



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. K. v Canada Employment Insurance Commission*, 2020 SST 84

Tribunal File Number: GE-19-4301

BETWEEN:

R. K.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Paul Dusome

HEARD ON: January 20, 2020

DATE OF DECISION: January 28, 2020

DECISION

[1] The appeal is allowed. The Claimant is entitled to receive sick benefits from July 23 to August 5, 2019.

OVERVIEW

[2] While in receipt of regular employment insurance (EI) benefits, the Claimant advised the Commission that she would travel to Sri Lanka from July 22 to August 6, 2019. The purpose of the travel was to complete a dental implant that had been started in Sri Lanka in 2018. The Commission decided that she was not entitled to receive benefits because she was out of Canada, and she had not proven that she was out of Canada to receive medical treatment that was not readily available in the area where she lived in Canada. The Commission took the position that dental implants are readily available in the Claimant's area of residence in Canada. The Claimant took the position that the treatment includes the materials needed for the treatment. Because the part to complete the procedure was not available in Canada, the treatment was not available in Canada.

ISSUE

[3] Was the Claimant entitled to receive EI benefits because she was out of Canada to receive medical treatment that was not readily or immediately available in her area of residence in Canada?

ANALYSIS

[4] A claimant is not entitled to receive EI benefits while she is outside Canada¹. There are a number of exceptions to this rule². The relevant exception in the Claimant's case relates to medical treatment. The Claimant has to prove three things. First, she was outside Canada to get medical treatment that was not readily or immediately available in her area of residence in Canada. She is not required to prove that the treatment was both "not readily and immediately

¹ *Employment Insurance Act*, paragraph 37(b).

² *Employment Insurance Regulations*, section 55.

available”³ Secondly, the treatment was given at a hospital, medical clinic or similar facility outside Canada. Thirdly, the hospital, clinic or facility was accredited by the governmental authority outside Canada to provide the treatment⁴.

[5] The Claimant has lived in Canada since 2012. She has family living in Sri Lanka, and visits them there. In April 2018, she was visiting family in Sri Lanka. While there, she developed severe dental pain. She consulted a local dentist, who diagnosed a broken tooth. The Claimant was not aware she had a broken tooth until then. The tooth needed to be dealt with immediately. The dentist extracted the tooth, and placed a dental implant into the jaw. The treatment could not be completed for another year. This left the Claimant with a gap in her teeth where the broken tooth had been. Completion of the treatment involved placing a crown on top of the implant after the year wait. At the time, the Claimant was focused on dealing with the need for immediate treatment. She was not thinking about the follow up for the crown.

[6] After returning to Canada, the Claimant wanted to get the last stage of the treatment done in Canada when the time came. The reason for this was the cost of travelling to Sri Lanka. She consulted a dentist in her community, a specialist in dental implants. He was willing to do the treatment, but needed information from the Sri Lankan dentist on the implant that had been used. When the Claimant gave that information to the Canadian dentist, he said that he could not complete the treatment for her. The reason was that the implant the Sri Lankan dentist had used was not available in Canada. Neither was the crown to be put onto the implant. The Canadian dentist advised the Claimant that she would have to return to Sri Lanka to have the treatment completed. That was the reason why the Claimant went to Sri Lanka to have the treatment completed in July 2019.

[7] The first question to be resolved is whether the medical treatment related to the dental implant was not readily or immediately available in the area where the Claimant resided. The answer is that the treatment was not readily or immediately available.

³ *M.L. v. C.E.I.C.*, 2019 SST 452.

⁴ *Employment Insurance Regulations*, paragraph 55(1)(a).

