



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. H. v Canada Employment Insurance Commission*, 2018 SST 1183

Tribunal File Number: GE-18-2683

BETWEEN:

G. H.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Lilian Klein

HEARD ON: October 15, 2018

DATE OF DECISION: November 8, 2018

DECISION

[1] The appeal is allowed in part. The Appellant is entitled to receive benefits from June 27, 2018, to July 10, 2018, when he was outside Canada for the purpose of conducting a job search.

OVERVIEW

[2] While receiving benefits, the Appellant left Canada to attend a series of interviews in Europe. Although he had planned to visit his grandmother in Hungary as well, on arrival in Germany he learned that she had been hospitalized and therefore travelled to visit her that first weekend. The Respondent disentitled him from receiving benefits since he had reported that he was outside Canada to visit a sick relative, and he did not meet the definition of an immediate family member for that purpose. The Appellant is now arguing that his primary reason for leaving Canada was to attend interviews and conduct a job search. I must decide whether his situation fell under the 14-day exception to the disentitlement for being outside Canada on the grounds that he left to conduct a *bona fide* job search.

PRELIMINARY MATTERS

[3] After the hearing, on October 15, 2018, the Appellant submitted additional documents about his job search that I accepted as relevant evidence. I shared this documentation with the Respondent, but it did not make any further submissions in response.

ISSUE

[4] **Should the Appellant be disentitled from receiving benefits because he was outside Canada?**

a) *Was the Appellant outside Canada, and when?*

b) *Was the Appellant conducting a bona fide job search while he was outside Canada?*

ANALYSIS

[5] I have set out the relevant legislation in the Annex to this decision.

[6] Claimants cannot receive benefits during any period that they are outside Canada.¹ This disentitlement does not apply if they are outside Canada for one of the listed exceptions in section 55 of the *Employment Insurance Regulations* (EI Regulations).² These are the only exceptions to the out-of-Canada rule.³

[7] The listed circumstances include a seven-day exception when the absence is to attend the funeral of an immediate family member, to visit a specified family member who is seriously ill or injured, or to attend a *bona fide* interview. A 14-day exception applies to an absence from Canada for a *bona fide* job search. The only exceptions that can be combined are those for the sickness and subsequent funeral of an immediate family member.

[8] Even if claimants meet one of the exceptions, they must still show they were available for work. However, availability is no longer a live issue in this file since the Appellant has proved his availability, and the Respondent has already removed the disentitlement on that count.

Issue: Should the Appellant be disentitled from receiving benefits because he was outside Canada?

[9] The Respondent disentitled him from June 27, 2018, to July 19, 2018, but I calculate the period of his disentitlement as July 11, 2018, to July 19, 2018, based on the following criteria:

a) *Was the Appellant outside Canada, and when?*

[10] Yes. I accept the Appellant's testimony that he left Canada on June 27, 2018, returning on July 20, 2018. The Respondent does not dispute this evidence.

[11] Claimants cannot receive benefits for "any period" they are outside Canada. This period is expressed in whole days, rather than fractions. However, "any period" does not necessarily mean a calendar day; it can include a continuous 24-hour period that straddles two calendar days.⁴ Since the Appellant left in the early hours of June 27, 2018, returning at 22.20 on July 20, 2018, he was outside Canada for the full 24-hour period of 23 days. I therefore find that the

¹ Subsection 37(b) of the *Employment Insurance Act* (EI Act).

² *Attorney General of Canada v. Peterson*, A-370-95.

³ *Attorney General of Canada v. Gibson*, 2012 FCA 166).

⁴ *Attorney General of Canada v. Picard*, 2014 FCA 46.

Respondent was correct in initially calculating the period of his disentitlement as June 27, 2018, to July 19, 2018.

a) ***Was the Appellant conducting a bona fide job search while he was outside Canada?***

[12] Yes. I find that he was conducting a *bona fide* job search since he has shown that this was the primary purpose of his absence from Canada.⁵

[13] I acknowledge that the Appellant initially gave the reason for his trip as visiting a seriously ill family member. The Respondent therefore determined that his primary purpose was to visit his grandmother. He testified that he felt it would be confusing to later change his response. He had been planning to visit her in Hungary while job hunting in Europe, even before she became seriously ill. He filled in the Respondent's questionnaire on the same date that he found out she had been hospitalized, which prompted him to travel from Germany to Hungary to see her on his first weekend. I find this context gives a credible explanation for his first response.

[14] I give weight to the Appellant's later clarification that the primary purpose of his trip was to attend interviews as part of an intensive job search starting right after his arrival in Europe. Visiting his grandmother became more urgent after she was hospitalized, but this was not the primary reason for his trip. I find that his clarification is consistent with the evidence he submitted after the hearing, which confirmed that he had an in-person interview in Germany on June 28, 2018, the day after his arrival. This interview had been set up on June 10, 2018, which was well before his departure from Canada. It took place before he visited his grandmother.

[15] I have also given significant weight to the evidence showing that the Appellant's job search was not limited to a single interview on the day after he arrived in Germany. He testified that his networking efforts after his arrival resulted in additional interviews because he was able to attract potential employers by being on the spot. The evidence shows that his job search efforts led to interviews on July 5, July 9, and July 11, 2018, which he only secured based on his in-person networking after he left Canada. I note that the Respondent has not challenged this new evidence.

⁵ Paragraph 55(1)(f) of the EI Regulations

[16] I therefore accept the Appellant's submission that the primary purpose of his trip was to conduct a *bona fide* job search. To be *bona fide*, a job search must be genuine; it must be carried out in good faith. It cannot be limited to online activity that could have been performed from inside Canada. I find that the evidence shows the Appellant went to Europe in good faith, with the intention of generating and exploring employment opportunities through a genuine job search.

[17] Since the Appellant carried out a *bona fide* job search, I find that he falls under the 14-day exception to the disentitlement for being outside Canada.⁶ The Respondent disentitled him from receiving benefits from June 27, 2018, to July 19, 2018. However, I find that he is not disentitled for the first 14 days of his absence, from June 27, 2018, to July 10, 2018. He is only disentitled from July 11, 2018, to July 19, 2018.

CONCLUSION

[18] The appeal is allowed in part. The Appellant is entitled to receive benefits from June 27, 2018, to July 10, 2018, when he was outside Canada for the purpose of conducting a job search.

Lilian Klein

Member, General Division - Employment Insurance Section

HEARD ON:	October 15, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	G. H., Appellant

⁶ Paragraph 55(1)(f) of the EI Regulations.

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.

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.

(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.