



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *B. C. v Canada Employment Insurance Commission*, 2019 SST 248

Tribunal File Number: GE-18-3784

BETWEEN:

**B. C.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Heather Hamilton

HEARD ON: January 16, 2019

DATE OF DECISION: February 14, 2019

## **DECISION**

[1] The appeal is allowed.

## **OVERVIEW**

[2] The Appellant established a benefit period on July 16, 2017. He separated from his employment and received a severance that was allocated from the date his benefit period was established and his benefit period was extended to 104 weeks. The end date of his benefit period was changed from October 20, 2018 to July 13, 2019. On September 29, 2017 the Appellant was informed his separation monies were allocated from July 16, 2017 to September 15, 2018 with a balance of \$2,194.00 applied against the week beginning September 22, 2018. The disentitlement ends September 29, 2018. The issue of the allocation of separation monies is not an issue before the Tribunal.

[3] The Appellant was out of Canada from August 25, 2018 to October 21, 2018. The Appellant was not receiving EI benefits when he left Canada due to an allocation of severance monies. Initially the Respondent determined the Appellant met the exception in 55(1)(b) of the Regulations while the Appellant was out of Canada to attend his father's funeral; however the Appellant did not meet any other of the exceptions and he was disentitled for the remainder of the time he was outside of Canada. The Appellant requested reconsideration and submitted that he looked after his terminally father and then his father passed away on October 9, 2018 and he should be granted a fourteen day exemption under 55(1.1) of the Regulations. At Reconsideration he was granted the 7 day exemption under 55(1)(b) of the Regulations; however he was not eligible for benefits during the first 7 days he was out of Canada due to an allocation of earnings, and he was disentitled to benefits for the remainder of his time while out of Canada.

[4] Subsequent to the reconsideration decision, the Respondent, the Canada Employment Insurance Commission (Commission) allowed fourteen days to visit his seriously ill father and attend his funeral under 55(1)(b) and 55(1)(d) effective from the time he left Canada, but imposed a disentitlement for the remainder of the Appellant's absence from Canada.

[5] The Appellant appealed to the Social Security Tribunal (Tribunal) seeking the fourteen day exemption closer to October 9, 2018 which is the date his father passed away, and not when

he left Canada. The Appellant accepts for the remainder of the time he was outside of Canada he would not receive benefits.

## ISSUES

1. Was the Appellant entitled to benefits because he was outside Canada? If so, is he entitled to benefits beyond the first fourteen consecutive days of his absence?

## ANALYSIS

[6] Claimants are not entitled to receive benefits while outside of Canada according to paragraph 37(b) of the *Employment Insurance Act* (Act). The only exceptions to this provision can be found in section 55 of the *Employment Insurance Regulations* (Regulations)(Canada (*Attorney General*) v. *Gibson*, 2012 FCA 166). The Appellant must also demonstrate his availability for work pursuant to section 18 of the EI Act (*Attorney General of Canada v. Elyoumni*, 2013 FCA 151).

[7] One of these exceptions allows claimants to be outside Canada for a maximum of seven consecutive days to visit a member of their immediate family who is seriously ill or injured (paragraph 55(1)(d) of the *Regulations*) and another exception allows claimants for a period of not more than seven consecutive days to attend the funeral of a member of the claimant's immediate family (paragraph 55 (1)(b) of the *Regulations*).

[8] Further 55(1.1) of the Regulations states that 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 who the claimant visits under paragraph (1)(d) is the person whose funeral the claimant attends under (1)(b).

[9] Claimants have the burden of demonstrating that they meet the requirements for receiving benefits and that no circumstances exist that will disentitle or disqualify them from receiving benefits, including the availability requirements prescribed by section 18 of the EI Act (*Attorney General of Canada v. Picard*).

**Issue 1: Was the Appellant entitled to benefits because he was outside Canada?**

[10] The Appellant agrees he was outside of Canada from August 25, 2018 to October 21, 2018. He submitted a non-availability questionnaire on October 22, 2018 stating he was absent from Canada to attend the funeral his father's funeral. He also submits he was absent from Canada during a single trip to visit his seriously ill father and then his father unfortunately passed away and he attended his burial/funeral.

[11] The Appellant left Canada to visit his very elderly frail father age 94 on August 25, 2018. He was booked to return to Canada on October 5, 2018; however, on September 3, 2018 his father was diagnosed with two cancerous tumours and he was told his father had two to six months to live. He cancelled his return date of his trip for October 5, 2018 and left his ticket open. His father died on October 9, 2018 and the burial service was October 12, 2018. The Appellant returned to Canada on October 21, 2018.

