



Citation: *OS v Canada Employment Insurance Commission*, 2025 SST 139

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

## **Decision**

**Appellant:** O. S.

**Respondent:** Canada Employment Insurance Commission

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

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**Tribunal member:** Lilian Klein

**Type of hearing:** Teleconference

**Hearing date:** February 5, 2025

**Hearing participants:** Appellant

**Decision date:** February 6, 2025

**File number:** GE-25-201

## Decision

[1] The law requires me to dismiss this appeal. I'll now explain why.

[2] The Appellant wasn't eligible for the \$2,000 advance payment of the Employment Insurance Emergency Response Benefit (EI ERB). That's because he wasn't unemployed long enough to qualify for the weeks of benefits covered by this payment.

## Overview

[3] It's the second time that this appeal has come to the Social Security Tribunal's General Division (GD). On the first occasion, the GD dismissed the appeal. Then, the Appellant challenged the GD decision at the Tribunal's Appeal Division (AD). With the parties' agreement, the AD has returned this appeal to the GD for reconsideration since the hearing recording was missing. The AD says this impacted his right to natural justice.

[4] The facts are as follows. On April 14, 2020, the Appellant applied for EI. His claim was automatically established for EI ERB. This was a new benefit created under EI in response to the COVID-19 pandemic.<sup>1</sup> When you applied, the Canada Employment Insurance Commission (Commission) gave you a \$2,000 advance payment for four weeks and then paid \$500 for each week of unemployment that you claimed. The Appellant claimed for seven weeks of unemployment before he returned to work.

[5] The Commission says it overpaid the Appellant the \$2,000 advance payment. It says he was only entitled to EI ERB for the weeks of unemployment that he claimed. It says the \$2,000 was payment in advance for four weeks of EI ERB **if** he needed help later in his claim. It says after he'd returned to work, he was no longer eligible for that money.

[6] The Appellant disagrees. He says he shouldn't have to repay the advance payment since it was the government's mistake to pay the money and he wasn't warned that this could happen. He's asked the Commission to write off his overpayment. He says he can't afford to repay such a large amount of money so many years after it was paid.

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<sup>1</sup> Part VIII.4 of the *Employment Insurance Act* (EI Act) sets out the rules that apply to the Employment Insurance Emergency Response Benefit. (EI ERB).

## The issue I must decide

[7] Was the Appellant eligible for the EI ERB advance payment? Can he keep it?

## Analysis

[8] On April 14, 2025, the Appellant applied for EI. Between March 15, 2020, and October 3, 2020, claimants for EI were eligible for the newly created EI ERB for two weeks at a time.<sup>2</sup> The law allowed the Commission to pay them EI ERB **before** it would normally pay benefits.<sup>3</sup> This was different from regular EI which is paid **after** each two weeks of unemployment that you claim.

[9] The Commission paid the Appellant a \$2,000 advance payment when he first applied for benefits. This was equal to four weeks of EI ERB. Then it paid seven weeks from April 12, 2020, to May 30, 2020. It says it planned to recover the four-week advance payment by holding back two weeks of benefits after the 12<sup>th</sup> week and two weeks after the 17<sup>th</sup> week if he was then still unemployed. But he returned to work before those benefit recovery weeks.

[10] The Appellant agrees that he got the \$2,000 advance payment and the seven weeks of EI ERB that he claimed. But he says he shouldn't have to repay the advance payment since paying it was the government's mistake and he can't afford to repay it.

## My findings

[11] The evidence shows that the Appellant was paid 11 weeks of EI ERB in total. That included the four weeks covered by the advance payment. He doesn't dispute receiving this money. But the \$2,000 advance payment was designed to cover four weeks of benefits **only** if he needed them later in his claim.

[12] So, I find that the Appellant was no longer entitled to the advance payment after he returned to work on June 1, 2020. He'd never claimed benefits for the weeks that the advance payment was meant to cover. That's because he was only eligible for the weeks when he was unemployed.

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<sup>2</sup> See section 153.8(1) of the EI Act.

<sup>3</sup> See section 153.7(1.1) of the EI Act.

[13] The Appellant argues that he shouldn't have to repay the advance payment since the government never warned him that this could happen. He says it's the government's mistake. But even if the Commission makes errors, I must apply the law.<sup>4</sup> And the law says you have to repay the EI ERB advance payment if you returned to work and were no longer eligible for this benefit. That's the same rule as for any EI benefits you may be overpaid.<sup>5</sup>

[14] As for the government's delay in asking him to repay the money, the Commission may reconsider a claim for benefits within 36 months after benefits were paid or payable. The evidence shows that the Appellant's advance payment was issued on April 20, 2020. The Commission issued the Notice of Debt on April 23, 2022. So, the Commission acted within the 36 months allowed for review of his file.

[15] I sympathize with the Appellant's argument that he can't afford the repayment, but I have no power to change the law even in cases of financial hardship.<sup>6</sup>

[16] The Commission has since calculated one more week of benefits that the Appellant didn't initially claim. It says this can be applied against his \$2,000 overpayment. Although the amount of the overpayment isn't before me, I note that this extra week reduces the Appellant's overpayment by \$500 to \$1,500. The Commission has confirmed this in its reconsideration decision. So, \$1,500 is what he must now repay.

[17] The Commission hasn't yet decided on the Appellant's request to write off his remaining overpayment. I have no authority to consider this issue.<sup>7</sup> But if the Commission refuses his request, the Appellant can ask the Federal Court of Canada for a judicial review of that refusal.<sup>8</sup>

[18] The Appellant has another option. He may want to contact the CRA's Debt Management Centre at 1-866-864-5823 to request an extended repayment plan that he can afford.

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<sup>4</sup> See *Robinson v Canada (Attorney General)*, 2013 FCA 255.

<sup>5</sup> See sections 43 and 45 of the EI Act.

<sup>6</sup> See *Canada (Attorney General) v Knee*, 2011 FCA 301.

<sup>7</sup> See section 112.1 of the EI Act and *Canada (Attorney General) v Villeneuve*, 2005 FCA 440.

<sup>8</sup> It would be up to the Appellant to investigate the process and take the required steps to appeal to the Federal Court. Application forms are available by calling the Courts Administration Service (1-613-992-4238).

## **Conclusion**

[19] The Appellant wasn't eligible for the \$2,000 EI ERB advance payment since he wasn't unemployed long enough to qualify for this money.

[20] That's why I must dismiss his appeal.

Lilian Klein

Member, General Division – Employment Insurance Section