



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *B. B. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 47

Tribunal File Number: GE-16-3956

BETWEEN:

B. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Yoan Marier

HEARD ON: March 30, 2017

DATE OF DECISION: April 6, 2017

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant and his representative, Camille Marcoux-Berthiaume, attended the teleconference hearing.

INTRODUCTION

[1] The Appellant filed an initial claim for Employment Insurance benefits effective December 20, 2015.

[2] On August 15, 2016, the Canada Employment Insurance Commission (Commission) found that the Appellant was disentitled from receiving Employment Insurance benefits from July 14 to 20, 2016, because he was outside Canada during that time. That decision resulted in an overpayment of \$524.

[3] On October 3, 2016, upon reconsideration, the Commission upheld its initial decision.

[4] The Appellant appealed the reconsideration decision to the Social Security Tribunal on October 27, 2016.

[5] The hearing was held via teleconference for the following reasons:

- a) The fact that the claimant will be the only party in attendance.
- b) The information in the file, including the need for additional information.
- c) This type 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

[6] The Tribunal must determine whether the Appellant was entitled to receive Employment Insurance benefits while he was outside Canada, in accordance with section 37 of the *Employment Insurance Act* (Act) and section 55 of the *Employment Insurance Regulations* (Regulations).

EVIDENCE

On File

[7] The Appellant filed an initial claim for Employment Insurance benefits on December 17, 2015. (GD3-3 to 10) This application took effect on December 20, 2015. (GD4-1)

[8] Transcripts of the Appellant's telephone statements show that he responded "No" to the question of whether he had been outside Canada from July 3 to 16, 2016, and from July 17 to 30, 2016. (GD3-15 to 28)

[9] On August 15, 2016, the Appellant contacted the Commission by telephone to inform it of his absence from Canada from July 14 to 20, 2016. He said that he had travelled to visit a gravely ill or injured family member. He said that he had not been available for work during that time due to an emotional breakdown. (GD3-29 to 32)

[10] On August 15, 2016, in a second telephone conversation with the Commission, the Appellant stated that he had been in Italy from July 14 to 20, 2016, to bring back his sister's body. The Appellant had not been available for work during that time. (GD3-33)

[11] On August 15, 2016, the Commission informed the Appellant that he was not entitled to receive Employment Insurance benefits from July 14 to 20, 2016, because he had been outside Canada during that time. (GD3-34)

[12] That disentitlement resulted in an overpayment of \$524 (GD3-35).

[13] In a conversation between the Commission and the Appellant on September 30, 2016, the Appellant mentioned that he had gone to Italy to identify and bring back his sister's body.

He confirmed the dates from July 14 to 20, 2016. He stated that he had been sick and unable to work during the period in question. He was claiming sickness benefits. (GD3-42)

[14] On October 3, 2016, following the reconsideration decision, the Commission informed the Appellant that it had upheld its initial decision.

At the Hearing

[15] The Appellant confirmed the dates of his absence from Canada, from July 14 to 20, 2016.

[16] He confirmed that he had gone to Italy following the tragic accidental death of his sister in that country.

[17] Once there, he had identified her body, carried out various administrative formalities and signed paperwork authorizing the cremation of her body. Then the Appellant and his other sister who was with him went to the site of the accident to place flowers, a cross and a photo. Then the Appellant took his sister's ashes back to Canada.

[18] Due to the emotional shock of losing his sister, the Appellant was on a leave of absence from work from July 4 to 8 and was unable to work during that time. He received sickness benefits.

[19] The Appellant's representative submitted the following definition of the term "funeral" from the French dictionary *Le Petit Robert*: [translation] "*The ceremonies held shortly after a person's death for honouring and paying one's last respects to the deceased, usually before burial or cremation.*"

SUBMISSIONS

Appellant's Arguments

[20] He cannot be considered disentitled from benefits from July 14 to 20, because he meets one of the exceptions set out in paragraph 55(1)(b) of the Regulations.

[21] The purpose of the trip and of the Appellant's various activities in Italy was to attend a funeral.