[8] The Commission has taken the position that because dental implants are readily available and accessible in Canada, the Claimant does not come within the exception in paragraph 55(1)(a) of the Regulations. The Commission submits that,

...the specific crown type and completion of the procedure in general may not be able to be completed, due to the access of the materials; however, the general basis of the performance of a dental crown implant, is not one that would be subject to being considered as a unique and inaccessible treatment that would not be accessible or readily available to be completed in Canada. (GD4-6)

However, the Commission contests that it is not the procedure that is not readily available, but only the materials which are now implanted, are not available...The Commission disputes the materials not being available in Canada as being the issue and not the procedure itself. (GD6-2)

[9] The Commission is interpreting the phrase “medical treatment” in the Regulation to exclude materials that may be required as part of the treatment. That cannot be right. Medical treatment is not just diagnosis and advice. It includes medications, therapies, surgeries, and supplies needed to carry out the course of the treatment. Medications may need syringes. Therapies may need assistive devices. Surgeries may require metal plates and screws to join broken bones. Dressings, braces, and casts may be needed to complete the treatment. The phrase “medical treatment” must include all the steps and materials needed to complete the course of the treatment. A response to this conclusion might be that the phrase “medical treatment” is ambiguous, so that the Commission’s interpretation is correct. That does not assist the Commission’s position. The applicable principle is that in interpreting the language of the employment insurance legislation, “any doubt arising from the difficulties of the language should be resolved in favour of the claimant.”⁵ If the phrase “medical treatment” is ambiguous, the above interpretation favouring the Claimant should be adopted.

[10] In this case, the Claimant had the first step of an implant done in Sri Lanka in 2018, because of severe pain she experienced while on vacation there. The second step involved placing a crown onto the implant. The crown was a critical part of the treatment. The treatment remained unfinished until the crown was put into place on the implant. The crown was not available in Canada, and therefore the treatment could not be completed here, as stated by the

⁵ *Abrahams v. Canada (A.G.)*, [1983] 1 S.C.R. 2.

dental surgeon in Canada. It was therefore necessary for the Claimant to return to Sri Lanka to complete the treatment. The conclusion from these facts is that the treatment was not readily available in Canada. It was, to reverse the Commission's submission, "a unique and inaccessible treatment that would not be accessible or readily available to be completed in Canada."

[11] The Commission also submitted that the Claimant chose to have an implant that was not available, which was a personal decision. There is no evidence to support the claim that she knew that the implant was not available in Canada. She tried to have the treatment completed in Canada, and only then found that it could not be completed here.

[12] The second question to be resolved is whether the treatment was given at a hospital, medical clinic or similar facility outside Canada. The answer to that question is, yes. The only evidence on this issue is the Claimant's testimony that she received the implant at a hospital, and the letter from the dental surgeon in Sri Lanka who identified the treatment as having taken place at a hospital. The Commission made no submission on this matter. It accepted the letter from the Sri Lanka dental surgeon as proof of this matter.

[13] The third question to be resolved is whether the hospital, clinic or facility was accredited by the governmental authority outside Canada to provide the treatment. The answer to that question is, yes. There is little evidence on this issue. The Claimant responded to the Commission's questionnaire respecting being out of Canada. She was asked to select an option that best described her reason for being out of Canada. She checked "To undergo medical treatment from an accredited institution that is not readily available in my area of residence." The Claimant provided the letter from the dental surgeon in Sri Lanka, confirming the treatment at a hospital. The letter does not on its face state that this hospital is accredited by a governmental authority. The Commission did not specifically ask the Claimant to provide evidence of accreditation of the hospital. It did ask her for evidence on the treatment, its availability in Canada, and the Sri Lanka facility. The Commission referred the issue of her eligibility to the appeals advice and guidance team to be reviewed in depth. The response from the team was that the Claimant was not eligible because dental implants are readily available in Canada. The Commission did not take the position that she was not eligible because the treatment took place at an unaccredited hospital. It is a reasonable inference that the

Commission accepted the letter from the Sri Lanka dental surgeon as proof of this matter. That inference, combined with the evidence of the questionnaire and the dental surgeon's letter, support a conclusion that the hospital was accredited by a government authority.

[14] As a result, the Claimant has proven all three things needed to succeed in this appeal.

CONCLUSION

[15] The appeal is allowed.

Paul Dusome
Member, General Division - Employment Insurance Section

HEARD ON:	January 20, 2020
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	R. K., Appellant