

**Citation: *P. B. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 141**

**Date: August 27, 2015**

**File number: GE-15- 2207**

**GENERAL DIVISION - Employment Insurance Section**

**Between:**

**P. B.**

**Appellant**

**and**

**Canada Employment Insurance Commission**

**Respondent**

**Decision by: Me Dominique Bellemare, Vice-Chair, General Division - Employment Insurance Section**

**Heard by Teleconference on August 27, 2015**

## **REASONS AND DECISION**

### **PERSONS IN ATTENDANCE**

The Appellant was present by teleconference. The Respondent, the Employment Insurance Commission (Commission) was not present.

### **INTRODUCTION**

[1] The Appellant is appealing a Reconsideration Decision dated June 25, 2015, in which the Commission disentitled her for a period of 6 days for being out of Canada when she made a trip to Las Vegas. The Appellant did declare her absence from Canada, but is contesting only the disentitlement imposed on April 29, 2015.

[2] The hearing was held by Teleconference for the following reasons:

- a) The complexity of the issue(s) under appeal.
- b) The fact that the credibility is not anticipated to be a prevailing issue.
- c) The fact that the appellant will be the only party in attendance.
- d) The form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

### **ISSUE(S)**

[3] Was the Appellant out of Canada on April 29, 2015, for the purposes of the Employment Insurance Act (Act)?

### **THE LAW**

[4] **Subsection 37(b) of the Act:**

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

## **EVIDENCE**

[5] The Appellant testified that she went to Las Vegas, USA, for a vacation between April 23 and 29, 2015. The plane ticket that she filed with the Tribunal demonstrates that she left at 18:30 on April 23, 2015, and came back at 0:43 on April 29, 2015. She confirmed in her testimony that these times and dates were accurate.

## **SUBMISSIONS**

[6] The Appellant submitted that:

a)- She is only contesting the disentanglement imposed regarding the 29<sup>th</sup> of April, 2015, as she was not gone of the entire 24 hour period.

[7] The Respondent submitted that:

a)- Except as otherwise prescribed by the legislation, a claimant is not entitled to receive employment insurance benefits for any period during which the claimant is not in Canada. The claimant in this case is not seeking exemption under the Regulations but rather is seeking relief from disentanglement based on the time of her arrival on April 29, 2015 and the fact that he could not have worked on the day she arrived. However, these statements are related to her availability for work and are addressed under Section 18 of the EI Act. The disentanglement for her absence from Canada was imposed under Section 37 of the act and requires a different application of the legislation. In the present case, the purpose of the claimant's absence was for vacation which is not covered by the exemptions found in Regulation 55. All claimants whose absences are not exempted by the Regulations are subject to disentanglement for the entire duration of their absence. Therefore, since the provisions of Regulation 55 are not applicable in this case, the claimant is subject to disentanglement under Section 37 of the Act for the entire period she was not in Canada regardless of the time of her arrival.

b)- In this case the issue is not one of her availability for work on April 29, 2015 but the timing of her absence from Canada. Unfortunately the legislation does not differentiate

between being outside of Canada for the whole or part of the day. As a result the Commission must disentitle for the whole day of April 29, 2015 even though the claimant arrived in the first part of the morning of that same day. The Commission submits that the claimant is subject to a disentitlement under subsection 37(b) of the Act because she was absent from Canada from April 23, 2015 to April 29, 2015 inclusive. This period as provided for in Subsection 37(b) of the Act strictly includes the day of departure and the whole day of return, regardless of the time. The Commission is given no discretion to interpret partial days. The Commission submits that the jurisprudence supports its decision. The Federal Court of Appeal confirmed the principle that employment insurance benefits are not payable to those persons not in Canada except as specifically prescribed by the Regulations, see *Canada (AG) v. Gibson*, 2012 FCA 166 and *Canada(AG) v. Bendahan*, 2012 FCA 237. The Court further confirmed that the onus is on the claimant to prove that her absence outside Canada met the exceptions prescribed by the Regulations, see *Canada (AG) v. Peterson*, A-370-95.

## ANALYSIS

[8] It is unfortunate that the Commission still does not remit copy of the recent Federal Court of Appeal decision in *Canada (Attorney General) vs. Picard*, 2014 CAF 46 to their agent, as unnecessary appeals could be avoided.

[9] While it is true that the Appellant made a small mistake in filing her non-availability questionnaire online, by inscribing her departure at “6:30” rather than “18:30” and her return as “12:43” instead of “0:43”, when she sent copy of her WestJet ticket in her Request for Reconsideration, the Commission should have granted her request.

[10] When the Commission states that it does not have discretion to grant partial days, it is wrong. To the contrary, the *Picard*, supra, decision is clear that they must do so. In *Picard*,

supra, the Federal Court states that absences from Canada must be counted in full 24 hour periods. As the appellant was out of Canada for 5 days, 6 hours and 13 minutes, she was deemed to have been away 5 days, not 6.

[11] Therefore the Appellant was not considered away on April 29, 2015, and she is not disentitled on that day. As availability is not an issue, the Tribunal does not have to make a finding on this issue.

## **CONCLUSION**

[12] The appeal is allowed and the Appellant was entitled to benefits on April 29, 2015, and the Commission must pay this extra day of benefit to the Appellant.

Me Dominique Bellemare  
Vice-Chair, General Division - Employment Insurance Section