[12] He submits his entitlement to benefits for the fourteen days under 55(1.1) of the Regulations be closer to the time of his father's death of October 9, 2018, and submits the fourteen days could start on October 3, 2018. He accepts for the remainder of time that he is out of Canada he does not qualify under 37 (b) of the Act and he does not meet any other exemptions to be granted further benefits under 55 of the Regulations, and accepts that he is disentitled to benefits other than fourteen day exception under 55(1.1) of the Regulations.

[13] The Tribunal acknowledges that there are two periods in question. There is a period of fourteen days when the both parties agree the Appellant meets the exemption under 55 (1.1) of the Regulations and he is entitled to benefits, and there is the remainder of the period while the Appellant is out of Canada and both parties agree that the Appellant does not meet any further exemptions under 55 of the Regulations and he is disentitled to benefits because he was out of Canada under 37(b) of the Act.

[14] Both parties agree that the Appellant is entitled to 14 days under Regulation 55(1.1) of the Act that (1)(b) and (d) may be cumulated during a single trip outside Canada as the Appellant was visiting his ill father and then the father passed away and there was a funeral. It is the effective date of the exemption that the parties are in disagreement about. The Respondent (Commission) allocated the 14 days from day after the Appellant left Canada on August 25, 2018

and the Appellant argues that it is reasonable to make the calculation closer to when his father became critically ill, died and was buried.

[15] The Tribunal finds the Appellant is entitled to benefits for a period of 14 days as a result of both exceptions in paragraphs 55(1)(b) and 55(1)(d) and the periods can be cumulative under 55(1.1) of the Regulations.(Canada (AG) v. Walsh 2008 FCA 220). The Tribunal determined the Appellant is available for work during these exemptions as he had made arrangements to be contacted while out of Canada for employment opportunities (GD3-14). 55(1)(b) and 55(1)(d) are two of the reasons of a compassionate nature that were introduced which broadened the grounds upon which a claimant could be outside Canada and still be entitled to benefits.

[16] The Respondent submits that the calculation of this period is a matter of policy and that the policy has been applied appropriately. The calculation of the fourteen days begins the day after the Appellant departed from Canada which was August 26, 2018, and the Appellant is allowed fourteen consecutive days, and the disentitlement should be imposed on the 15<sup>th</sup> day, and since the 15<sup>th</sup> day is a Saturday the disentitlement should be imposed from September 3, 2018 to October 19, 2018.

[17] The Appellant argues that the calculation of the fourteen day exemption should be calculated closer to the time of his father's death on October 9, 2018(GD 2-12)) and his burial/funeral on October 12, 2018, and although the Respondent has a policy for calculating the period allowed when he went outside Canada, it is only their policy and not law.

[18] The Tribunal agrees and accepts that the Appellant does meet the exception in 55 (1.1) of the *Regulations*. The Tribunal must consider the Appellant's argument. While the Tribunal is not bound by former decisions of the Social Security Tribunal, the Tribunal takes guidance from an Appeal Division decision in which the Commission acknowledged that neither the *Act* nor the *Regulations* specify when the calculation of the exemption from disentitlement begins (*R.R. v. Canada Employment Insurance Commission*, 2018 SST 77).

[19] The Tribunal finds there is nothing in the Act or Regulations that states the period of the Appellant's exemption must be calculated from the first day of his absence from Canada. When the period outside Canada extends beyond the fourteen grace period, the exemption from disentitlement can be applied to any period during the Appellant's absence. As such, the

Tribunal accepts the Appellant's argument that it would be reasonable to apply his exemption from disqualification for fourteen consecutive days closer to the time of his father's death and burial as opposed to when he left Canada because his father was not seriously ill then and he had not passed away. Since his father's death was October 9, 2018, and the burial was October 12, 2018 it is reasonable to apply the 7 days to visit his seriously ill father in the 7 days before his father passed away on October 9, 2018, and apply the 7 days to attend his father's funeral after his father passed away. The Tribunal finds the entitlement of fourteen days could start on October 3, 2018.

[20] The EI Act is designed to make benefits available quickly to those unemployed persons who qualify under it and so it should be liberally interpreted to achieve that end (*Abrahams v. Canada (Attorney General)*, A-872-80).

### CONCLUSION

[21] The Appellant has proven he is entitled to benefits for a period of fourteen days under section 55(1.1) of the Regulations because his father was seriously ill and it was his father's funeral that the Appellant attended and the entitlement to benefits could start on October 3, 2018.

[22] The appeal is allowed.

Heather Hamilton

Member, General Division - Employment Insurance Section

HEARD ON:	January 16, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	B. C., Appellant