member: Gerry McCarthy

Type of hearing: Teleconference

Hearing date: November 6, 2024

Hearing participant: Appellant

Decision date: November 15, 2024

File number: GE-24-261

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 he received. However, the Canada Employment Insurance Commission (Commission) **reconciled \$1,000.00 of the advance payment from the Appellant's EI ERB payments between August 23, 2020, and September 5, 2020.** As a result, the Appellant was overpaid \$1,000.00 in the EI ERB.

[3] Furthermore, the Commission has indicated there was currently **no overpayment of the EI ERB** as the \$1,000.00 balance owing of the EI ERB advance payment was recouped by the Canada Revenue Agency (CRA) on July 28, 2022 (**GD3-97**).

Overview

[4] 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 Commission gave claimants an advance payment of four-weeks of the EI ERB (\$2,000.00) when they first applied.

[5] The Appellant established a claim for EI ERB benefits on May 31, 2020 (GD3-3 and GD3-13). After this, the Commission paid the Appellant the \$2,000.00 advance payment on June 15, 2020 (GD3-17). The Commission also paid the Appellant 16-weeks of the EI ERB. In total, the Appellant received \$10,000.00 in the EI ERB.

[6] I have to decide whether the Appellant has to payback \$2,000.00 of the EI ERB advance payment he 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 Act.

[7] The Commission says the Appellant was overpaid \$2,000.00 and should have received only \$8,000.00. However, the Commission says \$1,000.00 of the advance payment was reconciled or recouped from his EI ERB payments from the weeks of August 23, 2020, and August 30, 2020.

[8] The Appellant disagrees and says he was entitled to the full 28-weeks of “EI ERB/CERB” benefits (GD29-237). He further says the recoupment of his overpayment by the CRA was “illegal.”

Matters I have to consider first

The Appellant’s other appeals

The Appeal Record

[9] The Appellant has two other appeals (GE-24-263 and GE-24-831). During the hearing, the Appellant explained he wished to present a single appeal. He further explained that he wished to use GD55 in file GE-24-263 as his overall reference point during the hearing.

[10] I realize the Appellant presented a single appeal. However, I must issue **decisions on each of the files separately**. This decision is for file **GE-24-261**.

[11] However, I will issue all three decisions (GE-24-261, GE-24-263, and GE-24-831) **at the same time** to avoid confusion.

[12] As mentioned, the Appellant referred to GD55 in file GE-24-263 as his overall reference during the hearing. The GD55 in GE-24-263 appears as GD51 in this file GE-24-261. I have carefully reviewed the 92-pages listed in GD51. However, for ease of reference I will refer to the “Consolidated List of Appeals” in **GD29-237 to GD29-238** which are contained in this file GE-24-261.

Issues

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

[14] Does the Appellant have to payback the EI ERB advance payment he received?

Analysis

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

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

[16] The Appeal Record shows an application for regular benefits was filed on June 6, 2020 (GD3-3 and GD3-13). However, between March 15, 2020, and September 26, 2020, all applications for EI regular benefits were processed as applications for the EI ERB.³ 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.

[17] The Appellant's application for EI regular benefits resulted in a benefit period beginning on May 31, 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 payback the EI ERB advance payment?

[18] I find the Appellant has to payback the EI ERB advance payment he received.

[19] 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

[20] The Commission paid the Appellant the \$2,000.00 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.

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

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

⁵ See section 153.7(1.1) of the EI Act.

[21] The Commission says that, because of the advance payment, the Appellant received a total of 20-weeks of benefits but should have received only 16-weeks of benefits. However, the Commission was able to recover \$1,000.00 of the advance payment because they reconciled \$1,000.00 from the Appellant's EI ERB payments between August 23, 2020, and September 5, 2020. As a result, the Appellant was overpaid \$1,000.00 in the EI ERB.

