



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. M. v Canada Employment Insurance Commission*, 2018 SST 1083

Tribunal File Number: GE-17-3655

BETWEEN:

A. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Lilian Klein

HEARD ON: April 9, 2018

DATE OF DECISION: June 11, 2018

DECISION

[1] The appeal is dismissed. The Appellant is not entitled to benefits between December 10, 2016, and January 13, 2017, because he was outside Canada, and did not prove his availability for work. The penalty and Notice of Violation are also justified.

OVERVIEW

[2] The Appellant applied for regular benefits on October 11, 2016. The Respondent was alerted by the Canada Border Services Agency (CBSA) that the Appellant was outside Canada during his benefit period between December 10, 2016, and January 13, 2017. After matching this information to its records, the Respondent discovered that he had been receiving benefits during this undeclared absence. The Respondent therefore disentitled him to benefits for the five weeks he was away. This led to an overpayment of benefits. The Respondent also assessed a penalty for knowingly making false representations, and issued a Notice of Violation. The Appellant maintains that he was never outside Canada, and was available for work and actively searching for employment. He now claims that he could not have left the country since he was busy looking after his elderly mother. I must decide whether the disentitlements, penalty and violation were justified.

ISSUES

[3] **Issue #1: Was the Appellant outside Canada while receiving benefits?**

[4] **Issue #2: Was the Appellant available for work between December 12, 2016, and January 13, 2017?**

- a) *Did he demonstrate the desire to return to the labour market as soon as a suitable job was offered?*
- b) *Did he show he wished to return to the labour market through efforts to find a suitable job?*
- c) *Did he set personal conditions that might limit his chances of returning to the labour market?*

[5] **Issue #3: Did the Appellant prove that he made “reasonable and customary” efforts to find suitable employment?**

- a) *Were his job search efforts sustained?*
- b) *Did he carry out the recommended job search activities?*
- c) *Were his efforts directed toward obtaining “suitable” employment?*

[6] **Issue #4: Was a penalty justified?**

- a) *Did the Appellant make false statements?*
- b) *Did he know his statements were false?*
- c) *Did the Respondent exercise its discretion judicially when it calculated the penalty?*

[7] **Issue #5: Was a Notice of Violation justified?**

ANALYSIS

[8] Claimants are not entitled to receive benefits while outside of Canada according to paragraph 37(b) of the *Employment Insurance Act* (EI Act).

[9] Claimants are only entitled to benefits if they can show they were available for work and unable to find suitable employment (paragraph 18(1)(a) of EI Act). They must also show that they made “reasonable and customary” efforts to find a job (subsection 50(8) of the EI Act).

[10] Sanctions may be applied if claimants knowingly make “false or misleading” statements on their claim reports, resulting in an overpayment of benefits they were not entitled to receive. These sanctions include a monetary penalty (subsection 38 of the EI Act) and a violation (subsection 7.1 of the EI Act.)

[11] The relevant legislative provisions are set out in full in the Annex to this decision.

Issue #1: Was the Appellant outside Canada while receiving benefits?

[12] Yes. The evidence submitted by the Respondent shows that the Appellant was outside Canada while claiming and receiving benefits. A claimant cannot receive benefits while outside Canada unless a specific exception to this rule applies.

[13] The Traveller's Declaration Card (Declaration) that the CBSA sent to the Respondent documents that the Appellant left Canada on December 10, 2016, and returned on January 13, 2017. Travellers must complete this Declaration on entry to Canada, and report their date of departure. The CBSA routinely shares this type of information with the Respondent to help identify claimants who fail to report they are outside Canada while receiving benefits.

[14] The Appellant disputed that he ever left Canada or completed the Declaration. He claimed that someone impersonated him and forged his writing. However, he confirmed that the name, middle initial, birth date, citizenship and postal code on the Declaration are his own. Moreover, a valid passport containing photo ID has to be presented with each Declaration, and he did not report that his passport had been lost or stolen. He did not give a reasonable explanation, on a balance of probabilities, to support his claim that he was impersonated by an unknown person who looked like him and had access to his personal data. I therefore accept the Declaration as reliable evidence of his absence.