Respondent's Arguments

[22] The Appellant is disentitled from benefits under paragraph 37(b) of the Act because he was travelling outside Canada at that time.

[23] The Appellant's situation does not fall under any of the exceptions set out in section 55 of the Regulations. Furthermore, the Appellant was unavailable for work during his trip due to illness and, had it not been for his illness, he still would have been unavailable for work during the time he was away.

ANALYSIS

[24] The relevant legislative provisions are reproduced in an appendix to this decision.

[25] Except as otherwise prescribed by the Regulations, paragraph 37(b) of the Act establishes that a claimant is not entitled to receive benefits for any period during which the claimant is not in Canada.

[26] According to the Federal Court of Appeal, the onus is on the claimant to show that they qualify to receive benefits and that there are no circumstances that have the effect of disentitling or disqualifying them from receiving benefits. (*Peterson v. Attorney General of Canada*, A-370-95)

[27] The absence from Canada in the file was confirmed by the Appellant's testimony. The Appellant was absent from Canada from July 14 to 20, 2016.

[28] Section 55 of the Regulations provides exceptions to section 37 of the Act. One of these exceptions, found at paragraph 55(1)(b), provides that a claimant is not disentitled from receiving benefits for the reason that they are outside Canada for a period of not more than seven consecutive days to attend the funeral of a member of the claimant's immediate family.

[29] The term "immediate family" is defined in subsection 55(2) of the Regulations and includes, among other things, "a child of the claimant's father or mother." The Appellant's sister therefore meets the definition of immediate family provided under the Regulations.

[30] The term "funeral" is not defined in the Act, Regulations or *Interpretation Act* and does not appear to have been interpreted in previous case law. The Tribunal will therefore refer to the standard definition of the term, put forward by the Appellant's representative at the hearing and taken from the French dictionary *Le Petit Robert*. The dictionary defines the term "funeral" as follows: [translation] "*The ceremonies held shortly after a person's death for honouring and paying one's last respects to the deceased, usually before burial or cremation.*"

[31] When he arrived in Italy, the Appellant stated that he had done the following things: identified his sister's body, carried out various administrative formalities and signed paperwork authorizing the cremation of her body. Subsequently, on Tuesday, July 19, the Appellant said that he went with his other sister who was with him to the site of the fatal accident to mourn and to place a cross, flowers and a photo. The Appellant and his other sister then brought their late sister's ashes back to Canada on July 20.

[32] The Tribunal finds the Appellant's testimony to be credible. The information provided was detailed and no disparities were identified.

[33] The Tribunal acknowledges that the Appellant's deceased sister did not have a "traditional" funeral in Italy; there was no gathering at a funeral home or a church and she was not buried in that country. However, the Tribunal finds that the act of attending a funeral is not limited to a visit to a funeral home or a cemetery. The standard definition of the term suggests that a funeral can include other types of ceremonies the purpose of which is to say a final goodbye to the deceased person. It is understood that the nature of these ceremonies may differ depending on a great number of circumstances such as the circumstances surrounding the death, cultural traditions and available financial resources.

[34] The Tribunal is of the opinion that the Commission used too narrow a definition of the term "funeral." It seems clear to the Tribunal that the Appellant's activities during his trip, including the cremation of the deceased and the act of mourning with other family members at the site of a fatal accident, meet the standard definition of a funeral and constitute a "*ceremony held shortly after a person's death for honouring and paying one's last respects to the deceased.*" The Tribunal is therefore of the opinion that the Appellant meets the conditions set out in paragraph 55(1)(b) of the Regulations.

[35] In *Canada (Attorney General) v. Elyoumni*, 2013 FCA 151, it was established that a claimant who is outside Canada to attend the funeral of a member of the claimant's immediate family must nonetheless meet the requirements of section 18 of the Act.

[36] Given that the provisions under section 55 of the Regulations apply subject to the section of the Act and that the Commission raises this question in its arguments, the Tribunal now turns to the question of the Appellant's availability.

