



Citation: *OS v Canada Employment Insurance Commission*, 2024 SST 1672

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:

O. S.

Respondent:

Canada Employment Insurance Commission

Decision under appeal:

Canada Employment Insurance Commission
reconsideration decision (517209) dated October 28, 2024
(issued by Service Canada)

Tribunal member:

Gerry McCarthy

Type of hearing:

Videoconference

Hearing date:

November 26, 2024

Hearing participant:

Appellant

Decision date:

November 27, 2024

File number:

GE-24-3692

Decision

[1] The appeal is dismissed.

[2] The Appellant has to payback \$2,000.00 of the Employment Insurance Emergency Response Benefit (EI ERB) advance payment he received. However, the Canada Employment Insurance Commission (Commission) determined the Appellant had one eligible week in the EI ERB period that could be applied to **offset** his overpayment. **So, the Appellant's overpayment was reduced by \$500.00 to \$1,500.00.**

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 \$500.00 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.

[4] The Appellant applied for the EI ERB on April 14, 2020. After this, the Commission paid the Appellant the \$2,000.00 advance payment on April 20, 2020. The Commission also paid the Appellant seven-weeks of the EI ERB from April 12, 2020, to May 30, 2020. In total, the Appellant received \$5,500.00 in the EI ERB.

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

[6] The Commission says the Appellant was overpaid \$2,000.00 and should have received only \$3,500.00. However, the Commission determined the Appellant had one eligible week in the EI ERB period that could be applied to **offset** his overpayment. So, the Appellant's overpayment was reduced by \$500.00 to \$1,500.00.

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 EI Act.

[7] The Appellant disagrees and says the Commission never mentioned he had to payback the advance payment. He further says the situation wasn't fair. The Appellant also confirmed that he asked the Commission to write-off his overpayment.

Matters I have to consider first

The Recording of the Hearing

[8] The recording for the hearing was initiated at the scheduled time. However, there was a technical problem and unfortunately the recording didn't occur. The recording file was placed on the file but didn't contain any recorded information.

Issue

[9] Should the Appellant have been paid Employment Insurance (EI) regular benefits instead of the EI ERB?

[10] 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?

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

[12] The Appellant had originally applied for EI regular benefits. The Commission paid him the EI ERB instead.

[13] 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.

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

[14] The Commission and the Appellant agree that the Appellant's application for EI regular benefits would have resulted in a benefit period beginning on April 12, 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?

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

[16] 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

[17] 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.

[18] The Commission says that, because of the advance payment, the Appellant received a total of 11-weeks of benefits but should have received only seven-weeks of benefits. The Commission wasn't able to recover \$2,000.00 of the advance payment, because the Appellant returned to work on June 1, 2020. As a result, the Appellant was overpaid \$2,000.00 in the EI ERB. However, the Commission determined the Appellant had one eligible week in the EI ERB period that could be applied to **offset** his overpayment of EI ERB. **So, the overpayment was reduced by \$500.00 to \$1,500.00.**

[19] The Appellant agrees that he was paid the \$2,000.00 advance payment and seven-weeks of the EI ERB. He further confirmed he stopped claiming the EI ERB after he returned to work on June 1, 2020.

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

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

[20] I find the Appellant was paid a total of 11-weeks of the EI ERB, but he should have received seven-weeks of benefits. This is because he returned to work on June 1, 2020.

[21] 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 determined the Appellant had one eligible week in the EI ERB period that could be applied to offset his overpayment. So, **the overpayment was reduced by \$500.00 to \$1,500.00.**

[22] 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. I realize the Appellant testified that no one mentioned he had to payback the advance payment and the situation wasn't fair. However, I must apply the law to the evidence before me. In other words, I cannot ignore or re-fashion the law even for compassionate reasons.⁷

The Appellant's request to write-off the Overpayment

[23] During the hearing, the Appellant confirmed that he asked the Commission to write-off his overpayment of \$1,500.00. In the Appeal Record, the Commission explained they informed the Appellant that a review to assess the possibility of writing-off his remaining overpayment was submitted for adjudication (GD3-35). However, the Commission further explained that at the time of the appeal the adjudication process to determine whether the overpayment could be written-off **wasn't yet finalized.**

[24] I wish to emphasize to the Appellant that I have no authority to write-off his 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. So, the Appellant can follow-up with the Commission to ask if they have determined

⁶ See sections 43 and 153.1301 of the EI Act.

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

⁸ *Villeneuve v Canada (Attorney General)*, 2005 FCA 440; *Mosher v Canada (Attorney General)*, 2002 FCA 355; and *Filiatrault v Canada (Attorney General)*, A-874-97.

whether his overpayment could be written-off. Or, the Appellant could contact the Canada Revenue Agency (CRA) to discuss fair payment arrangements.

Conclusion

[25] The Appellant has to payback \$2,000.00 of the EI ERB advance payment he received. However, the Commission determined the Appellant **had one eligible week in the EI ERB period that could be applied to offset his overpayment**. So, the overpayment was reduced by **\$500.00 to \$1,500.00**.

[26] This means the appeal is dismissed.

Gerry McCarthy

Member, General Division – Employment Insurance Section