

[TRANSLATION]

Citation: *D. A. v. Canada Employment Insurance Commission*, 2014 SSTGDEI 125

Appeal #: GE-14-2613

BETWEEN:

D. A.

Appellant
Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance

SOCIAL SECURITY TRIBUNAL MEMBER: Charline Bourque

HEARING DATE: September 25, 2014

TYPE OF HEARING: Teleconference

DECISION: Appeal allowed

PERSONS IN ATTENDANCE

[1] D. A., the Claimant, participated in the teleconference hearing on September 25, 2014.

DECISION

[2] The Tribunal is of the opinion that a disentitlement must be imposed for eight 24-hour periods, including weekdays and weekends when the Claimant was outside Canada, pursuant to paragraph 37(b) of the *Employment Insurance Act* (the Act).

INTRODUCTION

[3] The Claimant filed an Employment Insurance claim effective March 23, 2014. On April 29, 2014, he informed the Canada Employment Insurance Commission (the Commission) that he had been on vacation from 5:00 p.m. on April 18, 2014, to 4:00 p.m. on April 27, 2014. The Commission determined that the Claimant was not entitled to receive Employment Insurance benefits during the period from April 18, 2014, to April 25, 2014, because he was outside Canada and the reasons for this absence from the country do not come under the exceptions set out in section 55 of the *Employment Insurance Regulations* (the Regulations). The Commission also determined that the Claimant had not proven his availability for work while he was abroad. Consequently, a disentitlement was also imposed for the period from April 21, 2014, to April 25, 2014, pursuant to paragraph 18(a) of the Act. No notice was sent to the Claimant. On June 11, 2014, following a request from the Claimant for a reconsideration, the Commission informed the Claimant that it was not changing its decisions of April 29, 2014, regarding his being outside Canada and his availability. The Claimant appealed from this decision to the Social Security Tribunal (the Tribunal) on June 20, 2014.

TYPE OF HEARING

[4] The hearing for this appeal was held by teleconference on September 25, 2014, for the reasons given in the notice of hearing dated September 8, 2014.

ISSUE

[5] The issue consists of determining whether the Claimant was entitled to receive Employment Insurance benefits when he indicated that he was on vacation from 5:00 p.m. on Friday, April 18, 2014, to 4:00 p.m. on April 27, 2014.

APPLICABLE LAW

[6] Paragraph 37(*b*) of the Act states the following:

Except as may otherwise be prescribed, a claimant is not entitled to receive benefits for any period during which the claimant

(*b*) is not in Canada.

[7] Section 55 of the Regulations lists the exceptions in which case a claimant may receive Employment Insurance benefits when he or she is abroad:

(1) 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, namely,

(i) a grandparent of the claimant or of the claimant's spouse or common-law partner,

(ii) a grandchild of the claimant or of the claimant's spouse or common-law partner,

(iii) the spouse or common-law partner of the claimant's son or daughter or of the son or daughter of the claimant's spouse or common-law partner,

(iv) the spouse or common-law partner of a child of the claimant's father or mother or of a child of the spouse or common-law partner of the claimant's father or mother,

(v) a child of the father or mother of the claimant's spouse or common-law partner or a child of the spouse or common-law partner of the father or mother of the claimant's spouse or common-law partner,

(vi) an uncle or aunt of the claimant or of the claimant's spouse or common-law partner, and

(vii) a nephew or niece of the claimant or of the claimant's spouse or common-law partner;

(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.

(1.1) Only the periods set out in paragraphs (1)(b) and (d) may be cumulated during a single trip outside Canada, and only if the member of the claimant's immediate family whom the claimant visits under paragraph (1)(d) is the person whose funeral the claimant attends under paragraph (1)(b).

(2) For the purposes of subsections (1) and (1.1), the following persons are considered to be members of the claimant's immediate family:

(a) the father and mother of the claimant or of the claimant's spouse or common-law partner;

(b) the spouse or common-law partner of the father or mother of the claimant or of the claimant's spouse or common-law partner;

(c) the foster parent of the claimant or of the claimant's spouse or common-law partner;

(d) a child of the claimant's father or mother or a child of the spouse or common-law partner of the claimant's father or mother;

(e) the claimant's spouse or common-law partner;

(f) a child of the claimant or of the claimant's spouse or common-law partner;

(g) a ward of the claimant or of the claimant's spouse or common-law partner; and

(h) a dependant or relative residing in the claimant's household or a relative with whom the claimant permanently resides.

EVIDENCE

[8] On April 29, 2014, the Claimant submitted the Non-Availability Questionnaire. He indicated that he was on vacation from 5:00 p.m. on April 18, 2014, to 4:00 p.m. on April 27.

[9] On June 10, 2014, when contacted by the Commission during the reconsideration of its decision, the Claimant mentioned that he had been available for work on April 18, 2014, and that he did not leave until 5:00 p.m. Therefore, he did not agree with not being paid benefits for that day. The Commission told the Claimant that the disentitlement for non-availability was imposed correctly, that is, from April 21, 2014, to April 25, 2014, and that the disentitlement for the period outside Canada must start the day he left, regardless of the time that he left. Therefore, the disentitlement must be imposed effective April 18, 2014.

[10] After the hearing, the Claimant submitted a receipt dated April 18, 2014, at 6:58 p.m., from the IGL duty-free shop in St-Bernard-de-Lacolle.

