

Citation: *E. A. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 41

Appeal #: GE-13-2379

BETWEEN:

E. A.

Appellant
Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance

SOCIAL SECURITY TRIBUNAL MEMBER: Katherine Wallocha

HEARING DATE: May 21, 2014

TYPE OF HEARING: Teleconference

DECISION: Appeal Dismissed

PERSONS IN ATTENDANCE

E. A., the claimant, attended the hearing via telephone.

DECISION

[1] The Tribunal finds that the claimant was absent from Canada and not entitled to receive Employment Insurance (EI) benefits in accordance with paragraph 37(b) of the *Employment Insurance Act* (EI Act) and section 55 of the *Employment Insurance Regulations* (Regulations).

[2] The Tribunal finds that the claimant was not available for work pursuant to paragraph 18(a) of the EI Act.

INTRODUCTION

[3] The claimant filed for Employment Insurance (EI) benefits and an initial claim was established on May 5, 2013. The claimant reported that he was outside of Canada and the Canada Employment Insurance Commission (Commission) denied the claimant benefits for the period he was outside Canada. The claimant sought reconsideration of the Commission's decision, which the Commission maintained in their letter dated October 31, 2013. The claimant appealed to the Social Security Tribunal (SST).

[4] The hearing was scheduled for March 13, 2014 but the claimant contacted the SST to request an adjournment because he needed more time to prepare for the hearing. He requested the hearing be postponed until May 23, 2014. In the interest of natural justice, the adjournment was allowed and the hearing was rescheduled for May 21, 2014.

[5] The claimant contacted the SST and requested a subsequent adjournment indicating that he specifically requested May 23, 2014 as a hearing date and requested the hearing be rescheduled to this date. The subsequent adjournment was denied as it was determined that the claimant had not provided exceptional circumstances in accordance with subsection 11(2) of the SST Regulations.

FORM OF HEARING

[6] The hearing of this appeal was by teleconference for the reasons given in the Notice of Hearing dated February 11, 2014

ISSUES

[7] The issues under appeal are:

1. Whether the claimant was absent from Canada while receiving benefits pursuant to section 37 of the EI Act and section 55 of the Regulations.
2. Whether the claimant has proven that he was available for work in accordance with paragraph 18(a) of the EI Act.

THE LAW

Outside of Canada

[8] Paragraph 37(b) of the EI Act states that a claimant is not entitled to receive employment insurance benefits for any period during which the claimant is not in Canada, except in the cases provided for in section 55 of the Regulations.

[9] Section 55 of the Regulations states that subject to section 18 of the Act, a claimant who is not a self-employed person is not disentitled from receiving benefits for the reason that the claimant is outside Canada

- a) for the purpose of undergoing, at a hospital, medical clinic or similar facility outside Canada, medical treatment that is not readily or immediately available in the claimant's area of residence in Canada, if the hospital, clinic or facility is accredited to provide the medical treatment by the appropriate governmental authority outside Canada;

- b) for a period of not more than seven consecutive days to attend the funeral of a member of the claimant's immediate family or of one of the following persons;
- c) for a period of not more than seven consecutive days to accompany a member of the claimant's immediate family to a hospital, medical clinic or similar facility outside Canada for medical treatment that is not readily or immediately available in the family member's area of residence in Canada, if the hospital, clinic or facility is accredited to provide the medical treatment by the appropriate governmental authority outside Canada;
- d) for a period of not more than seven consecutive days to visit a member of the claimant's immediate family who is seriously ill or injured;
- e) for a period of not more than seven consecutive days to attend a bona fide job interview; or
- f) for a period of not more than 14 consecutive days to conduct a bona fide job search.

Availability

[10] Paragraph 18(a) of the EI Act provides that a claimant is not entitled to be paid benefits for a working day in a benefit period for which the claimant fails to prove that on that day the claimant was capable of and available for work and unable to obtain suitable employment.

EVIDENCE

[11] The evidence in the docket is as follows:

- a) The claimant completed the claimant's reports via the internet for the period of June 23 to July 6, 2013. He reported that he was outside of Canada during this report (Page GD3-11).

