



Citation: *RM v Canada Employment Insurance Commission*, 2021 SST 739

## Social Security Tribunal of Canada General Division – Employment Insurance Section

# Decision

**Appellant:**

R. M.

**Respondent:**

Canada Employment Insurance Commission

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**Decision under appeal:**

Canada Employment Insurance Commission  
reconsideration decision (431775) dated August 24, 2021  
(issued by Service Canada)

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**Tribunal member:**

Gary Conrad

**Type of hearing:**

Teleconference

**Hearing date:**

September 20, 2021

**Hearing participant:**

Appellant

**Decision date:**

September 21, 2021

**File number:**

GE-21-1514

## Decision

[1] The appeal is dismissed.

[2] The Claimant can be paid benefits for the first seven days<sup>1</sup> she was outside the country to attend her father's funeral, but is disentitled for the rest of the time she was out of the country.

[3] The Claimant is also disentitled for benefits, from March 16, 2021, to August 20, 2021, as she did not prove she was available for work.

## Overview

[4] The Claimant applied for employment insurance (EI) benefits on October 4, 2020.

[5] On March 15, 2021, her father passed away in India. The Claimant bought a plane ticket to India that day and left Canada for India to attend her father's funeral.

[6] The Claimant planned to return to Canada on April 29, 2021; however, a travel ban was put in place on April 22, 2021, preventing travel from India to Canada.

[7] The Claimant had to fly from India to a third country, and from the third country back to Canada. She returned to Canada on August 9, 2021.

[8] When the Claimant returned to Canada she had to quarantine for two weeks.

[9] The Commission decided the Claimant could be paid benefits for the first seven days she was out of the country to attend her father's funeral, but not for any other days she was out of the country.

[10] The Commission also decided the Claimant could not be paid benefits from March 16, 2021, to August 20, 2021, as she was not available for work while outside the country and when she was in quarantine after returning to Canada.

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<sup>1</sup> Subsection 55(1)(b) of the *Employment Insurance Regulations*

[11] The Claimant says she was available for work while outside of Canada and while in quarantine as she was looking for work and would have returned to Canada if offered a job. She also says she should be paid for when she was outside of Canada as the reason it took so long to return to Canada was not her fault; the situation was totally outside of her control.

## Issues

[12] Can the Claimant be paid benefits for the entire time she was outside of Canada?

[13] Was the Claimant available for work?

## Analysis

### **Can the Claimant be paid benefits for the entire time she was outside of Canada?**

[14] No, the Claimant cannot be paid benefits for the entire time she was outside of Canada as the law only allows payment for the first seven days she was outside of Canada to attend her father's funeral.<sup>2</sup>

[15] A claimant is not entitled to receive benefits for the period of time they are outside of Canada<sup>3</sup> although there are some exceptions to this rule, such as if they are outside Canada to attend the funeral of an immediate family member.<sup>4</sup>

[16] The Commission submits the Claimant can only be paid benefits from March 16, 2021, to March 22, 2021, the first seven days she was outside of Canada to attend her father's funeral as that is what the law allows.<sup>5</sup>

[17] The Claimant says when her father passed away she bought a ticket to India, left Canada on March 15, 2021, and arrived in India on March 16, 2021.

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<sup>2</sup> Section 55 of the *Employment Insurance Regulations*

<sup>3</sup> Subsection 37(b) of the *Employment Insurance Act*

<sup>4</sup> Section 55 of the *Employment Insurance Regulations*

<sup>5</sup> Subsection 55(1)(b) of the *Employment Insurance Regulations*

[18] The Claimant says she was planning to return to Canada on April 29, 2021.

[19] The Claimant it was not her fault that her return to Canada was delayed until August 9, 2021. The Claimant says the travel ban that was put in place on April 22, 2021, prevented her from returning earlier; she got COVID which delayed her further; and it took her a long time to fly out via a third country.

[20] I accept the Claimant left Canada to attend the funeral of her father and I note no party has disputed this.

[21] I find I agree with the submission of the Commission the Claimant can only be paid benefits for the first seven days she was outside the country, March 16, 2021, to March 22, 2021, to attend her father's funeral, as that is what the law allows.<sup>6</sup>

[22] I have do doubts the travel ban, the Claimant catching COVID, and the time it took to get to, and fly out of, a third country, were all circumstances outside of the Claimant's control.

[23] However, despite that, I cannot change the law<sup>7</sup> and the law only allows for benefits to be paid for the first seven days the Claimant was outside of Canada to attend her father's funeral. There are no further exemptions for travel bans, or other circumstances outside the Claimant's control.

[24] The decision of the Commission about paying the Claimant benefits when she was outside of Canada is upheld.