[15] I find that the proof he submitted of his physical presence—utility bills and pay slips—is not sufficient to disprove the evidence of the Declaration. Utility bills do not demonstrate presence in Canada on any particular day. His pay slips relate to jobs that he held several months later. They do not show he applied for these jobs in person during the absence that the CBSA reported. He did not answer a call from the Respondent during this absence or reply to its voice mail message. His only explanation at the hearing was that he had been occupied with his mother, who was elderly and sick.

[16] However, he did not substantiate his assertion that he could not have left Canada during his documented absence because he was too busy caring for her. He reported that she passed away in December 2017, a year after this absence. He never mentioned his mother until his hearing, eighteen months after he first applied for benefits. I find it reasonable to assume, on a

balance of probabilities, that he would have mentioned her to the Respondent much earlier on had her illness prevented him from leaving the country as early as December 2016.

[17] The Respondent's records show that the Appellant did not attend a job assessment session on January 9, 2017. He originally cited this session as proof of his presence in Canada, but later asserted that he had not received an invitation to the session. I find that the inconsistency between these two statements undermines his credibility. As well, the Respondent's records show that he did not appear at the session he was scheduled to attend on December 15, 2016. He did not submit reasons for his absence from this session, or any further evidence to show that he was in Canada from December 10, 2016, to January 13, 2017.

[18] Based on these facts, I find that the Appellant was outside Canada between December 10, 2016, and January 13, 2017. A disentitlement applies when a claimant is outside Canada (paragraph 37(b) of the EI Act). The only exceptions are listed in section 55 of the *Employment Insurance Regulations* (EI Regulations). Since he had no explanation for why he was outside Canada, I do not need to consider whether these exceptions applied to him.

Issue #2: Was the Appellant available for work between December 12, 2016, and January 13, 2017?

[19] No. He did not meet his burden of proof to show that he was available for work every working day from December 12, 2016, to January 13, 2017 (*Attorney General of Canada v. Renaud*, 2007 FCA 328; *Attorney General of Canada v. Cloutier*, 2005 FCA 73). Availability is not defined in the legislation, but the courts have developed the following three factors to show whether a claimant was available for work (*Faucher v. Attorney General of Canada*, A-56-96):

- ***Did he demonstrate the desire to return to the labour market as soon as a suitable job was offered?***

[20] No. The Appellant told me at the hearing that his intention from December 10, 2016, to January 13, 2017, was to find limited on-call jobs through an agency. He was not planning to return to the labour market on each working day.

- *Did he show he wished to return to the labour market through efforts to find a suitable job?*

[21] No. The Appellant did not submit sufficient information to prove that he made efforts to find suitable work, and would have been available for work, during the period he was outside Canada. He provided scant evidence of a job search inside Canada beyond a list of a few companies and two employment agencies. He did not submit job applications or the responses he received. He did not state that he actively searched for jobs while outside the country either.

- *Did he set personal conditions that might limit his chances of returning to the labour market?*

[22] Yes. The Appellant told me that his mother was under palliative care at his home, and he needed to be with her. He gave me this reason to explain why he had been too busy to answer the Respondent's call on January 12, 2017, or reply for two weeks. He testified that he was limiting his job search to on-call jobs at the time, so that he could be available to help care for his mother. By doing so, he set a personal condition on the hours he was available for work. These restrictions would limit his chances of returning to the labour market.

[23] This personal condition supports the Respondent's position that the Appellant was not trying to return to the labour market. It does not support his declaration on his biweekly reports that he was available for work on every working day.

[24] Based on these three criteria, I find that the Appellant did not meet his burden of proof to show that he was available for work between December 12, 2016, and January 13, 2017. He is therefore disentitled from receiving benefits for those weeks under paragraph 18(1)(a) of the EI Act.

Issue #3: Did the Appellant prove that he made "reasonable and customary" efforts to find suitable employment?

[25] No. He did not demonstrate that he made these efforts, which determine whether he was available for work, and unable to find suitable employment. He did not meet the following three

criteria for measuring whether his efforts were “reasonable and customary” (section 9.001 of the EI Regulations).

- ***Were his job search efforts sustained?***

[26] No. The Appellant did not prove that his efforts were sustained between December 12, 2016, and January 13, 2017 (paragraph 9.001(a) of the EI Regulations). He has not provided evidence that would place his job search within his period of absence. The benefit application specified that he was required to keep this evidence for six years. However, he did not keep job search records.

