



Citation: *Canada Employment Insurance Commission v EM*, 2025 SST 376

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Kevin Goodwin

Respondent: E. M.
Representative: N. L.

Decision under appeal: General Division decision dated December 6, 2024
(GE-24-3663, GE-24-3664)

Tribunal member: Pierre Lafontaine

Type of hearing: In person
Hearing date: April 3, 2025
Hearing participants: Appellant's representative
Respondent
Respondent's representative

Decision date: April 14, 2025

File number: AD-24-861, AD-24-862

Decision

[1] The appeal is allowed. The amount of \$5 000 received by the Respondent (Claimant) in *Employment Insurance Emergency Response Benefits* (EI-ERB) must be repaid.

[2] However, I recommend that the Appellant (Commission) consider the possibility of writing off the debt resulting from the overpayment.

Overview

[3] The Claimant stopped working on March 23, 2020, because of the COVID-19 pandemic. She applied for Employment Insurance (EI) benefits. Her application was treated as a claim for EI-ERB because of amendments to the law in place at that time.

[4] The Commission paid the Claimant 24 weeks of EI-ERB from March 22 to October 3, 2020, for a total of \$12,000. It also paid the Claimant a \$2,000 advance payment of EI-ERB on April 6, 2020. In total, the Claimant received \$14,000 from the Commission.

[5] The Commission learned that the Claimant had worked and received earnings while she was paid EI-ERB. It reconsidered her claim and found that she wasn't eligible for EI-ERB during 10 weeks of her claim. This resulted in an overpayment, which the Claimant was called upon to repay.

[6] The Claimant disagreed and argued that she shouldn't have to repay any of the EI-ERB she received. She said she was working far less during the pandemic and needed the EI-ERB she received to support herself and her family. After review, the Commission maintained its initial decision. The Claimant appealed to the General Division of the Tribunal.

[7] The General Division determined that the Commission had 72 months within which it could reconsider the Claimant's claim. It determined that during weeks 1 to 12

of her claim the Claimant was eligible for the EI ERB under path one for the two-week periods from March 22 to June 13, 2020.

[8] The General Division determined that during weeks 13 to 20 of her claim, the Claimant was eligible under path two for the four weeks from June 14 to July 11, 2020, (during which she had income of \$890) and the four weeks from July 12 to August 8, 2020 (during which she had income of \$963).

[9] The General Division determined that the Claimant was ineligible for benefits between August 9 and October 3, 2020. This is because she hadn't ceased working for 7 consecutive days during any of the two-week periods between those dates. And she had earned more than \$1,000 in all the successive four-week periods in which EI-ERB was paid.

[10] The General Division concluded that the Claimant must repay \$4,000 of EI-ERB that she wasn't eligible to receive, less any amounts that have been retained in reduction of the debt.

[11] The Appeal Division granted the Commission leave to appeal of the General Division decision. The Commission submits that the General Division erred in law in its consideration of EI ERB eligibility pursuant to section 153.9(4) of the *Employment Insurance Act* (EI Act) for the period between July 12, 2020, to July 25, 2020.

Issue

[12] Did the General Division err in law in its consideration of EI ERB eligibility pursuant to section 153.9(4) of the EI Act for the period between July 12, 2020, to July 25, 2020?

Analysis

[13] The Claimant filed bi-weekly claims for the EI-ERB for the period of March 22 to October 3, 2020. She was paid 24 weeks of EI ERB totalling \$12,000. In addition, the Claimant received an advance payment of \$2,000 on April 6, 2020.

[14] To recover the advance, the Commission off set \$500 of the advance payment against EI-ERB it believed the Claimant was eligible for during the weeks of June 14, June 21, August 2, and August 9, 2020.

[15] So, in total, the Claimant received \$14,000.

[16] The Commission subsequently discovered that the Claimant had worked and received earnings during several weeks of her claim.

[17] Relying on information obtained from the Claimant's employer, the Commission decided that the Claimant wasn't eligible for benefits during the following two-week periods:

- July 12 to July 25, 2020
- August 9 to August 22, 2020
- August 23 to September 5, 2020
- September 2020 to September 19, 2020
- September 2020 to October 3, 2020

[18] It also decided that the off set for the week of August 9, 2020, had to be reversed because the Claimant wasn't eligible to receive benefits that week. This meant that \$500 of the \$2 000 advance payment had to be repaid.