- b) The claimant reported in his report for the period of July 7 to July 20, 2013 that he had not returned to Canada during the period of this report (Page GD3-17).
- c) The claimant reported in his report for the period of July 21 to August 3, 2013 that he had returned to Canada on July 29, 2013 (Page GD3-23).
- d) The claimant completed a questionnaire on July 11, 2013 stating that he was out of Canada to visit relatives. He departed on June 24, 2013 but had made arrangements to be contacted about any job opportunities that may arise and he was ready to return home within 48 hours if offered a job (Page GD3-26).
- e) The claimant stated that he was out of Canada to visit family but is adamant that this was not a vacation. He departed on June 24 and returned on July 29, 2013 (Page GD3-33).
- f) The claimant mentioned that he was outside of Canada visiting relatives but had his computer and cell phone and indicated that he was looking for work and was able to return back to Canada within 48 hours if an employment opportunity came up. The claimant believes that he should still be payable benefits for the period he was outside of Canada based on the following information he read on the Service Canada Website:

"Usually, you are not eligible to receive regular benefits while you are away from Canada. However, you can receive regular benefits if you show that you are available for work in Canada while abroad and you inform your local Service Canada Centre that you will be away temporarily" AND "If you indicate that you have taken measures to be reached if an employment opportunity presents itself during your absence and that you are able to return to Canada within 48 hours, we will accept that you have proven your availability."

- g) The claimant was advised by the Commission that he had not considered the information which was listed in between those two paragraphs and was asked if he was away on a bona fide job search or to visit a family member who was seriously ill. He stated that he was not but he argued that the website did not state that those conditions had to be fulfilled and therefore, EI benefits should be payable (Page GD3-37).
- h) The claimant stated that as per the text found at the Service Canada website, he can be paid benefits if he can show that he is available to work in Canada while abroad. He is accepted and recognized to be available for work in Canada if he can be reached with a job offer while outside of Canada and can come back within 48 hours. The website also states that you can be outside of Canada for seven days if you are attending a funeral or accompanying a sick family member, but these two are not related. For example, accompanying a family member to a medical facility may prevent a claimant to return to Canada within 48 hours (Page GD3-46).
- i) The claimant provided a letter dated August 28, 2013 with his Request for Reconsideration. He explained the Service Canada website and how he got to the page that explains if he is allowed to leave Canada while receiving regular benefits. He has reproduced this page and explained that he fulfilled the second sentence in the first paragraph which stated that he can be paid if he can show that he is available to work in Canada provided that he informs Service Canada that he is temporarily outside of Canada (Page GD3-46).
- j) He then explained that the second and third paragraphs do not pertain to him but the last paragraph stated that he is accepted and recognized to be available for work in Canada if he can be reached with a job offer while outside of Canada and can come back within 48 hours. He believes that the second and third paragraphs do not relate to each other, as an example: accompanying a family member to a medical facility may prevent a claimant to return to Canada within 48 hours (Page GD3-46).
- k) The claimant was contacted by the Commission regarding his Request for Reconsideration and was asked to clarify the reason he was out of the country. He

stated that he did not wish to do so as he provided it in his letter which accompanied his Request for Reconsideration. The claimant was asked if the reason he was outside of Canada was to visit family as he had previously stated and he would not confirm or deny. The claimant was informed of where to find the legislation regarding availability, out of Canada and the exceptions which is the legislation that must be followed when making decisions. He was informed that the decision would be maintained regarding availability and out of Canada because the information on file indicated that he was visiting family which is considered personal reasons (Page GD3-47).

[12] The evidence at the hearing is as follows:

- a) The claimant referred to the letter dated August 28, 2013 which he submitted (Page GD3-44) stating that he is an average citizen who read the informational document provided by the government agency. This document is the government agency's interpretation of the law. He read this document which states that "you can receive regular benefits if you show that you are available for work in Canada while abroad and you inform your local Service Canada Centre that you will be away temporarily". He fulfilled these requirements.
- b) The claimant stated that while he was away, he was looking for jobs as a project engineer, account manager, electrical estimator and so on. He further testified that a possible employer contacted him on the Friday before he returned and they spoke briefly but had a full conversation on the Monday when he returned. He explained that he applies for jobs on a daily basis, even when he is working, through the websites simplyhired.ca, monster.ca and Workopolis.com. He stated that he is pretty motivated to go to websites and apply for jobs. He does not however, keep an agenda or a job search log. If there is an opportunity, he sends a resume. Furthermore, he explained that some large companies keep their own databases where he is constantly updating his information. As a project engineer, his employment is usually based on the term of the project.

