



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. E. v Canada Employment Insurance Commission*, 2019 SST 953

Tribunal File Number: GE-19-2609

BETWEEN:

J. E.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Takis Pappas

HEARD ON: August 14, 2019

DATE OF DECISION: August 14, 2019

DECISION

[1] The appeal is dismissed on both issues.

OVERVIEW

[2] An initial claim for employment insurance sickness benefits was established effective April 16, 2017.¹

[3] Information obtained from Canada Border Services Agency (“CBSA”)² confirmed that the Appellant was absent from Canada from July 6, 2017 to August 4, 2017. When this information was matched to the Respondent’s records,³ it was discovered the Appellant did not declare this situation to the Respondent and was paid benefits for the same period.⁴

[4] The Appellant provided that her brother fell ill and passed away in January 2017. Around July 2017, his lawyer called from Trinidad and notified her that they need to distribute his estate to his children. The Appellant had the Power of Attorney and she was the executor of the will. She had to travel to Trinidad to perform her duties as the executor.⁵

[5] The Respondent determined that the Appellant was not entitled to employment insurance benefits for the period outside of Canada and imposed a disentitlement from July 7, 2017 to August 3, 2017.⁶ The definite disentitlement resulted in an overpayment of \$2,000.00.

[6] The Respondent also imposed a penalty in the amount of \$400.00 because the Appellant made three misrepresentations by knowingly providing false or misleading information.⁷

[7] Upon reconsideration, the Respondent upheld the out of Canada decision and rescinded the penalty decision.

¹ (GD3-3 to GD3-10)

² (GD3-37 to GD3-38)

³ (GD3-15 to GD3-33)

⁴ (GD3-12 to GD3-13)

⁵ (GD3-39 to GD3-41)

⁶ (GD3-42 to GD3-44)

⁷ (GD3-43 to GD3-44)

ISSUES

[8] Issue #1: Should a disentitlement be imposed according to section 37 of the *Employment Insurance Act* (the Act) and section 55 of the *Employment Insurance Regulations* (the Regulations) because the Appellant was absent from Canada?

[9] Issue #2: Should a penalty be imposed on the Appellant?

ANALYSIS

Issue #1: Should a disentitlement be imposed according to section 37 of the Act and section 55 of the Regulations because the Appellant was absent from Canada?

[10] 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. Parliament decided upon a very strict approach to the question of entitlement to Employment Insurance benefits for persons outside of Canada, presumably with a view to avoiding abuse of the employment insurance system. In Section 37(b), it enacted a clear and unequivocal restriction of employment insurance benefits for persons not in Canada. The governing principle is described by Section 37(b) of the Act and it states:

Except as may otherwise be prescribed, a claimant is not entitled to receive benefits for any period during which the claimant

- a) is not in Canada

[11] Regulation 55 goes further to add certain exemptions to that may provide benefits for up to seven days for scenarios that include:

- a) attending medical treatment not available in the claimant's area of residence.
- b) attending the funeral of an immediate family member or close relative.
- c) to accompany family member undergoing medical treatment.
- d) to visit an immediate family member who is seriously ill or injured.

e) to conduct a bona fide job search or interview.

[12] Yes, a disentitlement should be imposed on the Appellant because she was out of Canada.

[13] The uncontested evidence in this case established that the Appellant was out of Canada during the periods in question.

[14] The Appellant submitted that the purpose of her trip was to attend to her brother's affairs after he passed away in January 2017. The Respondent submitted that the purpose of the Appellant's absence did not meet the conditions under Regulation 55 and as a result, she was disentitled for the period of July 7, 2017 to August 3, 2017 because she was out of Canada.

[15] I find that the Appellant is not entitled to benefits for the period of July 7, 2017 to August 3, 2017 because she was out of Canada. The reason that the Appellant was out of Canada does not fall within the exceptions of Regulation 55.

[16] The Court stated that "Section 37(b) of the Employment Insurance Act, S.C. 1996, c, 23, provides that "except as may otherwise be prescribed", a claimant is not entitled to receive benefits while outside Canada".⁸

Issue #2: Should a penalty be imposed on the Appellant?

[17] Penalties may be imposed for false or misleading statements made "knowingly".⁹ "Knowingly" is determined on the balance of probabilities based on the circumstances of each case or the evidence of each case.¹⁰

[18] The Respondent submits that in the case at hand, it has rescinded the Appellant's penalty because there is no evidence of misrepresentation. The Respondent contends the Appellant made an honest mistake.

[19] I agree with the Respondent's submission. Since the Appellant is appealing a favourable reconsideration decision, I dismiss the appeal on this issue.

⁸ (Canada (AG) v. Gibson, 2012 FCA 166)

⁹ (Employment Insurance Act (the Act), section 38)

¹⁰ (*Gates* A-600-94)

[20] I agree with the Respondent's comment that the Appellant's statement of financial hardship might indirectly be a request for a write-off. As indicated by the Federal Court decision,¹¹ I am not authorized to address such request.

[21] In cases such as this, it would be appropriate for the Appellant to make a formal request to the Respondent and ask for a write-off of the overpayment. The Respondent could then issue a formal decision regarding the write-off.

CONCLUSION

[22] The appeal is dismissed on both issues.

Takis Pappas

Member, General Division - Employment Insurance Section

HEARD ON:	August 14, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	J. E., Appellant

¹¹ (Canada (AG) v. Villeneuve, 2005 FCA 440; Canada (AG) v. Mosher, 2002 FCA 355; Canada (AG) v. Filiatrault, A-874-97)