



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. R. v Canada Employment Insurance Commission*, 2020 SST 753

Tribunal File Number: AD-20-695

BETWEEN:

J. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: September 3, 2020

DECISION AND REASONS

DECISION

[1] I am dismissing this application to rescind or amend the Appeal Division decision dated June 3, 2020. This file will now be closed.

OVERVIEW

[2] The Claimant, J. R., applied for Employment Insurance (EI) sickness benefits after breaking his wrist. The Canada Employment Insurance Commission reviewed his application, approved it, and paid him EI benefits.

[3] While the Claimant was receiving EI benefits, he went to Mexico to be with his family and to recover from his injury. The Commission decided that the Claimant was not entitled to EI benefits from November 25, 2019, to December 31, 2019, because he was out of the country and because he was unavailable for work.

[4] The Claimant appealed the Commission's decision to the Tribunal's General Division, but he lost. He then appealed the General Division decision to the Tribunal's Appeal Division. On June 3, 2020, a different Appeal Division member concluded that the Claimant's appeal had no reasonable chance of success, and refused to give him leave (or permission) to appeal.

[5] The Claimant emailed the Tribunal on June 1 and 3, 2020. The Appeal Division also finalized its decision on June 3, 2020. Unfortunately, however, Tribunal staff had not brought these emails to the Tribunal Member's attention before he finalized his decision. As a result, the Claimant brought this application to rescind or amend the Appeal Division decision dated June 3, 2020.

[6] I have decided that the Claimant has not met the legal test that would allow me to rescind or amend the June 3, 2020, decision. In any case, the Claimant is unable to avoid the general rule which says that EI recipients cannot receive benefits while outside the country.

ON THE RECORD DECISION

[7] This is an “on the record” decision, meaning that I decided the application without a hearing. Instead, I based my decision on all the evidence and submissions in the file. I decided to proceed in this way because:

- a) the underlying facts in the case are not in dispute;
- b) both parties have provided written arguments to support their case; and
- c) the *Social Security Tribunal Regulations* require that I proceed as quickly and informally as the circumstances allow, while still being fair to the parties.¹

ISSUE

[8] My decision focuses on this question: Has the Claimant established that I should rescind or amend the Appeal Division’s decision dated June 3, 2020?

ANALYSIS

[9] Briefly, the Appeal Division can rescind or amend one of its earlier decision if the Claimant:²

- a) submits “new facts”. In this context, the new facts must affect the outcome of the case. These facts must also have happened after June 3, 2020, or be ones that the Claimant could not have discovered before that date, even if acting diligently;³ or
- b) establishes that a decision was made without knowledge of, or was based on a mistake as to, some material fact.

¹ Specifically, see section 3(1)(a) of the *Social Security Tribunal Regulations*.

² This legal test appears in section 66(1)(a) of the *Department of Employment and Social Development Act*.

³ These principles were reconfirmed by the Federal Court of Appeal in *Canada (Attorney General) v Hines*, 2011 FCA 252.

There is no reason to rescind or amend the June 3, 2020, decision.

[10] The Claimant does not dispute that he was out of the country at the relevant time. He also acknowledges that he did not inform the Commission of his trip before leaving. His main argument is that he did tell the Commission that he was out of the country on December 10, 2019, and that the Commission should then have warned him that he was not entitled to EI benefits while staying abroad. If the Commission had given him this warning, the Claimant says that he would have quickly returned to Canada.

[11] In its decision of June 3, 2020, the Appeal Division concluded that the Claimant had no way of escaping the clear language in section 37(b) of the *Employment Insurance Act* (EI Act): a person cannot receive EI benefits while outside the country. Although there are some exceptions to this general rule, the Claimant has not suggested that any of those exceptions apply here.⁴

[12] For clarity's sake, I have reviewed emails sent by the Claimant at the following times, all of which I consider to be part of his application to rescind or amend the Appeal Division's June 3, 2020, decision:

- a) June 1, 2020, at 3:02 p.m.;
- b) June 3, 2020, at 1:41 a.m.;
- c) June 3, 2020, at 10:23 a.m.;
- d) June 10, 2020, at 9:25 a.m.;
- e) June 15, 2020, at 11:46 a.m.;
- f) June 18, 2020, at 11:29 p.m.;
- g) June 23, 2020, at 1:02 p.m.;
- h) June 28, 2020, at 5:09 p.m., with attached application to rescind or amend (RA1);
- i) July 22, 2020, at 2:42 p.m., 2:47 p.m., and 3:14 p.m. (RA3).

⁴ The exceptions are set out in section 55 of the *Employment Insurance Regulations*.

[13] In my view, none of these emails are new facts, as defined above. In addition, none establish that the Appeal Division made its June 3, 2020, decision without knowledge of, or based on a mistake concerning, some material fact.

[14] Instead, the Claimant's emails attempt to raise new arguments and propose a way of settling his case with the Commission.

[15] For example, the Claimant argues that the General Division made an error when it wrote this at the top of page 5 of its decision: "the Commission included reminders that you cannot get benefits when you are abroad."

[16] The Claimant has taken this passage out of context. In fact, the General Division wrote this in paragraph 14 of its decision:

The Claimant also argues that the Commission never told him that he could not receive benefits while he was out of the country. He pointed out that none of the correspondence from the Commission included reminders that you cannot get benefits when you are abroad.

[17] The Appeal Division was not confused about the Commission's lack of reminders or warnings in this case. Indeed, the Commission conceded this fact. Regardless, the Appeal Division concluded that the Claimant's appeal had no reasonable chance of success. In other words, while it might have been better if the Commission had warned the Claimant that he could not receive his benefits while staying abroad, it was not obliged to do so.

[18] Related to this, the Claimant said that he would forego the first three weeks of benefits (before the Commission knew that he was abroad) but that the Commission should pay benefits for the last three weeks (after learning that he was abroad).

[19] The previous Appeal Division member was aware of this proposal and argument, but it had no bearing on his decision.⁵ The Appeal Division member's task was to make a decision that applies the law.

⁵ The Claimant also made this proposal clear at page AD1-13.

[20] The Claimant also argued that the general rule against collecting EI benefits while outside Canada makes little sense and should not apply to him. In support of his arguments, the Claimant mentioned how women can receive maternity benefits, even if they are outside the country. The Claimant also questioned why a Montrealer could receive sickness benefits if visiting Vancouver but not Mexico City, even though Mexico City is a bit closer.

[21] These arguments suggest that the EI Act should be changed. But that is not something that the Tribunal can do.

[22] None of the Claimant's emails contain new facts. Nor do they reveal how the Appeal Division was unaware of or mistaken as to some material fact. As a result, the law does not allow me to rescind or amend the June 3, 2020, decision.

[23] In any event, none of the Claimant's emails help him to avoid the plain language in section 37(b) of the EI Act: EI recipients are not entitled to benefits when they are outside Canada. This general rule has some exceptions, none of which the Claimant has said apply in his case. As a result, the outcome of his case remains the same: the appeal is bound to fail.

CONCLUSION

[24] I am dismissing the Claimant's application to rescind or amend the Appeal Division's June 3, 2020, decision. The Claimant has not presented new facts, nor has he demonstrated that the Appeal Division was unaware of or mistaken as to some material fact.

Jude Samson
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
REPRESENTATIVES:	J. R., Appellant S. Prud'Homme, Representative for the Respondent