- c) The claimant provided the names of two companies where he has applied but could not confirm if he applied to these jobs while he was outside of Canada. He explained that he went to his emails and searched that time line and these were the email responses he had received around that time.
- d) The claimant confirmed that he was outside of Canada from June 24 to July 29, 2013 to visit relatives in Russia and Kazakhstan. He did not apply for work in these countries because he does not have permission to work in Kazakhstan or Russia. The claimant was asked if any of the exceptions in regulation 55 applied to him and he referred to the letter he submitted stating that he was available for work while abroad and should be able to receive regular benefits.

SUBMISSIONS

[13] The claimant submitted that:

- a) He disagreed that he is not entitled to benefits stating that he had his computer and cell phone and can be contacted for jobs. He is also disputing because he was not on vacation (Page GD3-32).
- b) The claimant stated that as a member of the general public, he is obtaining information with regards to EI from official publications by Service Canada geared towards the general population. He must be able to assess his own case by using only the above stated publication. It appears that the EI case worker is not using the same document. Rather, he continued, the EI Act and Regulations are used to assess his situations with regard to being outside of Canada. It is the claimant's request to reconsider the initial decision using the information stated in the document "Employment Insurance Regular Benefits", produced by Service Canada, March 2010. The claimant stated that he has proved that he was eligible for benefits based on the criteria stated in this document geared toward the general public (Page GD2-4).

- c) He is a regular Joe who was reading the government official documents. He is not reading Acts and legislation but reading the documents prepared for the general public and making his decisions from there. Similar to what a person will do when they file income tax every year. The average person is not going to read the Income Tax Act but will follow the guide that is provided by the government agency.

[14] The Respondent submitted that:

Outside of Canada

- a) The claimant is subject to a disentitlement under subsection 37(b) of the Act because his reason for being out of Canada was to visit family and that reason does not fall within the exceptions of Regulation 55. The claimant's situation did not meet the exceptions specified in the legislation because he was not out of Canada for the purpose of undergoing medical treatment not available in his area of residence; he was not attending the funeral of an immediate family member or close relative; he was not accompanying an immediate family member or close relative undergoing medical treatment not available in Canada; he was not visiting an immediate family member or close relative who was ill or injured; he was not attending a bona fide job interview or conducting a bona fide job search. The claimant was out of Canada to visit family. This absence was for personal reasons and his situation does not meet the exceptions specified in the legislation (Page GD4-3).
- b) The claimant has been vague about his reasons for being out of Canada and he has yet to show his reasons for being out of Canada were for anything other than visiting family (Page GD4-4).

Availability

- c) The claimant has not proven he was available for, actively seeking and able to accept work during the period he was out of Canada. Having access to a computer

and a cell phone is not the same as actively seeking employment. If the claimant were to submit information supporting his availability for work such as a job search or a list of all the efforts he made to find work while out of Canada, his availability for work could be reviewed but it should be noted, it would not affect the other disentitlement for being out of Canada (Page GD4-5).

- d) The claimant has only told the Commission he was out of Canada to visit family and it was not for a vacation. He has not provided any further details to consider and though he states he was available for work during the period in question, he has not provided any evidence to support his statement. The claimant believes the Commission is incorrectly interpreting the legislation but that is not the case. The Act and Regulations are the legislation used in determining entitlement to benefits and the claimant is ignoring the exceptions of Regulation 55 in relation to him being entitled to receive benefits while out of Canada (Page GD4-6).

ANALYSIS

Outside of Canada

[15] In order for a claimant to be entitled to receive EI benefits for any period during which the claimant is not in Canada, they must meet one of the conditions outlined in section 55 of the Regulations.

[16] The claimant was outside of Canada from June 24 to July 29, 2013 while in receipt of EI benefits. He informed the Commission that he would be away and continued to file his reports indicating he was away. He reported that the purpose of his trip was to visit relatives.

[17] The claimant provided a quote from the Service Canada website indicating that he informed Service Canada that he would be outside of Canada and he was available for work and could return within 48 hours if necessary.

[18] The Tribunal sought guidance from **CUB 80877**, where Justice Goulard stated:

“Section 37 of the Act leaves no room for ambiguity. A claimant is not entitled to receive benefits for any period during which he or she is not in Canada. The only exceptions to this provision can be found at section 55 of the Regulations.”