- ***Did he carry out the recommended job search activities?***

[27] No. Given his lack of records, the Appellant is unable to show that he carried out a comprehensive job search either inside Canada, or from outside the country. He reported that he applied for three jobs in person and four online, and registered with two employment agencies. Applying for jobs and registering with agencies are two of nine activities recommended by the Respondent to show an active job search (paragraph 9.001(b) of the EI Regulations). However, he did not provide copies of his applications and the responses he received, or show that he applied for posted vacancies.

- ***Were his efforts directed toward obtaining “suitable” employment?***

[28] No. The Appellant did not give details of his job search that were specific to the weeks of his absence. He therefore did not show that he had directed his efforts to obtaining suitable employment during this period (paragraph 9.001(c) of the EI Regulations). He did not claim any restrictions that would have limited the type of employment that was suitable in his case (subsection 9.002(1) of the EI Regulations).

[29] I therefore find that he did not meet the criteria to show he had made “reasonable and customary” efforts to find suitable work. Failing to demonstrate these efforts warrants a disentitlement from December 12, 2016, to January 13, 2017, under subsection 50(8) of the EI Act.

Issue #4: Was a penalty justified?

[30] Yes. The Respondent is entitled to impose a penalty for each representation on the Appellant's claim reports that he knew was "false or misleading" (paragraph 38(1)(a) of the EI Act). The Respondent had the burden of proof to provide evidence of the questions he was asked on these reports and his responses (*Attorney General of Canada v. Lavoie*, 2005 FCA 18). The Respondent met this burden by submitting the Appellant's completed online reports dated December 23, 2016, January 6, 2017, and January 21, 2017. The Respondent then had to show that the Appellant knew his statements were false.

- ***Did he make false statements?***

[31] Yes. The Appellant's online reports show he made false statements on three claim reports when he answered "No" to the question, "Were you outside Canada between Monday and Friday during the period of this report?" The Declaration is strong evidence that he was outside Canada during the period covered by these reports. The Appellant only submitted unsupported testimony to refute the Declaration. I therefore agree with the Respondent's submissions that his statements were false.

[32] The Appellant also made false statements on these same online reports by answering "Yes" to the question: "Were you ready, willing and capable of working each day, Monday through Friday during each week of this report?" He did not provide evidence of his availability for work while outside Canada according to the criteria set out above. I therefore accept that his statements were false on this question too.

- ***Did he know his responses were false?***

[33] Yes. The Respondent met its burden to prove to show, on a balance of probabilities, that the Appellant knowingly made false or misleading statements (*Attorney General of Canada v. Gates*, A-600-94). The Respondent did not have to prove that he intended to deceive when he made these statements. However, it is not enough that he made false or misleading representations; he had to have the "subjective" knowledge that they were false or misleading when he made them (*Mootoo v. Minister of Human Resources Development of Canada*, 2003

FCA 206). Once the Respondent found that he made false statements knowingly, the burden of proof shifted to the Appellant to provide an explanation.

[34] I have considered whether the question on availability might have been confusing, causing a lack of subjective knowledge about its meaning. I am allowed to take common sense and objective factors into account when considering whether the Appellant knowingly made false statements when declaring his availability on each working day while outside Canada (*Moretto v. Attorney General of Canada*, A-667-96). I again note that he gave little information about his availability in Canada. He did not assert that he was available to work remotely from outside the country either. The Declaration had merely indicated that he was absent for personal reasons. I am prepared to accept that he may not have fully understood the question on availability. I therefore find that his misrepresentations on availability were not knowingly made.

[35] However, I agree with the Respondent's submission that the Appellant answered the out-of-Canada question with the subjective knowledge that his responses were false and misleading. I consider that the wording of the question "Were you outside Canada" is clear and unambiguous. I find that he did not meet his burden of proof to provide an explanation for his false statements through his argument that someone impersonated him, and forged the Declaration using his personal data. As discussed above, the evidence he submitted to support his presence in Canada was not persuasive. I have therefore relied on the Declaration in finding that he was outside Canada between December 10, 2016, and January 13, 2017. Since he knowingly made a false representation on this issue on three reports, I find that the penalty was justified.

