



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. M. v Canada Employment Insurance Commission*, 2019 SST 900

Tribunal File Number: GE-19-1363

BETWEEN:

B. M.

Appellant/Claimant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Catherine Shaw

HEARD ON: April 2, 2019

DATE OF DECISION: April 3, 2019

DECISION

[1] The appeal is allowed in part. The result is that the Claimant has proven he was available for work as of January 1, 2019, but is not entitled to receive employment insurance benefits while outside of Canada from January 1, 2019 to March 29, 2019.

OVERVIEW

[2] The Claimant was laid off from his employment and travelled outside Canada to live temporarily in a Florida. The Claimant and his spouse live in Florida for part of the year, as the conditions there are better for his spouse's chronic illness. The Canada Employment Insurance Commission (Commission) decided the Claimant was not entitled to benefits as of January 1, 2019, because he was on vacation outside Canada and because he was not available for work while out of the country.

[3] The Claimant requested a reconsideration of this decision on the basis that he was in Florida because of his spouse's health condition and that he was in contact with his employer and could have returned immediately if there was work. The Commission maintained its decision and the Claimant now appeals to the Social Security Tribunal (Tribunal).

PRELIMINARY MATTERS

[4] At the hearing, the Claimant testified that he had returned to Canada in the evening of Saturday, March 30, 2019. As the reason for the Claimant's disentitlement for being out of the country was his absence from Canada, I will consider whether the Claimant should be disentitled due to this absence for the period from January 1, 2019 to March 29, 2019.

ISSUES

[5] Has the Claimant proven he was available for work as of January 1, 2019?

[6] Is the Claimant entitled to benefits when he was outside Canada from January 1, 2019 to March 29, 2019?

ANALYSIS

[7] To be entitled to receive regular employment insurance benefits, claimants must show they were capable of and available for work and unable to find suitable employment for every working day they are seeking benefits.¹ A working day is any day of the week except Saturday and Sunday.²

[8] Claimants have the burden of demonstrating that they meet the requirements for receiving employment insurance benefits and that no circumstances exist that will disentitle or disqualify them from receiving benefits, including the availability requirements provided for in the *Employment Insurance Act*.³

Has the Claimant proven he was available for work as of January 1, 2019?

[9] The Claimant can establish his availability by proving his desire to return to the labour market as soon as a suitable job is offered, through demonstrating efforts to find a suitable job, and without setting personal conditions that might limit his chances of returning to the labour market.⁴

[10] The following facts are not in dispute. For the benefit period starting July 29, 2018, the Claimant was laid off from his employment on July 25, 2018. He traveled outside of Canada on December 31, 2018 and returned on March 30, 2019.

[11] The Claimant submits he is employed by X and that he receives job assignments through the union's job review and bidding system. The Claimant testified that job opportunities are posted each day for the members of the union, who can then call into a telephone system to bid on certain jobs. The member's relative ranking compared to other bidders then determines who obtains the job, with the rank being determined by several factors, including the member's most recent employment period.

¹ *Employment Insurance Act*, paragraph 18(1)(a)

² *Employment Insurance Act*, section 32

³ *Canada (Attorney General) v. Picard*, 2014 FCA 46; *Canada (Attorney General) v. Peterson*, A-370-95

⁴ *Faucher v. Canada Employment and Immigration Commission*, A-56-96

[12] The Claimant stated that since January 1, 2019, he checked the job postings daily and had bid on several jobs while he was residing in Florida. He stated he was prepared to return to Canada immediately if he had successfully obtained a job. He had previously stated to the Commission that it would take him less than 48 hours to travel home from his residence in Florida. At the hearing, the Claimant's representative stated this was the case several years ago, when the Claimant was residing at his address in Florida and received a job, he traveled back to his place of residence in Canada and was ready to work within 48 hours.

[13] The desire to return to work must be sincere, demonstrated by the attitude and the conduct of the Claimant.⁵

[14] I am satisfied the Claimant had a desire to return to the labour market as soon as a suitable job was offered and demonstrated that desire through efforts to find a suitable job. The Claimant gave direct and credible testimony regarding the procedure to check for available employment opportunities with his union and confirmed that this is the only method to find suitable employment for a member of this union.

[15] I am also satisfied the Claimant did not set any personal conditions that might have unduly limited his chances of returning to the labour market. The Claimant stated the only factor he considered for jobs he placed a bid on was whether or not he was qualified for the job itself.

[16] Based on the foregoing, I find the Claimant has met his burden of proof to show that he was available for work as of January 1, 2019. As a result, the Claimant is not disentitled from receiving benefits for not being available for work.⁶

Is the Claimant entitled to benefits when he was outside Canada from January 1, 2019 to March 29, 2019?