[37] The Appellant said that he was on a leave of absence from work from July 4 to August 8, 2016, due to the emotional shock of his sister's tragic death on July 1. During his trip, the Appellant stated that he was unavailable for work and that he was receiving sickness benefits. The Appellant was therefore subject to paragraph 18(1)(b) of the Act, establishing that to be eligible for benefits, a claimant must be able to prove that they were unable to work because of a prescribed illness, but would otherwise have been available for work.

[38] The Appellant confirmed that his sister's death was the only reason for his leave from work due to illness. The leave from work began on July 4, immediately following the death of his sister, and extended until August 8, 2016. Considering the information provided by the Appellant at the hearing on the circumstances surrounding his leave from work, it goes without saying that if it had not been for his medical situation, the Appellant would have been available for work during that period. Indeed, the work stoppage and the Appellant's lack of availability for work were solely and directly caused by the emotional shock that he experienced and had it not been for his medical situation, there would not have been other barriers to his availability for work. In light of the information on file and the Appellant's testimony, the Tribunal is satisfied that the Appellant met the availability requirements under paragraph 18(1)(b) of the Act during his trip to Italy.

[39] The Tribunal finds that the Appellant travelled outside Canada from July 14 to 20, 2016, to attend the funeral of a member of his immediate family. The Appellant meets the exception set out in paragraph 55(1)(b) of the Regulations, providing for an exemption to the disqualification from benefits for a maximum of seven days in such circumstances. The Appellant cannot be found disqualified from receiving Employment Insurance benefits from July 14 to 20, 2016, for being outside Canada.

CONCLUSION

[40] The appeal is allowed.

Yoan Marier
Member, General Division – Employment Insurance Section

ANNEX

THE LAW

Employment Insurance Act

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

- (a) is an inmate of a prison or similar institution; or
- (b) is not in Canada

18 (1) 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

- a) capable of and available for work and unable to obtain suitable employment;
- b) unable to work because of a prescribed illness, injury or quarantine, and that the claimant would otherwise be available for work; or
- c) engaged in jury service.

Employment Insurance Regulations

55 (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
- (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 purpose of subsection (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 dependent or relative residing in the claimant's household or a relative with whom the claimant permanently resides.

(3) [Repealed, SOR/2001-290, s. 3]

(4) A claimant who is not a self-employed person is not disentitled from receiving benefits in respect of pregnancy, the care of a child or children referred to in subsection 23(1) of the Act, the care or support of a family member referred to in subsection 23.1(2) of the Act or of a critically ill child or while attending a course or program of instruction or training referred to in paragraph 25(1)(a) of the Act for the sole reason that the claimant is outside Canada, unless their Social Insurance Number Card or the period of validity of their Social Insurance Number has expired.

(5) A major attachment claimant who is not a self-employed person and whose most recent interruption of earnings before making a claim for benefits is from insurable employment outside Canada is not disentitled from receiving benefits for the sole reason that the claimant is outside Canada if

(a) the benefits are in respect of pregnancy, the care of a child or children referred to in subsection 23(1) of the Act or the care or support of a family member referred to in subsection 23.1(2) of the Act or of a critically ill child;

(b) the claimant proves that they are incapable, by reason of illness, injury or quarantine, from performing the duties of their regular or usual employment or of other suitable employment.

(6) Subject to subsection (7), a claimant who is not a self-employed person and who resides outside Canada, other than a major attachment claimant referred to in subsection (5), is not disentitled from receiving benefits for the sole reason of their residence outside Canada if

(a) the claimant resides temporarily or permanently in a state of the United States that is contiguous to Canada and

(i) is available for work in Canada, and

(ii) is able to report personally at an office of the Commission in Canada and does so when requested by the Commission; or

(b) the claimant is qualified to receive benefits under Article VI of the *Agreement between Canada and the United States respecting Unemployment Insurance*, signed on March 6 and 12, 1942, and resides temporarily or permanently in one of the following places in respect of which the Commission has not, pursuant to section 16 of the *Employment and Immigration Department and Commission Act*, suspended the application of that Agreement, namely,

- (i)** the District of Columbia,
- (ii)** Puerto Rico,
- (iii)** the Virgin Islands, or
- (iv)** any state of the United States.

