



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. M. v. Canada Employment Insurance Commission*, 2016 SSTGDEI 102

Tribunal File Number: GE-16-834

BETWEEN:

A. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

HEARD ON: July 15, 2016

DATE OF DECISION: July 28, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

Mr. A. M., the Appellant (claimant) attended the hearing.

INTRODUCTION

[1] On August 31, 2014 the Appellant established a claim for employment insurance. On October 13, 2015 the Commission notified the Appellant it was unable to pay him benefits from February 16, 2015 to February 20, 2015 because he was not in Canada. On November 13, 2015 the Appellant made a request for reconsideration. On February 3, 2016 the Commission modified its original decision and the Appellant appealed to the *Social Security Tribunal of Canada* (Tribunal).

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

- a) The complexity of the issue(s) under appeal.
- b) The fact that the credibility may be a prevailing issue.
- c) The information in the file, including the need for additional information.
- 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

[3] The Tribunal must determine whether the Appellant should be disentitled to benefits pursuant to section 37 of the *Employment Insurance Act* (the Act) and section 55 of the *Employment Insurance Regulations* (the Regulations) because he was absent from Canada.

THE LAW

[4] Section 37(b) of the Act states, except as otherwise prescribed, a claimant is not entitled to receive benefits for any period during which the claimant is not in Canada, except for the allowable reasons in section 55 of the Regulations.

[5] 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.

[6] (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).

EVIDENCE

[7] Copies of the Appellant's report cards which he does not report he was out of the Country (GD3-15 to GD3-28).

[8] On August 8, 2015 the Commission notified the Appellant they had obtained information from Canada Border Services Agency Traveler Declaration Card indicating he travelled outside of Canada from February 8, 2015 to February 20, 2015 to which the Appellant replied providing his reasons for his absence to attend a funeral of his grandfather and visit his sick mother (GD3- 29 to GD3-36).

[9] On October 13, 2015 the Appellant stated he failed to report his absence from Canada as he had limited access to the internet so one of his friends filled out his EI reports for him. He stated that his friend did not fully understand the questions. The Commission advised the Appellant that it was his responsibility to complete his own cards and ensure they were done so correctly. A penalty was imposed (GD3-38).

[10] On October 13, 2015 the Commission notified the Appellant they were unable to pay him benefits from February 16, 2015 to February 20, 2015, and also concluded he knowingly made false statements (GD3-39 to GD3-40).

[11] A notice of debt was issued in the amount of \$1291.00 (GD3-41).

[12] On November 13, 2015 the Appellant made a request for reconsideration reiterating his reasons for being out of Canada and that he didn't make false statements but rather it was an incident of improper reporting this one and only time and requested the penalty be removed (GD3-43 to GD3-46).

[13] On February 3, 2016 the Appellant reiterated to the Commission that his friend had filled out his cards as he had limited access to the internet and did not tell him he had made mistakes. As the Appellant stated he was very distraught over the death of his grandfather. The Commission advised that he would be allowed 7 days out of Canada for the funeral, however he will not be paid from February 16-20th, 2015 and stated they would remove the penalty as he provided mitigating circumstances why the cards were completed incorrectly (GD3-49 to Gd3-50).

[14] On February 3, 2016 the Commission advised the Appellant the decision of out of Canada from February 16-20th, 2015 was maintained but the penalty was overturned and provided the information on his right to appeal to the Tribunal (GD3-51 to GD3-52).

[15] On February 29, 2016 the Appellant filed a Notice of Appeal stating that this was the first time he had made a mistake in his EI reporting. He stated he is a full time student and would have made himself available for work. He stated he maintained his good grade average while he was out of the Canada to attend the funeral ceremony. He does not have a full time job to pay the money back for the period of February 16, 2015 to February 20, 2015. He stated that Louis Riel public holiday fell within that period. He stated there were two main reasons to go to Pakistan, one to attend the funeral of his grandfather and to visit his seriously critically ill mother in the hospital (GD2-1 to GD2-13).

