



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. M. v. Canada Employment Insurance Commission*, 2018 SST 329

Tribunal File Number: GE-17-3025

BETWEEN:

G. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Katherine Wallocha

VIDEOCONFERENCE ON: March 20, 2018

DATE OF DECISION: April 5, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed. The Tribunal finds that the claimant has not met the exception allowing employment insurance (EI) benefits while he was outside of Canada. Therefore, the claimant is not entitled to EI benefits during the period he was outside Canada.

OVERVIEW

[2] The claimant was outside of Canada from April 27 until June 12, 2017. He explained that he left the country for family business, doctors' appointments, to prepare for an exam, and to retrieve documents for permanent residency in Canada. The Canada Employment Insurance Commission (Commission) determined that the claimant was not allowed EI benefits under subsection 37(b) of the *Employment Insurance Act* (EI Act) because his reasons for being outside Canada are not listed in section 55 of the *Employment Insurance Regulations* (Regulations), and the medical care the claimant received in Colombia is routine and could easily have been obtained in his area of residence, and certainly in Canada. The Commission further decided that the claimant had not proven his availability for work while outside of Canada under paragraph 18(1)(a) of the EI Act. The claimant appealed the Commission's decision to the Social Security Tribunal (Tribunal).

ISSUES

1. Was the claimant entitled to EI benefits while he was outside of Canada?
2. Was the claimant available for work?

ANALYSIS

[3] The relevant legislative provisions are reproduced in the Annex to this decision.

[4] A claimant is not entitled to receive EI benefits while outside of Canada according to subsection 37(b) of the EI Act. The only exceptions to this provision can be found in section 55 of the Regulations (*Canada (Attorney General) v. Gibson*, 2012 FCA 166).

[5] The claimant must also demonstrate his availability for work pursuant to section 18 of the EI Act (*Attorney General of Canada v. Elyoumni*, 2013 FCA 151).

1. Was the claimant entitled to EI benefits while he was outside of Canada?

[6] The parties agree that the claimant was outside of Canada from April 27 to June 12, 2017.

[7] The Tribunal finds that retrieving documents, working for his parents' business, and preparing for an exam while outside of Canada are not exceptions listed in section 55 of the Regulations that would allow him to receive EI benefits.

[8] However, a claimant is not disentitled from receiving EI benefits while he is outside of Canada for the purpose of undergoing medical treatment that is not readily or immediately available in the claimant's area of residence in Canada under paragraph 55(1)(a) of the Regulations.

[9] The claimant stated the he went to many medical appointments while he was in Colombia because he was unable to get similar treatment in his city.

Readily available medical treatments

[10] The Tribunal finds that the claimant has not proven that the medical treatments were not readily available in his area of residence in Canada. The claimant initially stated he was unable to get similar treatment in his city in Canada because it took too long to commute to the appointments. He explained in his Notice of Appeal that he has been experiencing hearing loss and tinnitus for a few years now and it continues to worsen. He stated that one of the tests is called "speech recognition" and it was necessary to do this in Spanish to have a precise and credible result because it is his native language and his level of English is not good enough. His level of understanding would be much lower if he did the exam in English, and the results would not be accurate. He also had refractive surgery in Columbia a few years ago and he needed a medical follow-up. While he was in Columbia, he took advantage of his time to have other medical consultations including a consultation with an internist, dermatologist, urologist, and chiropractor, to name a few.

[11] The Tribunal finds that the medical follow-up and other consultations were available in the claimant's area of residence. Further, the Tribunal finds that the claimant did not investigate whether he could have the hearing tests in Spanish in his area of residence without leaving Canada. The Commission provided evidence that the medical care the claimant received in Colombia is routine and there are at least three offices in the city where the claimant lives that can offer all manner of hearing tests in the claimant's language of choice, including at Costco and the Hearing Loss Clinic.

[12] The claimant testified that he did not know if he could have had a language test in Spanish in his area of residence. He stated that these exams are not basic and he was not sure if he could have them in Canada or if he would have to pay for them. He does not know the system and finding a Spanish-speaking doctor was difficult; therefore, he assumed finding a specialist who also spoke Spanish would be even more difficult. However, the claimant initially said only that the commute was too long. From this, the Tribunal is not convinced that the claimant did not know if he could get the treatments in his city in Canada.

[13] The claimant is responsible to prove that he should be allowed EI benefits while outside of Canada. The Tribunal concludes that he has not proven that he was required to leave Canada in order to receive medical treatment because the evidence indicates that the specialized tests in Spanish, and the other consultations, were available in his area of residence in Canada. Further, differences in the manner of treatment, or its costs, are not relevant to the determination of whether the medical treatment is available in Canada.

Immediately available medical treatments

[14] The Tribunal finds that the claimant has not provided evidence that the medical treatments he needed were not immediately available in his area of residence. The claimant testified that he heard that it can take a long time to get appointments with a specialist in Canada but in Columbia, it is much faster. He is afraid that he will lose his hearing entirely and this is a "big deal" because it will greatly affect his quality of life and his ability to function. He needed to go to these examinations to find out what is wrong with him. While the Tribunal understands that the claimant is afraid for his health and wanted answers, the fact remains that the claimant did not investigate if the tests and treatments were available in his region.

Medical note

[15] The Tribunal finds that the claimant has not provided medical evidence to show that he was required to receive treatment in a medical facility in Colombia. In a conversation with the Commission, the claimant confirmed that he did not have a medical note from his Canadian doctor explaining the treatment he was receiving in Colombia and that it was not available in Canada at the time. Following his return to Canada, and after the Request for Reconsideration was denied, the claimant submitted a doctor's note dated August 23, 2017. The doctor stated that the claimant was not comfortable doing the tests in Canada because his first language is Spanish. However, the claimant's doctor did not state that the claimant was required to travel outside Canada for these tests or that they were unavailable in his area. Therefore, the doctor's note has not persuaded the Tribunal that the claimant was required to travel outside of Canada for medical treatment.

2. Was the claimant available for work?

[16] Since the claimant has not proven that he met the exceptions found in section 55 of the Regulations, the Tribunal finds that the claimant's appeal cannot succeed. Therefore, the Tribunal will not consider whether the claimant has proven that he was available for work while he was outside of Canada under paragraph 18(1)(a) of the EI Act.

CONCLUSION

[17] The Tribunal concludes that the claimant has not proven, on the balance of probabilities, that the medical treatments he received while outside of Canada were not readily and immediately available in his area of residence in Canada. Therefore, the Tribunal finds that the claimant has not met the exception in paragraph 55(1)(a) of the Regulations.

[18] Consequently, the claimant is disentitled from receiving EI benefits under subsection 37(b) of the EI Act for being outside of Canada from April 27 to June 12, 2017.

[19] The appeal is dismissed.

K. Wallocha
Member, General Division - Employment Insurance Section

ANNEX

THE LAW

Employment Insurance Act

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.

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.

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 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.