[19] The **only issue raised** before me is whether the General Division made an error in law when it decided that the Claimant was eligible to EI-ERB for the two-week period of July 12 to July 25, 2020.¹

[20] The Commission submits the General Division made an error in law when it misapplied the *H.M.* decision in its consideration of EI-ERB eligibility pursuant to section 153.9(4) of the EI Act for the period between July 12, 2020, to July 25, 2020.

¹ I see no error made by the General Division in concluding that the Commission had 72 months to reconsider the Claimant's application and that it acted judicially when it decided to do so.

[21] The Commission submits that the General Division assessed the Claimant's eligibility between July 12, 2020, to July 25, 2020, by examining her earnings in successive weeks but failed to consider her earnings in the weeks leading up to the two-week period under review. Instead, the General Division determined that the Claimant was eligible for four weeks from July 12 to August 8, 2020, due to her combined income of \$963 over this four-week period.

[22] The Appeal Division in *H.M.* decided that a claimant is retrospectively eligible for the EI-ERB under section 153.9(4) if they earn no more than \$1,000 over the four-week period preceding the two-week claim period for which eligibility is determined, ignoring the weeks for which the emergency EI benefit was not paid. A four-week period under section 153.9(4) includes the two-week period for which eligibility is being verified.²

[23] The General Division decided that the Claimant was eligible for the four weeks from July 12 to August 8, 2020, during which her income was 963\$. It appears to have considered whether the Claimant earned more than \$1 000 over the four-week period following and including the two-week claim period for which eligibility is determined.

[24] This constitutes an error of law.

[25] I am therefore justified to intervene.

Remedy

There are two ways to fix the General Division's errors

[26] When the General Division makes an error, the Appeal Division can fix it in one of two ways: (1) It can send the matter back to the General Division for a new hearing; or (2) it can give the decision that the General Division should have given.³

² *Canada Employment Insurance Commission v H.M.*, 2023 SST 831, AD-23-50.

³ See section 59(1) of the *Department of Employment and Social Development Act*.

The record is complete enough to decide this case on its merits

[27] I am of the view that the record is complete. Both parties had the opportunity to present their case before the General Division. I will therefore give the decision that the General Division should have given.

Was the Claimant eligible for the two-week period of July 12 to July 25, 2020?

[28] To determine this, in accordance with *H.M.*, one must look at the period of four weeks leading up to and including the two-week claim period under review, which means from June 28 to July 25, 2020. During this period, the Claimant had earnings of 1 291\$. Therefore, she was not eligible for the two-week period of July 12 to July 25, 2020.

[29] I find that from the period between July 12, 2020, and July 25, 2020, the Claimant did not experience at least seven consecutive days with no income pursuant to the eligibility conditions under section 153.9(1) of the EI Act, and alternatively, she earned more than \$1,000 over the period of four weeks leading up to and including the two-week claim period under review pursuant to section 153.9(4) of the EI Act.

[30] Consequently, I have no choice to conclude that the Claimant received a total of \$5,000 in EI-ERB payments to which she was ineligible.

Conclusion

[31] The Commission's appeal is allowed.

[32] The Claimant received \$5,000 of EI-ERB that she wasn't eligible to receive. This amount, less any amounts that have been retained in reduction of the debt, must be repaid.

[33] During the appeal hearing, the Claimant reiterated that her application for EI-ERB was completed by her employer. She does not speak French and her English is weak. She said that repaying the debt would cause her undue hardship.

[34] The Claimant said that given her age, she is no longer capable of working and her income is minimal, and she still must support one of her adult children, who suffers from mental health issues as a single mother.

[35] Considering these circumstances, I recommend that the Commission consider the possibility of writing off the debt resulting from the overpayment.⁴

Pierre Lafontaine
Member, Appeal Division

⁴ I must point out that my recommendation is not binding on the Commission but constitutes an invitation to explore the possibility of a write-off considering the circumstances raised before me.