[22] The Appellant disagrees with the Commission. He says he should have been paid 28-weeks of EI ERB. However, the Appellant's EI ERB claim started on May 31, 2020, and he was paid the following weeks of EI ERB: **12-weeks** from May 31, 2020, to August 22, 2020, and **four-weeks** from September 6, 2020, to October 2, 2020. At that point, the **EI ERB program ended on October 3, 2020**. In short, no further EI ERB benefits could be paid to any claimant after this date.

[23] As mentioned, the Appellant's EI ERB reports were completed for August 23, 2020, to September 5, 2020. However, instead of the Commission issuing the \$500.00 payment for each week this was a period **where \$1,000.00 of the \$2,000.00 advance payment was reconciled** and no payment was issued.

[24] In summary: I find the Appellant was paid a total of 20-weeks of the EI ERB, but he should have received only 16-weeks of benefits. This was because he received an advance payment of \$2,000.00 on June 15, 2020.

[25] Since the Appellant received four more weeks of the EI ERB than he should have received, he was overpaid \$2,000.00. However, the Commission reconciled \$1,000.00 of the advance payment from the Appellant's EI ERB payments between August 23, 2020, and September 5, 2020. As a result, the Appellant was overpaid \$1,000.00 in the EI ERB.

[26] The law says that, if someone received more of the EI ERB than they were eligible for, they have to payback the overpayment.⁶ So, the Appellant has to payback this amount. However, the Commission says there was currently **no overpayment of**

⁶ See sections 43 and 153.1301 of the EI Act.

the EI ERB as the \$1,000.00 balance owing of the EI ERB advance payment was recouped by the Canada Revenue Agency (CRA) on July 28, 2022 (GD3-97).

Additional Testimony and Submissions from the Appellant

[27] I realize the Appellant wrote that he was “owed 12 additional weeks, after recoupments, he has received 16 weeks” (GD29-237). However, as mentioned the EI *ERB period ended on October 3, 2020*, and **no claimant** could be paid EI ERB benefits after this date. On this matter, I must apply the law. In other words, I cannot ignore or re-fashion the law.⁷

[28] I further recognize the Appellant explained that regular benefits were supposed to be extended to give him more time, but the claim was “truncated” in order to pay him ERB benefits. The Appellant was referencing a claim for regular benefits he established on May 5, 2019. On this matter, I agree with the Commission that the Appellant was eligible to receive payments on the May 5, 2019, claim *first*. However, the Appellant wasn’t eligible to receive payments from both programs (EI regular benefits and EI ERB) for the same weeks. The Commission further explained that the Appellant’s claim for EI regular benefits paid a higher benefit rate. So, the Commission says it was in the Appellant’s best interest to be paid out his weeks of entitlement on the EI regular benefits claim which ended May 30, 2020 (GD3-97).

[29] The Appellant further testified that the CRA’s recoupment of the \$1,000.00 EI ERB overpayment was “illegal.” However, this wasn’t an issue before me. In other words, the Appellant must speak to the CRA about their recoupment of the \$1,000.00 overpayment. In short, **the only issue before me** on this file was whether the Appellant has to payback the EI ERB advance payment.

[30] Finally, I wish to emphasize what the Commission explained in the Appeal Record. Specifically, the Commission explained that any payment for the period after October 4, 2020, was for CRB which was “Canada Recovery Benefit” a benefit that was

⁷ *Knee v Canada (Attorney General)*, 2011 FCA 301.

paid strictly through Canada Revenue Agency (CRA). **This benefit wasn't related to EI ERB** which ended October 3, 2020.

Conclusion

[31] The Appellant has to pay back \$2,000.00 of the EI ERB advance payment he received. However, the Commission reconciled \$1,000.00 of the advance payment from the Appellant's EI ERB payments between August 23, 2020, and September 5, 2020. As a result, the Appellant was overpaid \$1,000.00 in the EI ERB.

[32] Furthermore, the Commission says there was currently no overpayment of the EI ERB as the \$1,000.00 balance owing of the EI ERB advance payment was recouped by the Canada Revenue Agency (CRA) on July 28, 2022 (GD3-97).

[33] This means the appeal is dismissed.

Gerry McCarthy

Member, General Division – Employment Insurance Section