- ***Did the Respondent exercise its discretion judicially in calculating the penalty?***

[36] Yes. I find that the Respondent exercised its discretion judicially by considering all relevant factors, and ignoring irrelevant factors (*Attorney General of Canada v. Uppal*, 2008 FCA 388; *Attorney General of Canada v. Gagnon*, 2004 FCA 351).

[37] The amount of a penalty is a discretionary decision that is solely within the Respondent's jurisdiction (*Gill v. Attorney General of Canada*, 2010 FCA 182). I may only consider varying the penalty amount if I find that the Respondent did not exercise its discretion judicially. However, there is no basis to make this finding.

[38] The Respondent imposed the penalty because the Appellant knowingly made false statements on three online claim reports. It was entitled to set the amount of the penalty at three times his weekly benefit rate of \$378 (subsection 38(2) of the EI Act). This would have resulted in a penalty of \$1,134. However, the Respondent submitted that it used its established guidelines to set the amount of the penalty (*Attorney General of Canada v. Hudon*, 2004 FCA 22). This led to a calculation of 50% of the overpayment of benefits that he received between December 10, 2016, and January 13, 2017.

[39] The 50% rate is applicable to a first instance of misrepresentation where there are no mitigating circumstances. The Respondent submits that it was the Appellant's first infraction and his overpayment was \$1,890. He did not submit any mitigating circumstances to the Respondent, or to the Tribunal. I therefore find that the Respondent exercised its discretion judicially when it calculated his penalty as \$945.

Issue #5: Was a Notice of Violation justified?

[40] Yes. The Respondent has the discretion to issue a violation (subsection 7.1(4) of the EI Act.) A violation is not automatic or mandatory (*Gill*). However, a violation is meant to “deter abuse of the employment insurance scheme by imposing an additional sanction on claimants who attempt to defraud the system” (*Attorney General of Canada v. Savard*, 2006 FCA 327).

[41] The Respondent acted judicially by taking into account all the Appellant's circumstances, before issuing a “serious” violation. It correctly assessed the level of the violation based on the amount of his overpayment: \$1,890. A violation of between \$1,000 and \$5,000 is classed as “serious” (subparagraph 7.1(5)(a)(ii) of the EI Act).

[42] The Respondent showed in its Record of Decision that it considered the Appellant's circumstances when assessing the impact of this violation, including his ability to qualify for benefits in the future. He had previously been able to accrue the higher number of hours required, as documented in his Record of Employment. The Respondent also showed it considered whether there were any mitigating circumstances, but the Appellant submitted none. He did not argue any mitigating circumstances before the Tribunal either. I therefore find that the Respondent exercised its discretion judicially when it issued the “serious” violation.

[43] Based on the evidence and submissions of both parties, I find that the Respondent was justified in disentitling the Appellant from receiving benefits between December 10, 2016, and January 13, 2017. I also find that the Respondent exercised its discretion judicially in calculating a penalty and issuing a violation.

CONCLUSION

[44] The appeal is dismissed.

Lilian Klein

Member, General Division - Employment Insurance Section

HEARD ON:	April 9, 2018
METHOD OF PROCEEDING:	Videoconference
APPEARANCES:	A. M., Appellant

ANNEX

THE LAW

Employment Insurance Act

Section 7.1

7.1 (1) The number of hours that an insured person requires under section 7 to qualify for benefits is increased to the number set out in the following table in relation to the applicable regional rate of unemployment if the insured person accumulates one or more violations in the 260 weeks before making their initial claim for benefit.

TABLE / TABLEAU

Regional Rate of Unemployment / <i>Taux régional de chômage</i>	Violation			
	minor / <i>mineure</i>	serious / <i>grave</i>	very serious / <i>très grave</i>	subsequent / <i>subséquente</i>
6% and under/ <i>6 % et moins</i>	875	1050	1225	1400
more than 6% but not more than 7%/ <i>plus de 6 % mais au plus 7 %</i>	831	998	1164	1330
more than 7% but not more than 8%/ <i>plus de 7 % mais au plus 8 %</i>	788	945	1103	1260
more than 8% but not more than 9%/ <i>plus de 8 % mais au plus 9 %</i>	744	893	1041	1190
more than 9% but not more than 10%/ <i>plus de 9 % mais au plus 10 %</i>	700	840	980	1120
more than 10% but not more than 11%/ <i>plus de 10 % mais au plus 11 %</i>	656	788	919	1050
more than 11% but not more than 12%/ <i>plus de 11 % mais au plus 12 %</i>	613	735	858	980
more than 12% but not more than 13%/ <i>plus de 12 % mais au plus 13 %</i>	569	683	796	910
more than 13%/ <i>plus de 13 %</i>	525	630	735	840

(2) [Repealed, 2016, c. 7, s. 210]

(2.1) A violation accumulated by an individual under section 152.07 is deemed to be a violation accumulated by the individual under this section on the day on which the notice of violation was given to the individual.

