



[TRANSLATION]

Citation: *AR v Canada Employment Insurance Commission*, 2025 SST 860

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

Decision

Appellant: A. R.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (583324) dated May 14, 2025 (issued by Service Canada)

Tribunal member: Jacques Bouchard
Type of hearing: Teleconference
Hearing date: June 17, 2025
Hearing participant: Appellant
Decision date: July 2, 2025
File number: GE-25-1708

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant has to pay back the \$14,606 of the Employment Insurance Emergency Response Benefit (EI ERB) he received.

Overview

[3] 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 per week.² But the Canada Employment Insurance Commission (Commission) gave claimants an advance payment of four weeks of the EI ERB (\$2,000) when they first applied.

[4] The Appellant applied for the EI ERB on April 7, 2020. After this, the Commission paid him the \$2,000 advance payment, and it paid him the EI ERB until October 3, 2020. In total, the Commission paid him \$14,606, including the advance payment.

[5] I have to decide whether the Appellant has to pay back the EI ERB advance payment [and] money he received.

[6] The Commission says that the Appellant didn't qualify for the EI ERB because he hadn't earned a minimum of \$5,000 in 2019, and he hadn't worked for a minimum of 700 hours. In fact, and according to the information on file, he had 320 hours of insurable employment, for a total of \$4,656.01. Based on the criteria set out in section 153.5(2)(a) of the *Employment Insurance Act* (Act), he would have qualified since he was no longer working because of COVID-19. But he didn't meet the criteria set out in section 153.9(1)(a) of the Act—that is, to have insurable earnings of at least \$5,000 during the 52 weeks of 2019, and to have 700 insurable hours of employment for the same period (see GD3-25 to GD3-33).

¹ Part VIII.4 of the *Employment Insurance Act* (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 Appellant disagrees and says that an Employment Insurance (EI) officer called him and told him that he qualified. He said at the hearing that he was very sick during that period, that he had alopecia universalis, and that this had affected him mentally. He submitted evidence showing that he had been approved for emergency assistance under the Social Solidarity Program (see supporting letter at GD3-47). He shows that he has lost \$7,579 in provincial assistance. He asks that his debt of \$14,606 be forgiven, given the prejudice that the Commission's error caused and how precarious his personal finances are, since he has no money.

[8] The Commission disagrees and says that there is no note on file showing that the Appellant applied for benefits before April 7, 2020, and that it was the false information he provided that caused the overpayment. It used its discretion judicially in considering all the relevant information on file (see GD4-5).

[9] The Appellant disagrees and says that he applied for EI regular benefits, and that these had been denied because he didn't have enough insurable hours. The Commission didn't consider his health and financial situation, given that he wasn't able to receive Quebec social assistance.

[10] In this situation, I have to decide whether the Commission correctly established a \$14,606 overpayment under section 52(2) of the Act.

Issue

[11] Should the Appellant have been paid the EI ERB?

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

Analysis

Should the Appellant have been paid the EI ERB?

[13] I find that the Appellant should not have been paid the EI ERB. It is clear from the information on file that he didn't qualify because he had earnings of less than \$5,000 and not enough hours.

[14] The Appellant says that he should not have to pay back the EI ERB because he had initially applied for EI regular benefits, and they were denied. But the Commission paid him the EI ERB instead. This decision resulted in his provincial social solidarity benefits being denied, causing a loss of \$7,579.

[15] Between March 15, 2020, and September 26, 2020, all applications for EI regular/sickness benefits were processed as applications for the EI ERB.³ So, if someone applied for EI regular/sickness benefits and their benefit period started during that time, they would have received the EI ERB instead of EI regular/sickness benefits.

[16] The Commission and the Appellant agree that the Appellant's application for EI regular/sickness benefits would have resulted in a benefit period beginning on April 7, 2020, if he had qualified. This was between March 15, 2020, and September 26, 2020. So, he received the EI ERB instead of EI regular/sickness benefits, even though he wasn't eligible for it.

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

[17] I find that the Appellant has to pay back the EI ERB because he wasn't eligible for it. But the Commission might not have used its discretion judicially when it established his overpayment under section 52(2) of the Act. If he finds that the Commission didn't give proper weight to many relevant pieces of information, he can always have recourse to the Federal Court. I will go back to this point later in the decision.

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

[18] 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

[19] 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.

[20] The Commission says that, considering the advance payment, the Appellant received a total of \$14,606 even though he didn't qualify, as mentioned above. So, he was overpaid \$14,606.

[21] The Appellant disagrees with the Commission. For the reasons mentioned above, he is asking for the debt to be written off. At the hearing, he argued that he had paid taxes on the \$14,606, that he hadn't been able to participate in the provincial Social Solidarity Program—resulting in \$7,579 in losses—and that the Commission was responsible for the error. At the hearing, he said that the Commission hadn't considered his health when analyzing his testimony, even though he had alopecia universalis and was mentally affected by it.

[22] I find that the Appellant actually received \$14,606 in the EI ERB—benefits he wasn't eligible for. The Tribunal's General Division doesn't have jurisdiction to decide the write-off or the process that led to the Commission's decision. The evidence on file regarding the dialog with the provincial authorities shows that he acted in good faith and that he was transparent about his application. Mail exchanges with government authorities specifically said that, if the Appellant were eligible for the EI ERB, the money that the Social Solidarity Program paid would be recovered.

[23] I find that it is more likely than not that the Appellant did in fact communicate with the Commission about whether he was eligible.

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

⁵ See section 153.7(1.1) of the Act.

[24] The law says that, if someone received more of the EI ERB than they were eligible for, they have to pay back the overpayment.⁶ So, the Appellant has to pay back this amount.

[25] The Appellant is asking for the overpayment to be written off for the reasons mentioned above, but the Commission has already decided the write-off.

[26] I can only apply the law that is set out in the Act and *Employment Insurance Regulations*. I can't change the law or give the Appellant another decision, even if I sympathize with his situation.⁷

[27] I can't write off the Appellant's overpayment.⁸ 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. I find that this is the case with him. The Commission has already assessed whether to write off the overpayment, and it refused to do so. It found instead that he had misled the Commission.

[28] So, the Appellant can contact the Canada Revenue Agency to discuss payment arrangements. Or, he can bring this issue before the Federal Court since the Act doesn't say that I can hear this case.

Conclusion

[29] The appeal is dismissed.

Jacques Bouchard
Member, General Division – Employment Insurance Section

⁶ See sections 43 and 44 of the Act.

⁷ See *Canada (Attorney General) v Hamm*, 2011 FCA 205; and *Granger v Canada Employment and Immigration Commission*, A-684-85.

⁸ See sections 153.1306, 153.1307, and 113 of the Act.