SUBMISSIONS OF THE PARTIES

[11] The Claimant submitted the following:

(a) The Claimant indicated that he was available all day on Friday, April 18, 2014, until 5:00 p.m. He submitted that on that day his current employer, Prévost Car, telephoned him at 11:00 a.m. to hire him starting April 28, 2014. He indicated that he left home at 5:00 p.m. and he left the country at 7:00 p.m.

(b) The Claimant indicated that he was misinformed by the Service Canada office in Thetford Mines a few weeks before his departure since he was told that he could leave the country after 4:00 p.m. and that he could receive Employment Insurance benefits. He indicated that he believed he should be paid benefits for the day of April 18, 2014.

[12] The Respondent submitted the following:

(a) The Claimant lives at Thetford Mines and he left Canada on April 18, 2014, for a vacation. He came back on April 27, 2014. Although the Claimant said that he left the country on Friday, April 18, 2014, at 5:00 p.m., and he was available to work all that day, he was not paid benefits for that day because he nevertheless was outside Canada for the period in question. The Act is clear on this point. When a claimant claims Employment Insurance benefits while outside Canada, the claimant's situation must come under one of the exceptions listed in section 55 of the Regulations in order for the claimant to receive benefits. This was not the Claimant's case.

(b) Although the Claimant maintains that the Commission misinformed him by telling him that he could leave the country after 4:00 p.m. and his benefits would not be cut, when a claimant is outside Canada and his or her situation does not come under any of the exceptions listed in section 55 of the Regulations, he or she cannot receive Employment Insurance benefits. This was the Claimant's case.

(c) Here, all these factors applied in the Claimant's case for April 18, 2014. He showed that he was available on April 18, 2014. The Commission also wants to inform the Tribunal that no disentitlement based on the Claimant's non-availability was established for April 18, 2014, since the Claimant was available for the entire day of April 18, 2014, as he said. This decision was rendered in accordance with section 18 of the Act.

ANALYSIS

[13] The Claimant indicated that the only issue was the disentitlement for being outside Canada that was imposed for the day of April 18, 2014. The Claimant agreed with the Commission's decision regarding the disentitlement imposed for the period from April 21 to April 25, 2014, because he was on vacation.

[14] The Claimant indicated that he was available to work on April 18, 2014, and left his home around 5:00 p.m. The receipt submitted after the hearing shows that he was at the duty-free shop in St-Bernard-de-Lacolle at 6:58 p.m. The Claimant also indicated that he received an offer of employment the day that he left. He was to start work on April 28, 2014. The Claimant also indicated that the Employment Insurance office had informed him that he could leave the country after 4:00 p.m. without his Employment Insurance benefits being affected.

[15] The Commission maintains that, although the Claimant was misinformed by being told that he could leave the country after 4:00 p.m. and his benefits would not be cut, when he was outside Canada and did not meet the exceptions set out in section 55 of the Regulations, he could not receive Employment Insurance benefits.

[16] First of all, although the Claimant indicated that he was appealing just the disentitlement imposed for April 18, 2014, the Tribunal is of the opinion that it must look at the entire period that he was outside Canada and that one day at a time cannot be subtracted from this period.

[17] Section 55 of the Regulations lists the circumstances in which a claimant abroad may be entitled to receive benefits under paragraph 37(b) of the Act. The Claimant indicated that he was on vacation. Consequently, the Tribunal is satisfied that this situation does not come under the exceptions listed in section 55.

[18] Nevertheless, the Claimant indicated that he left home around 5:00 p.m. and he left Canada around 7:00 p.m. He submitted a receipt from the duty-free shop to show the time at which he crossed the Canada-U.S. border.

[19] Therefore, generally speaking, paragraph 37(b) of the Act provides that a claimant is not entitled to receive benefits for “any period” during which the claimant was not in Canada (*Canada (Attorney General) v. Picard*, 2014 FCA 46).

[20] In *Picard*, the Court stated as follows:

In my view, the answer is no. The absence on each calendar day should not be disregarded. The text of paragraph 37(b) speaks of “any period” outside of Canada, not “any period” of each calendar day. Further, the purpose of the provision is to ensure that a person is available and looking for work in Canada. A situation could be envisaged where a claimant is outside of Canada for almost two entire days – in substance, not available and looking for work in Canada on those days – and yet, because the claimant was never away for an entire calendar day, no benefits are withheld. This is contrary to the purpose of paragraph 37(b).

In light of the foregoing, I conclude that the “period” in paragraph 37(b) of the Act is the period, expressed in complete, whole days, during which the claimant was outside of Canada. For this purpose, a complete, whole day does not necessarily mean a calendar day. Rather, it can include a continuous 24 hour period that straddles two calendar days. (*Canada (Attorney General) v. Picard*, 2014 FCA 46)

[21] The Court specified that a complete, whole day does not necessarily mean a calendar day. Rather, it can include a continuous 24-hour period that straddles two calendar days.

[22] The Claimant indicated that he left home on April 18 at 5:00 p.m., showed that he left the country around 7:00 p.m., and indicated that he returned on April 27 at 4:00 p.m. Therefore, since a 24-hour period does not necessarily mean a calendar day and may include a continuous 24-hour period that straddles two calendar days, the Tribunal is of the opinion that, from April 18, 2014, to April 27, 2014, the Claimant was abroad for eight 24-hour periods including weekdays and weekends. Consequently, the Tribunal is satisfied that the disentitlement for being outside Canada must be imposed for these eight 24-hour periods during which the Claimant was out of the country.

CONCLUSION

[23] The appeal is allowed.

Charline Bourque

Member, General Division

DATE OF REASONS: October 24, 2014