(3) A violation may not be taken into account under subsection (1) in more than two initial claims for benefits under this Act by an individual if the individual who accumulated the violation qualified for benefits in each of those two initial claims, taking into account subsection (1), subparagraph 152.07(1)(d)(ii) or regulations made under Part VIII, as the case may be.

(4) An insured person accumulates a violation if in any of the following circumstances the Commission issues a notice of violation to the person:

(a) one or more penalties are imposed on the person under section 38, 39, 41.1 or 65.1, as a result of acts or omissions mentioned in section 38, 39 or 65.1;

(b) the person is found guilty of one or more offences under section 135 or 136 as a result of acts or omissions mentioned in those sections; or

(c) the person is found guilty of one or more offences under the *Criminal Code* as a result of acts or omissions relating to the application of this Act.

(5) Except for violations for which a warning was imposed, each violation is classified as a minor, serious, very serious or subsequent violation as follows:

(a) if the value of the violation is

(i) less than \$1,000, it is a minor violation,

(ii) \$1,000 or more, but less than \$5,000, it is a serious violation, or

(iii) \$5,000 or more, it is a very serious violation; and

(b) if the notice of violation is issued within 260 weeks after the person accumulates another violation, it is a subsequent violation, even if the acts or omissions on which it is based occurred before the person accumulated the other violation.

(6) The value of a violation is the total of

(a) the amount of the overpayment of benefits resulting from the acts or omissions on which the violation is based, and

(b) if the claimant is disqualified or disentitled from receiving benefits, or the act or omission on which the violation is based relates to qualification requirements under section 7, the amount determined, subject to subsection (7), by multiplying the claimant's weekly rate of benefit by the average number of weeks of regular benefits, as determined under the regulations.

(7) The maximum amount to be determined under paragraph (6)(b) is the amount of benefits that could have been paid to the claimant if the claimant had not been disentitled or disqualified or had met the qualification requirements under section 7.

Section 18

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.

(2) A claimant to whom benefits are payable under any of sections 23 to 23.2 is not disentitled under paragraph (1)(b) for failing to prove that he or she would have been available for work were it not for the illness, injury or quarantine.

Section 37

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.

Section 38

38 (1) The Commission may impose on a claimant, or any other person acting for a claimant, a penalty for each of the following acts or omissions if the Commission becomes aware of facts that in its opinion establish that the claimant or other person has

- (a) in relation to a claim for benefits, made a representation that the claimant or other person knew was false or misleading;
- (b) being required under this Act or the regulations to provide information, provided information or made a representation that the claimant or other person knew was false or misleading;
- (c) knowingly failed to declare to the Commission all or some of the claimant's earnings for a period determined under the regulations for which the claimant claimed benefits;
- (d) made a claim or declaration that the claimant or other person knew was false or misleading because of the non-disclosure of facts;
- (e) being the payee of a special warrant, knowingly negotiated or attempted to negotiate it for benefits to which the claimant was not entitled;
- (f) knowingly failed to return a special warrant or the amount of the warrant or any excess amount, as required by section 44;
- (g) imported or exported a document issued by the Commission, or had it imported or exported, for the purpose of defrauding or deceiving the Commission; or
- (h) participated in, assented to or acquiesced in an act or omission mentioned in paragraphs (a) to (g).

(2) The Commission may set the amount of the penalty for each act or omission at not more than

- (a) three times the claimant's rate of weekly benefits;
- (b) if the penalty is imposed under paragraph (1)(c),

(i) three times the amount of the deduction from the claimant's benefits under subsection 19(3), and

(ii) three times the benefits that would have been paid to the claimant for the period mentioned in that paragraph if the deduction had not been made under subsection 19(3) or the claimant had not been disentitled or disqualified from receiving benefits; or

(c) three times the maximum rate of weekly benefits in effect when the act or omission occurred, if no benefit period was established.