SUBMISSIONS

[16] The Appellant submitted that:

- a) He was out of Canada to attend the funeral of his grandfather and then extended his stay to visit his sick mother, therefore he should be entitled to that week as well;
- b) Repaying the money will be hard;
- c) His going to Pakistan did not affect his marks in school;
- d) February 16th was the Louis Riel family day which was a holiday; and

- e) He never contacted Service Canada to advise them he would be out of Canada and discuss on how he should make the report or if he would be entitled to benefits while he was away.

[17] The Respondent submitted that:

- a) In this case the claimant was outside Canada from February 8, 2015 to February 20, 2015, an issue not in dispute. The Commission considered that during this period the claimant was attending his grandfather's burial ceremony therefore complied with the exception in accordance with section 55(1)(b) of the Regulation; allowing a period of 7 days free of a disentitlement, the period from February 8, 2015 to February 14, 2015;
- b) The Commission argues the period from February 16, 2015 to February 20, 2015 cannot be combined with the above exception because the second reason the claimant was outside Canada was to visit his seriously ill mother. The Commission submits that subsections 55(1.1) of the Regulation does allow for a combination during a single absence from Canada, of the up to 7 days to visit a seriously ill family member, with up to an additional 7 days to attend the funeral of that immediate family member. This was not the claimant's situation, therefore can only benefit from one 7 day period free of disentitlement; and
- c) The Commission maintains that the claimant is subject to a disentitlement under subsection 37(b) of the Act from February 16, 2015 to February 20, 2015 because the circumstances causing him to be outside Canada cannot be combined under the exceptions of Regulation 55.

ANALYSIS

[18] The Tribunal must decide whether the Appellant should be disentitled pursuant to section 37(b) of the Act because he was absent from Canada and does not meet any of the exceptions set out in section 55 of the Regulations.

[19] The Appellant presents the argument that he was out of Canada to attend the funeral of his grandfather and then extended his stay to visit his sick mother; therefore he should be entitled to that week as well.

[20] The Tribunal finds there is no dispute that the Appellant was out of Canada. While there are exemptions to section 37(b) to avoid a disentitlement under section 55 of the Regulations, the Tribunal does find sufficient evidence to support the Appellant has met the requirement for the first 7 days of his trip in 55(b) *For a period of not more than seven consecutive days to attend the funeral of a member of the claimant's immediate family*; however the section 55(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)*, must be applied for the second week.

[21] In this case for the Appellant cannot be entitled to benefits for the second week for the period of February 16-20th, 2015, as he was out of Canada for two separate events and therefore can only benefit from one 7 day period free of disentitlement as pursuant to subsections 55(1.1) of the Regulations as it does not allow a combination during a single absence from Canada, unless he was out of Canada to visit a seriously ill family member, with up to an additional 7 days to attend the funeral of "that" immediate family member. The Tribunal finds that is not the case here.

[22] The Appellant presents the argument that his schooling was never affected while he was out of the Canada.

[23] The Tribunal finds the issue before it is whether the Appellant should be disentitled to benefits because he was out of Canada and his issue of attending a training course is not in question and therefore the argument is not relevant.

[24] The Appellant presents the argument that the Louis Riel civic holiday fell within the period he was out of Canada.

[25] The Tribunal finds section 37 of the Act is clear and unequivocal, and there is no doubt that benefits are denied to a claimant during a period of absence from Canada. Unless they meet

the exemptions set out in section 55 of the Regulations, and in this case the Appellant does not meet any of the exceptions for the period of February 16 to 20th, 2015.

[26] The Appellant presents the argument that repaying the money will be hard.

[27] The Tribunal finds from the Appellant's oral evidence that he never contacted Service Canada to advise them he would be out of Canada and discuss on how he should make the report or if he would be entitled to benefits while he was away, which the Tribunal finds would have been a reasonable thing to do which may have changed his plans, or he would have known he would not be entitled to the monies while he was away.

[28] The Tribunal sympathies with the Appellant's situation, however the Tribunal does not have the authority to alter the requirements of the Act and must adhere to the legislation regardless of the personal circumstances of the Appellant (*Canada (A.G.) v. Levesque*, 2001 FCA 304).

CONCLUSION

[29] The appeal is dismissed.

Teresa Jaenen

Member, General Division - Employment Insurance Section