[19] The Tribunal sought further guidance from **CUB 80855**, where Justice Goulard states:

“It has been held in a number of cases that, unless a claimant falls under one of the exceptions provided in section 55 of the Regulations, there has to be a disentitlement for the period during which the claimant is out of the country (**CUBs 27413, 44824, 53438, 57518 and 72399**). In **CUB 27413**, Justice Rothstein wrote:

“In my opinion, even if it were possible to adopt a liberal approach to the words "is not in Canada" in paragraph 32(b) [now paragraph 37(b)] in the abstract, this is precluded by the opening words of the paragraph ("Except as may otherwise be prescribed") and section 54 [now section 55] of the Regulations. It seems clear that Parliament, for better or worse, decided upon a very strict approach to the question of entitlement to unemployment insurance benefits for persons outside of Canada, presumably with a view to avoiding abuse of the unemployment insurance system. In paragraph 32(b) it enacted a clear and unequivocal restriction of unemployment insurance benefits for persons not in Canada. It established by regulation those exceptions it deemed appropriate. I do not see how it is open to an Umpire to attempt to interpret paragraph 32(b) in a broad and generous manner when Parliament has set out an exhaustive list of exceptions in section 54 of the Regulations.”

[20] In the present case, the claimant confirmed that he did not meet any of the exceptions found in section 55 of the Regulations. As is stated in the case law, section 37 leaves no room for ambiguity. The Tribunal finds that the claimant did not meet any of the exceptions found in section 55 of the Regulations.

[21] Therefore, the Tribunal concludes that the claimant has provided no evidence that he met the requirements for exemption under section 55 of the EI Regulations. The Commission is appropriate in imposing a disentitlement to benefits pursuant to section 37(b) of the EI Act.

Availability

[22] In order to show availability, the claimant must demonstrate that there is a desire to return to the labour market, the expression of that desire through efforts to find a suitable job, and not setting personal conditions that might unduly limit the chances of returning to the labour market (**Faucher A-56-96**).

[23] In this case, the claimant was outside of Canada visiting relatives. There is a presumption that a claimant who is outside of Canada is not available for work and the onus is on the claimant to prove that he was available for work.

[24] The claimant explained the nature of his work and the fact that he is always looking for employment and applying for jobs on a daily basis. When asked to provide examples of the employment he applied for while he was outside of Canada, he provided the name of two companies but could not confirm if he applied for these jobs while he was away. He explained that he uses websites to apply where you submit your resume on-line but he does not keep an agenda or a log of what jobs he has applied for.

[25] The claimant's main argument is that he read on the Service Canada website that "Usually, you are not eligible to receive regular benefits while you are away from Canada. However, you can receive regular benefits if you show that you are available for work in Canada while abroad and you inform your local Service Canada Centre that you will be away temporarily" The website also stated that "If you indicate that you have taken measures to be reached if an employment opportunity presents itself during your absence and that you are able to return to Canada within 48 hours, we will accept that you have proven your availability"

[26] The claimant argues that he is an average person who is not going to read the Act and Regulations but will rely on the government agency's interpretation of the legislation which they provided. The Tribunal finds that the claimant has made a fair point however, in Federal Court of Appeal decision **Granger (A-684-85)**, Justice Pratt stated that "the Commission or its representatives do not have the power to amend the law and their interpretation of the EI Act does not have the force of the law".

[27] Although the Tribunal understands how the claimant made his decision to travel believing that it would not interrupt his entitlement to EI benefits, the misleading information provided on the Service Canada website does not have the power to amend the law nor have the force of the law.

[28] While the claimant stated that he was available for work, he had his computer and cell phone and could have returned within 48 hours if an employment opportunity presented itself, he has not provided evidence to show that he was actively seeking employment. The Tribunal finds that the claimant has not shown a desire to return to the labour market as soon as a suitable job was offered. Further, he has not provided evidence to show that he made efforts to find suitable employment while he was outside of Canada and he set personal restrictions by being outside of Canada that unduly limited his chances of finding suitable employment.

[29] For these reasons, the Tribunal finds that the claimant has not proven that he was available for work during the period of June 24 to July 29, 2013 and is not entitled to receive benefits under section 18(a) of the EI Act.

CONCLUSION

[30] The appeal is dismissed.

K. Wallocha
Member, General Division

DATED: May 23, 2014