(3) For greater certainty, weeks of regular benefits that are repaid as a result of an act or omission mentioned in subsection (1) are deemed to be weeks of regular benefits paid for the purposes of the application of subsection 145(2).

Section 50

50 (1) A claimant who fails to fulfil or comply with a condition or requirement under this section is not entitled to receive benefits for as long as the condition or requirement is not fulfilled or complied with.

(2) A claim for benefits shall be made in the manner directed at the office of the Commission that serves the area in which the claimant resides, or at such other place as is prescribed or directed by the Commission.

(3) A claim for benefits shall be made by completing a form supplied or approved by the Commission, in the manner set out in instructions of the Commission.

(4) A claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time.

(5) The Commission may at any time require a claimant to provide additional information about their claim for benefits.

(6) The Commission may require a claimant or group or class of claimants to be at a suitable place at a suitable time in order to make a claim for benefits in person or provide additional information about a claim.

(7) For the purpose of proving that a claimant is available for work, the Commission may require the claimant to register for employment at an agency administered by the Government of Canada or a provincial government and to report to the agency at such reasonable times as the Commission or agency directs.

(8) For the purpose of proving that a claimant is available for work and unable to obtain suitable employment, the Commission may require the claimant to prove that the claimant is making reasonable and customary efforts to obtain suitable employment.

(8.1) For the purpose of proving that the conditions of subsection 23.1(2) or 152.06(1) are met, the Commission may require the claimant to provide it with an additional certificate issued by a medical doctor.

(9) A claimant shall provide the mailing address of their normal place of residence, unless otherwise permitted by the Commission.

(10) The Commission may waive or vary any of the conditions and requirements of this section or the regulations whenever in its opinion the circumstances warrant the waiver or variation for the benefit of a claimant or a class or group of claimants.

Employment Insurance Regulations

Section 55

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.

(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.

(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) to (6) of the Act; and

(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 Number of Hours of Insurable Employment	Column II 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.

Section 9.001

9.001 For the purposes of subsection 50(8) of the Act, the criteria for determining whether the efforts that the claimant is making to obtain suitable employment constitute reasonable and customary efforts are the following:

(a) the claimant's efforts are sustained;

(b) the claimant's efforts consist of

- (i) assessing employment opportunities,
- (ii) preparing a resumé or cover letter,
- (iii) registering for job search tools or with electronic job banks or employment agencies,
- (iv) attending job search workshops or job fairs,
- (v) networking,
- (vi) contacting prospective employers,
- (vii) submitting job applications,
- (viii) attending interviews, and
- (ix) undergoing evaluations of competencies; and

(c) the claimant's efforts are directed toward obtaining suitable employment.

Section 9.002

9.002 (1) For the purposes of paragraphs 18(1)(a) and 27(1)(a) to (c) and subsection 50(8) of the Act, the criteria for determining what constitutes suitable employment are the following:

- (a) the claimant's health and physical capabilities allow them to commute to the place of work and to perform the work;
 - (b) the hours of work are not incompatible with the claimant's family obligations or religious beliefs; and
 - (c) the nature of the work is not contrary to the claimant's moral convictions or religious beliefs.
- (d) to (f) [Repealed, SOR/2016-162, s. 1]

(2) However, employment is not suitable employment for the purposes of paragraphs 18(1)(a) and 27(1)(a) to (c) and subsection 50(8) of the Act if

- (a) it is in the claimant's usual occupation either at a lower rate of earnings or on conditions less favourable than those observed by agreement between employers and employees, or in the absence of such agreement, than those recognized by good employers; or
- (b) it is not in the claimant's usual occupation and it is either at a lower rate of earnings or on conditions less favourable than those that the claimant might reasonably expect to obtain, having regard to the conditions that the claimant usually obtained in the claimant's usual occupation, or would have obtained if the claimant had continued to be so employed.

(3) After a lapse of a reasonable interval from the date on which an insured person becomes unemployed, paragraph (2)(b) does not apply to the employment described in that paragraph if it is employment at a rate of earnings not lower and on conditions not less favourable than those observed by agreement between employers and employees or, in the absence of any such agreement, than those recognized by good employers.