



Citation: *ZN v Canada Employment Insurance Commission*, 2022 SST 1765

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: Z. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (441410) dated October 18, 2022
(issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Videoconference

Hearing date: December 14, 2022

Hearing participant: Appellant

Decision date: December 15, 2022

File number: GE-22-3392

Decision

[1] The appeal is dismissed with modification. The Claimant cannot have regular Employment Insurance (EI) benefits instead of the EI Emergency Response Benefit (ERB). He must also repay all the ERB he received to which he was not entitled, but he only need repay \$1,000.

Overview

[2] Due to the COVID-19 pandemic the Government amended the *Employment Insurance Act* to create a new benefit, the ERB. The ERB is effective March 15, 2020.

[3] Generally, claimants who could have had a benefit period established for regular EI benefits between March 15, 2020, and September 26, 2020, got ERB instead.

[4] The Claimant applied for benefits on March 30, 2020. The Claimant was initially paid 7 weeks of ERB benefits. He was also advanced \$2,000 worth of ERB payments.

[5] The Commission says that normally, in the course of paying out ERB, they would withhold four weeks of ERB down the line, which is equal to \$2,000, in order to balance out the advance. However, in the Claimant's case he did not collect ERB long enough for them to do that, so they say he has an overpayment because he needs to repay the advance, since he was not eligible for those weeks of ERB the advance represents.

[6] The Commission says that they did review the Claimant's eligibility and found they could pay him one more week of ERB than he received, which they applied to the overpayment, so they say he only has to repay \$1,500.

[7] The Claimant says the Commission is struggling with their ability to do math, as he is eligible for nine and a half weeks of ERB and at \$500 a week that means he is owed \$4,750 dollars. He received \$5,500 total in ERB and when you subtract \$4,750 from \$5,500 you get a difference of \$750 dollars, not \$1,500.

Issue

[8] Can the Claimant get regular EI instead of the ERB?

[9] Does the Claimant have to repay \$1,500 of the advance?

Analysis

Can the Claimant get regular EI instead of the ERB?

[10] No, the Claimant cannot get regular EI instead of the ERB.

[11] The Claimant says that he never applied for, or requested, ERB money and under normal circumstances, would have applied for regular EI benefits.¹

[12] I find that, while the Claimant may have felt he was not applying for ERB, he had no choice but to receive ERB.

[13] The law says that no claim for regular benefits can be established between March 15, 2020, and September 26, 2020;² the Claimant applied on March 30, 2020, and this is within the period where the law says no claim for regular benefits can be established, so he had to get ERB.

Does the Claimant have to repay the \$1,500 of the advance?

[14] No, the Claimant need only pay back \$1,000 of the advance, as that represents the two weeks of ERB he received for which he is not eligible.

[15] The Commission submits they initially paid the Claimant seven weeks of ERB from March 22, 2020, to May 9, 2020,³ and advanced him \$2,000 of ERB, which represents four weeks of ERB.⁴

[16] The Commission says that normally, they would recover this advance by withholding four weeks of ERB over the course of the claim, but the Claimant did not collect ERB long enough for them to do this.

¹ GD02-5

² See section 153.8(5) of the *Employment Insurance Act*

³ GD04-4

⁴ GD04-4.

[17] The Commission says that although the Claimant did not initially claim for it, they used the week of March 15 – 21, 2020, to offset part of the advance, so they say he only has to repay \$1,500 as that represents the three weeks of ERB he received that he was not entitled to.

[18] The Claimant says the situation is very simple; the Commission is struggling with their math. His last day of work was March 9, 2020, and he started working again on May 12, 2020.

[19] The Claimant says that is a period of nine and a half weeks, and at \$500 a week he is owed \$4,750 of ERB. He says that he received a total of \$5,500 in ERB payments, and when you subtract \$4,750 from \$5,500 you get a difference of \$750 dollars, not \$1,500.

[20] I find I disagree with both the Commission and the Claimant.