⁵ *Canada (Attorney General) v. Whiffen*, A-1472-92

⁶ The availability of the Claimant was examined under paragraph 18(1)(a) of the *Employment Insurance Act*

[17] As a general rule, claimants are not entitled to receive benefits for any period that they are outside Canada.⁷ There are a few exceptions to this rule and they are set out in section 55 of the *Employment Insurance Regulations*.⁸

[18] The onus is on the Claimant to prove that his absence outside Canada meets one of the exceptions set out in the *Employment Insurance Regulations*.⁹

[19] The Claimant agrees that he was outside of Canada for the period from January 1, 2019 to March 29, 2019. He stated he and his spouse temporarily reside in Florida, as the cold weather in their home province makes his wife's chronic health condition worse. In support of his position, the Claimant provided documentary evidence to show he has a residence in Florida, including a monthly bill from an internet and cable television provider in his spouse's name, and the certificate of title for a recreational vehicle in his and his spouse's names, with an address listed in Florida.

[20] The Claimant stated that he was not on vacation in Florida, but living there temporarily to improve his spouse's chronic health condition. The Claimant provided medical notes to the Tribunal that support his spouse has severe arthritis. His spouse gave testimony as a witness at the hearing and stated she is disabled.

[21] The Claimant submitted to the Tribunal that he understands there are situations in which a claimant may be entitled to benefits while outside of Canada. He submitted that he meets two of the exemptions listed in the *Employment Insurance Regulations*, specifically subparagraphs 55(5)(a) and 55(6)(a).

[22] In consideration of the Claimant's argument, I will first examine the exemption provision located at subparagraph 55(5)(a) of the *Employment Insurance Regulations*. To be exempt from disqualification under this clause requires that the Claimant be making a claim for one of the listed special benefits and that his most recent interruption of earnings before making his claim for benefits is from insurable employment outside of Canada.

⁷ This rule is located in paragraph 37(b) of the *Employment Insurance Act*.

⁸ *Canada (Attorney General) v. Gibson*, 2012 FCA 166

⁹ *Canada (Attorney-General) v. Peterson*, A-370-95

[23] At the hearing, the Claimant's representative confirmed the Claimant was claiming regular employment insurance benefits, not special benefits. The Claimant also confirmed that he did not work in insurable employment outside of the country at any time. The evidence on file indicates the Claimant's most recent interruption of earnings before making his claim for benefits was for his employer in his home province. The Claimant's initial claim for benefits also states he is claiming regular employment insurance benefits. Based on the foregoing, I find the Claimant does not meet the requirements of this exemption.

[24] Next, I will examine the exemption provision located at paragraph 55(6)(a) of the *Employment Insurance Regulations*. To be exempt from disentitlement under this clause requires that the Claimant resides temporarily or permanently in a state of the United States that is contiguous to Canada and that he is available for work in Canada.

[25] I have established the Claimant was available for work during this period in my analysis above; however, the Claimant's temporary residence was in Florida, which is not a state that is contiguous, or in other words shares a border, with Canada. At the hearing, the Claimant's representative stated there is a direct flight between Florida and the Claimant's home province in Canada, and this ease of travel between the two locations supports that there is no appreciable distinction between Florida and a state that is contiguous with Canada. While I understand the Claimant's argument, I recognize that the Federal Court of Appeal has considered this relationship between Canada and Florida and determined that Florida cannot be considered "contiguous" to Canada within the meaning of paragraph 55(6)(a) of the *Employment Insurance Regulations*.¹⁰ As such, I find the Claimant does not meet the requirements of this exemption.

[26] The Claimant's spouse also stated at the hearing that she believed the Claimant could meet the exemption provision located at subparagraph 55(6)(b)(iv) of the *Employment Insurance Regulations*. To meet the requirements of this exemption require that the Claimant is entitled to receive benefits in both Canada and the United States for the same period of unemployment, and is only relevant to a claimant who has had separate insurable employments in both jurisdictions.

¹⁰ *Canada (Attorney General) v. Bendahan*, 2012 FCA 237

As the Claimant confirmed that he was only employed within Canada for the benefit period in question, I find the Claimant does not meet the requirements of this exemption.

[27] I acknowledge the Claimant and his spouse move their residence temporarily to Florida to aid his wife's chronic health condition and that this is not the same as a vacation. However, this is not relevant to the Claimant's entitlement to employment insurance benefits. The *Employment Insurance Act* is clear that claimants who are outside Canada are restricted from receiving benefits unless they meet one of the listed exceptions in the *Employment Insurance Regulations*. Since the Claimant did not meet one of these listed exceptions, he is not entitled to employment insurance benefits while he was outside of Canada for the period from January 1, 2019 to March 29, 2019.

CONCLUSION

[28] On the issue of availability, the appeal is allowed.

[29] On the issue of the Claimant's entitlement to benefits while outside Canada, the appeal is dismissed with modification. The Claimant remains disentitled for the period of his absence from Canada, which is January 1, 2019 to March 29, 2019.

Catherine Shaw

Member, General Division - Employment Insurance Section

HEARD ON:	April 2, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	B. M., Appellant/Claimant Suraiya Jinah, Representative for the Appellant/Claimant