



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. L. v. Canada Employment Insurance Commission*, 2018 SST 1070

Tribunal File Number: GE-18-2023

BETWEEN:

M. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Teresa Jaenen

HEARD ON: October 4, 2018

DATE OF DECISION: October 5, 2018

DECISION

[1] The appeal is allowed. The Tribunal finds the Appellant should not be disentitled to receive employment insurance benefits while he was outside of Canada from January 18, 2018, to January 24, 2018, because he proved his availability by demonstrating that he made arrangements he could be reached during his absence from Canada if a job was offered.

OVERVIEW

[2] The Appellant was in receipt of employment insurance benefits when he left Canada to visit a member of his immediate family who was seriously ill from January 17, 2017, to January 25, 2018. The Canada Employment Insurance Commission (Respondent) agreed that the Appellant should not be disentitled to benefits because he was out of Canada to help his sister with a medical emergency, but that he should be disentitled from January 18, 2018, to January 24, 2018, because he failed to prove his availability while outside of Canada as he was not able to return to Canada within 48 hours if he was offered employment. The Appellant appealed this decision to the *Social Security Tribunal* (Tribunal).

ISSUES

[3] Should the Appellant be disentitled to benefits while he was outside of Canada?

[4] Should the Appellant be disentitled to benefits while he was outside of Canada because he failed to prove his availability?

ANALYSIS

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

Issue 1: Should the Appellant be disentitled to benefits while he was outside of Canada?

[6] The Tribunal finds that the Appellant 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 unless the claimant meets the exceptions listed under section 55 of the *Employment Insurance Regulations* (Regulations).

[7] The Respondent submits that the Appellant has met the exception listed under section 55(c) of the Regulations; therefore a disentitlement should not be imposed pursuant section 37 of the Act.

[8] The Tribunal finds that the Appellant does not meet the exception of section 55(c) of the Regulations but does meet the exception of 55(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. The Tribunal concurs with the Respondent and that the Appellant should not be disentitled to benefits from January 18, 2018, to January 24, 2018.

[9] The Appellant argues that he travelled to Ireland to visit his sister who had taken seriously ill and to assist her in moving into a nursing home.

Issue 2: Should the Appellant be disentitled to benefits from January 18, 2018, to January 24, 2018, while he was outside of Canada because he failed to prove his availability?

[10] No, the Tribunal finds the Appellant should not be disentitled from January 18, 2018, to January 24, 2018, because he has proven his availability by demonstrating he made arrangements to be reached during his absence from Canada if a job was offered.

[11] He testified that he left his home in X the morning of January 17, 2018, and returned late in the day on January 26, 2018. He testified that he knew he was only going for this period of time, and he made arrangements that he could be reached during his absence from Canada. He testified that he contacted a job prospect before he left and any prospective employers had his home telephone number and his cellular number and both numbers, had voice mail which he checked regularly. He stated that he communicated with his wife every day he was away so in the event there was any job offers, she could relay the message to him.

[12] The Respondent submitted that the Appellant stated that he was not able to return to Canada within 48 hours if he was offered employment. Upon reconsideration, the Appellant stated that it was impossible for him to return to Canada within this timeframe given, where he travelled to (Ireland). Given these circumstances, the Commission maintains that the Appellant has not proven his availability for work while outside of Canada and that the disentitlement imposed pursuant to section 18 of the Act is warranted.

[13] The Tribunal finds that this case involves whether or not the Appellant was available within the meaning of section 18 of the *Employment Insurance Act* (Act) while out of Canada. It is not disputed that the Appellant was otherwise entitled to receive benefits.

[14] The Tribunal finds that the Respondent based its decision the Appellant failed to prove his availability because he stated that he was not able to return to Canada within 48 hours if a job was offered. However, the Respondent did not consider the Appellant had made arrangements that he could be reached if a job was offered. The Appellant also had pre-booked flights and knew his return date.

[15] The Tribunal finds from the Appellant's testimony was credible and that any potential employer had his home number and his cellular number which he had with him. He testified that both his phones, had voice mail which he checked regularly and he was in daily communication with his wife who remained in Canada.

[16] The Tribunal finds from the evidence on the file, the Appellant indicated on his availability questionnaire to the Respondent that he had made arrangements to be contacted during his absence from Canada.

[17] In a recent decision (*Canada (AG) v. Elyoumni*, 2013 FCA 151) the Federal Court of Appeal clarified the interpretation of subsection 18(1) of the Act and subsection 55(1) of the Regulations, in particular how the first provision should be interpreted if the second provision applies. The Court stated the follow:

The availability of a claimant who benefits from the exception set out in subsection 55(1) of the Regulations is assessed on a case-by-case basis. In the context of the present case, the claimant had to, at the very least; demonstrate that he had made arrangements so that he could be reached during his absence from Canada if he was offered a job.

In light of the principle that Parliament—more specifically, the Governor in Council—does not speak in vain, the legislation necessarily contemplated that claimants who avail themselves of this provision could remain available for the purposes of subsection 18(1) of the Act even if they are outside the country.

[18] The Tribunal finds that in the concept of availability in paragraph 18(1)(a) of the Act is not defined and must be interpreted contextually. Paragraph 55(1)(a) of the Regulations maintains a claimant's entitlement to benefits despite the claimant's being abroad—see section 37 of the Act—if in this case the purpose of the trip is to visit a member of the Appellant's immediate family who is seriously ill or injured. This provision applies for a period of seven days.

CONCLUSION

[19] The appeal is allowed.

Teresa Jaenen
Member, General Division - Employment Insurance Section

HEARD ON:	October 4, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	M. L., Appellant

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;

37 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.

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

(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;