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<sup>6</sup> Subsection 55(1)(b) of the *Employment Insurance Regulations*

<sup>7</sup> *Canada (Attorney General) v Knee*, 2011 FCA 301

### **Was the Claimant available for work?**

[25] The law requires claimants to show that they are available for work.<sup>8</sup> In order to be paid EI benefits, claimants have to be capable of and available for work and unable to find suitable employment.<sup>9</sup>

[26] Case law sets out three factors for me to consider when deciding whether the Claimant was capable of and available for work but unable to find a suitable job. The Claimant has to prove the following three things:<sup>10</sup>

- a) She wanted to go back to work as soon as a suitable job was available.
- b) She made efforts to find a suitable job.
- c) She did not set personal conditions that might have unduly (in other words, overly) limited her chances of going back to work.

[27] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.<sup>11</sup>

#### **– Wanting to go back to work**

[28] I find the Claimant has shown that she wanted to go back to work as soon as a suitable job was available.

[29] The Claimant testified she wanted to work. She says she was looking for work while in India. She would have returned right away if offered a job. She says she was looking for work while she was in quarantine in Canada as well.

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<sup>8</sup> Paragraph 18(1)(a) of the *Employment Insurance Act* provides that a claimant is not entitled to be paid benefits for a working day in a benefit period for which he or she fails to prove that on that day he or she was capable of and available for work and unable to obtain suitable employment.

<sup>9</sup> Paragraph 18(1)(a) of the *Employment Insurance Act*.

<sup>10</sup> These three factors appear in *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96. This decision paraphrases those three factors for plain language.

<sup>11</sup> Two decisions from case law set out this requirement. Those decisions are *Canada (Attorney General) v Whiffen*, A-1472-92; and *Carpentier v Canada (Attorney General)*, A-474-97.

[30] The Claimant says that the notes from the Commission about the August 24, 2021, phone call<sup>12</sup> are incorrect. The Claimant says she did not tell the Commission she was not looking for work in India and while quarantined. The Claimant says she did not tell the Commission she would not have returned to Canada before April 29, 2021, if she was offered a job.

[31] The Claimant says she was calling from India, the call quality was poor and there must have been a miscommunication with the Commission.

[32] I find I accept the Claimant's explanation for the notes in the August 24, 2021, phone call with the Commission. I can accept there was a miscommunication as the Claimant required an interpreter at the hearing since English is not her first language. That fact, combined with the possibility of a poor connection on the other side of the world, leads me to accept the Claimant's explanation.

[33] So, I accept the Claimant wanted to work as she was looking for work.

– **Making efforts to find a suitable job**

[34] The Claimant did not make enough efforts to find a suitable job for the entire period of March 16, 2021, to August 20, 2021.

[35] The Claimant testified she was looking for jobs while in India for her father's funeral. She says she was looking for part-time jobs that would let her work remotely. She says she looked through a lot of jobs but could not find one that met her requirements.

[36] The Claimant says when she was back in Canada in quarantine, she called the agency she used to work for to see if they had any jobs for her. She also contacted one other agency to check for jobs as well.

[37] The Claimant says when she was back in Canada she would have taken any type of job offered to her.

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<sup>12</sup> GD03-22

[38] I find for the period of March 16, 2021, to August 8, 2021, when the Claimant was in India she was making enough efforts to find employment as she was looking for jobs, and evaluating the jobs to see if they would work for her. I accept she looked through a lot of jobs to try and find one that would meet her requirements.

[39] However, for the period of August 9, 2021, to August 20, 2021, when she was back in Canada and in quarantine, she did not make enough efforts to find employment. I find that calling only two agencies to ask if they had jobs was not enough efforts to find employment and the Claimant could have expanded her search beyond only those two agencies.

– **Unduly limiting chances of going back to work**

[40] The Claimant did set personal conditions that might have unduly limited her chances of going back to work, but only for the period of March 16, 2021, to August 8, 2021.

[41] I find the Claimant only looking for a part-time job she could do remotely while she was in India was a personal condition that would unduly limit her chances of returning to work.

[42] I find the Claimant's requirement the job be part-time only and remote work are too restrictive. These requirements for a job would have unduly limited her chances of going back to work since they would remove so many potential jobs she could apply for.

[43] However, I find that once she was back in Canada and was willing to accept any job, she was no longer setting a personal condition that might have unduly limited her chances of going back to work, since she would now be open to applying to a lot more jobs.

– **So, was the Claimant capable of and available for work?**

[44] Based on my findings on the three factors, I find that the Claimant has not shown that she was capable of and available for work but unable to find a suitable job for the entire period of the disentitlement, March 16, 2021, to August 20, 2021.

## **Conclusion**

[45] The appeal is dismissed; the decision of the Commission is upheld.

[46] I find the Claimant is disentitled from benefits for the period of time she was out of the country to attend her father's funeral, except for the first seven days as allowed by the law.

[47] I further find the Claimant is disentitled from benefits for the period of March 16, 2021, to August 20, 2021, as she has not proven that in that time period she was capable of and available for work.

Gary Conrad

Member, General Division – Employment Insurance Section