



Citation: *MR v Canada Employment Insurance Commission*, 2024 SST 42

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: M. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: General Division decision dated October 6, 2023
(GE-23-2415)

Tribunal member: Stephen Bergen

Type of hearing:

Decision date: January 10, 2024

File number: AD-23-931

Decision

[1] I am granting leave to appeal and allowing the appeal in part. I am also giving the decision that the General Division should have given. I am reducing the Claimant's overpayment from \$1500.00 to \$1000.00.

Overview

[2] The Applicant is M. R. I will refer to him as the Claimant because the appeal concerns his claim for Employment Insurance (EI) benefits.

[3] The Respondent, the Canada Employment Insurance Commission (Commission), paid the Claimant benefits under the Employment Insurance Emergency Response Benefits program (EI-ERB). Under this program, claimants were entitled to a \$500.00 weekly benefit if they met the requirements. To get support to claimant's quickly, the law authorized the Commission to immediately prepay benefits.¹ The Commission advanced claimants \$2000.00 of the EI-ERB benefits to which they would be eligible in later weeks. The Commission expected to recover the advance by withholding payment of the EI-ERB benefit in some of those weeks.

[4] The Claimant received this \$2000.00 advance. He returned to work full-time in the week of May 17, 2020, before the Commission could recover any of the advance. However, in early September he began receiving EI-ERB support for an additional period. The Commission withheld the benefit for one of his eligible weeks, which reduced by \$500.00 the amount that he was expected to repay the Commission. The Commission sent the Claimant a notice of debt for the other \$1500.00.

[5] When the Claimant asked the Commission to reconsider it would not change its decision. It maintained that he had been overpaid by \$1500.00. He appealed to the General Division of the Social Security Tribunal, but the General Division dismissed his appeal.

¹ See 153.7(1.1) of the *Employment Insurance Act* (EI Act).

[6] The Claimant next applied to the Appeal Division for leave to appeal the General Division decision.

[7] I am granting leave and allowing the appeal in part. The General Division made an error in how it calculated the claim periods and the weeks in which the Claimant was entitled to the EI-ERB benefits. The Claimant was entitled to the \$500.00 ERB benefit in the week of May 17 to May 23, 2020, but did not receive it. This means he should only be required to repay \$1000.00 of the advance.

The parties agree on the outcome of the appeal

[8] A case conference was convened on January 10, 2024, to discuss if the Claimant had any additional weeks of entitlement that might have been applied to reduce his overpayment.

[9] The Commission agreed that the General Division made an error. It noted that not all of the Claimant's EI-ERB benefits were paid according to two-week reporting periods (the week of March 29 to April 4, 2020, was its own one-week report). As a result, the reporting periods were mis-identified. The week of May 17, 2020, was understood to be the first week in a new reporting period where it should have been the second week in a reporting period beginning May 10, 2020.

[10] When the General Division considered the appeal, it recalculated the benefit reporting periods. It concluded that the General Division should not have paid the benefit for the week of May 10, 2020 (week 9), because it was one week out of a two - week reporting period.

[11] The Commission concedes that that the General Division made an error in how it understood the earnings and recoveries. Once it reviewed the Claimant's earnings and allocated work and earnings to properly calculated benefit periods, it was satisfied that the Claimant's earnings in week 10 were low enough that the total of his earnings for weeks 7, 8, 9 and 10 (the four-week period from April 26 to May 23) was less than \$1000.00. Therefore, the Commission accepts that the General Division should have

received the EI-ERB benefit for week 10 (May 17-May 23) in addition to the other benefits he received.

[12] The Commission agrees that this additional \$500.00 benefit may be applied to offset the overpayment, which means that the Claimant should only be required to repay \$1000.00 in total.

[13] The Claimant agreed with the Commission's position.

I accept the proposed outcome

[14] I agree that the General Division made an error of fact.

[15] The General Division accepted that the Claimant owed the Commission \$1500.00 based on its \$500.00 recovery in week 29 (September 7, 2020), and it found that the Claimant was eligible for the \$6000.00 in benefits that he actually received. These findings cannot be reconciled with the General Division's finding that the Claimant should not have received the benefit for week 9, the first week of a two-week benefit period (May 10, 2020, to May 23, 2020).

[16] I accept that a claimant's eligibility for the EI-ERB benefit is determined based on two-week reporting periods beginning with the first week of eligibility. Claimants must receive benefits for both weeks of a two-week reporting period or receive nothing for that period.

[17] However, I do not agree that this means the Claimant cannot receive the benefit for week 9. Instead, I find that the Claimant was eligible to receive the EI-ERB benefit for both weeks of the reporting period comprised of week 9 and week 10.

Conclusion

[18] I am allowing the appeal in part. The General Division made an error of fact. I have accepted the Commission's concession to make the decision the General Division should have made.

[19] The Claimant's overpayment is reduced from \$1500.00 to \$1000.00.

Stephen Bergen
Member, Appeal Division