Why I disagree with the Commission

[21] The Commission says the Claimant is eligible for the ERB in general, as he is a “claimant” for the purposes of ERB, because if it were not for the ERB he could have had a benefit period established for normal employment insurance benefits.⁵

[22] I find I accept the submission from the Commission that the Claimant is, in a general sense, eligible for the ERB as he could have, if there were no ERB, established a benefit period for normal employment insurance benefits,⁶ as I see no evidence to contradict this.

[23] The Commission also states that the Claimant is eligible for eight weeks (\$4,000) of ERB from March 15, 2020 to May 9, 2020, according to the eligibility requirement

⁵ GD04-3

⁶ See section 153.5(2)(b) of the *Employment Insurance Act*, which defines a “claimant” for the purposes of ERB as someone who could have established a claim for normal employment insurance benefits.

under the law that the Claimant have no income from employment for at least seven consecutive days within the two week period in which he claimed ERB.⁷

[24] I find that while I agree with the Commission on the eligibility requirements for the Claimant to collect ERB (that he have no income from employment for at least seven consecutive days within the two week period in which he claims ERB),⁸ I disagree with their application of the eligibility requirement.

[25] I find the Claimant should have been paid for the week of May 10 -16, 2020, as within the two week period in which he claimed benefits (May 3 – 16, 2020)⁹ he had seven consecutive days, (May 3 -9, 2020) in which he had no income from employment, which means he met the eligibility requirements for the week of May 10 -16, 2020.

[26] I note the Commission has agreed that seven consecutive days without income from employment within the two week period in which he claims ERB is the eligibility criteria the Claimant needs to meet.

[27] So, as the law looks at eligibility in two week periods,¹⁰ and as the Claimant meets the eligibility criteria for the two week period of May 3-16, 2020, he is eligible for, and should have been paid for, the week of May 10-16, 2020.

[28] This means that the Claimant is eligible for nine weeks (\$4,500) of ERB and received 11 weeks (\$5,500), which means he has to repay \$1,000 of the advance, as that represents the two weeks of ERB which he received for which he was not eligible.

⁷ See GD04-3 which references section 153.9(1)(b) of the *Employment Insurance Act* and GD04-4 which states how many weeks of ERB the Commission thinks the Claimant can get.

⁸ See section 153.9(1)(b) of the *Employment Insurance Act* which states that if the person is a “claimant” as defined under section 153.5(2)(b) of the *Employment Insurance Act*, like the Claimant in this case, then in order to be eligible, he must have no income from employment for at least seven consecutive days within the two week period in which he claims ERB.

⁹ GD03-36 to 41 shows his report for the period of May 3 – 16, 2020, and he declares no income or work for the period of May 3 -9, 2020.

¹⁰ Section 153.9(1)(b) of the *Employment Insurance Act* explicitly states that the Claimant’s eligibility is being looked at in two week periods “A claimant is eligible for the employment insurance emergency response benefits if they are a claimant referred to in paragraph 153.5(2)(b) and they have no income from employment or self-employment for at least seven consecutive days within the two-week period in respect of which they claimed the benefit.”

Why I disagree with the Claimant

[29] While I do not disagree with the date the started or ended work, or his math; I disagree with how much ERB he is eligible for as he is asking for benefits for a period he did not claim for.

[30] He did not file a claim for benefits from March 9, 2020.¹¹ Since there is no claim for that period, I cannot find him eligible for that period, as I cannot find him eligible for a claim he did not make. While the Commission may have chosen to pay him for a week he did not claim for, that is not something I can do.

[31] Further, it is too late for him to make a claim for the week of March 9, 2020, at this point as no claim can be made for ERB after December 2, 2020.¹²

[32] This is what creates the difference between the amount I have found the Claimant is eligible for and the amount he says he is eligible for.

Conclusion

[33] The appeal is dismissed with modification.

[34] The Claimant cannot have regular EI benefits instead of the ERB.

[35] The Claimant must also repay the amount of ERB he received that he was not eligible for, but I find that he was eligible for one more week of ERB than he was paid, so he need only repay \$1,000 of the ERB advance.

Gary Conrad

Member, General Division – Employment Insurance Section

¹¹ See his claimant reports from GD03-21 to GD03-41

¹² Section 153.8(2) of the *Employment Insurance Act*