(7) Subject to subsection (10), the maximum number of weeks for which benefits may be paid in a benefit period, in respect of a claimant referred to in subsections (5) and (6) who is not disentitled from receiving benefits, is

(a) in the case of benefits that are paid for a reason referred to in subsection 12(3) of the Act, the applicable number of weeks referred to in subsections 12(3, and (6) of the Act;

(b) in any other case, in respect of the number of hours of insurable employment in the claimant's qualifying period set out in column I of the table to this subsection, the corresponding number of weeks set out in column II of that table.

Table

Item	Column I	Column II
	Number of Hours of Insurance Employment	Number of Weeks of Benefits
1	420 - 454	10
2	455 - 489	10
3	490 - 524	11
4	525 - 559	11
5	560 - 594	12
6	595 - 629	12
7	630 - 664	13
8	665 - 699	13
9	700 - 734	14
10	735 - 769	14
11	770 - 804	15

12	805 - 839	15
13	840 - 874	16
14	875 - 909	16
15	910 - 944	17
16	945 - 979	17
17	980 - 1,014	18
18	1,015 - 1,049	18
19	1,050 - 1,084	19
20	1,085 - 1,119	19
21	1,120 - 1,154	20
22	1,155 - 1,189	20
23	1,190 - 1,224	21
24	1,225 - 1,259	21
25	1,260 - 1,294	22
26	1,295 - 1,329	22
27	1,330 - 1,364	23
28	1,365 - 1,399	23
29	1,400 - 1,434	24
30	1,435 - 1,469	25
31	1,470 - 1,504	26
32	1,505 - 1,539	27
33	1,540 - 1,574	28
34	1,575 - 1,609	29
35	1,610 - 1,644	30
36	1,645 - 1,679	31
37	1,680 - 1,714	32
38	1,715 - 1,749	33
39	1,750 - 1,784	34
40	1,785 - 1,819	35
41	1,820 or more	36

(8) Subject to subsection (10), a claimant referred to in subsections (5) and (6), for whom a benefit period has been established and who subsequently becomes resident in Canada, continues to be entitled to receive benefits for not more than the maximum number of weeks referred to in subsection (7).

(9) Subject to subsection (10), the maximum number of weeks for which benefits may be paid in the benefit period, in respect of a claimant for whom a benefit period has been established in Canada and who subsequently becomes a claimant referred to in subsection (6), is the greater of

(a) the number of weeks for which the claimant has already received benefits in Canada; and

(b) the number of weeks to which the claimant would have been entitled under subsection (7) if the claimant had been temporarily or permanently resident in a place referred to in subsection (6) when the benefit period was established.

(10) In a claimant's benefit period, a claimant who is not in Canada or a claimant referred to in subsection (8) may, subject to the applicable maximums set out in paragraphs (7)(a) and (b), combine weeks of benefits to which they are entitled, but the maximum number of combined weeks is 50. If the benefit period is extended under subsection 10(13) of the Act, the maximum number of combined weeks equals the maximum number of weeks calculated under subsection 10(15) of the Act less two weeks.

(11) A claimant who is not a self-employed person is not disentitled from receiving benefits for the sole reason that the claimant is outside Canada if the claimant is outside Canada, with the approval of the Commission, in the course of the claimant's employment under the Self-employment employment benefit established by the Commission under section 59 of the Act or under a similar benefit that is provided by a provincial government or other organization and is the subject of an agreement under section 63 of the Act.

(12) Subject to subsection (13), where a claimant makes a claim for the purposes of this section, the claim shall be sent in an envelope or package addressed to the Commission, by mail or by means of a confirmed delivery service.

(13) Where a claim is sent by the claimant to the Commission in a manner other than the manner required by subsection (12), the claim shall be reviewed by an employee of the Commission at the time of importation.