



Citation: *NK v Canada Employment Insurance Commission*, 2021 SST 778

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

# **Decision**

**Appellant:** N. K.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (434601) dated September 22, 2021 (issued by Service Canada)

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**Tribunal member:** Angela Ryan Bourgeois

**Type of hearing:** Teleconference

**Hearing date:** October 29, 2021

**Hearing participants:** Appellant

**Decision date:** November 12, 2021

**File number:** GE-21-1881

## Decision

[1] The appeal is dismissed. The Claimant, N. K., cannot receive regularly employment insurance benefits (EI benefits) between March 2, 2021, and June 9, 2021, because he was outside Canada. Further, he is also disentitled from receiving EI benefits between March 2, 2021, and June 10, 2021, because he didn't meet the availability requirements under the law.

## Overview

[2] The rule is that to receive regular employment insurance benefits (EI benefits) claimants have to be in Canada. There are some exceptions to this rule. But even if a claimant falls within one of the exceptions, to receive EI benefits they still have to show that they meet the availability requirements under the law.

[3] After the Claimant established a benefit period in February 2021, he had to travel to India to see his family. His grandfather and mother were seriously ill. He left Canada on February 22, 2021, and returned on June 10, 2021. He had planned to come home sooner but was delayed by pandemic travel restrictions.

[4] On his biweekly reports, the Claimant reported that he was out of Canada, but the Commission still paid him EI benefits. Upon the Claimant's return to Canada, the Canada Employment Insurance Commission (Commission) decided that he hadn't been entitled to receive EI benefits while out of Canada between March 2, 2021, and June 9, 2021. It applied an exception to the Claimant's first seven days outside Canada. The Commission also decided that he hadn't proven his availability between March 2, 2021, and June 10, 2021. Since he had already received the EI benefits, the Commission said he had to repay them.

[5] The Claimant is appealing both of the Commission's decisions (out of Canada and availability) to the Tribunal.

## Issues

[6] I have to decide:

- Does the Claimant's travel to India prevent him from receiving EI benefits between March 2, 2021 and June 9, 2021 for the reason he was outside Canada?
- Has the Claimant proven his availability between March 2, 2021, and June 10, 2021?

## Analysis

### The rule - EI benefits aren't paid to claimants not in Canada

[7] Claimants are not entitled to receive EI benefits for any period, expressed in complete, whole days, when they are not in Canada.<sup>1</sup>

[8] The Claimant left Canada on February 22, 2021. He returned to Canada on June 10, 2021.

[9] So, unless he falls within an exception to the rule, he isn't entitled to benefits between February 23, 2021, and June 9, 2021.

### Exceptions to the rule

[10] There are exceptions to the rule. The onus is on the Claimant to prove that he falls within one of the exceptions. One exception is to visit a seriously ill immediate family member for up to seven days.<sup>2</sup>

[11] The Claimant says he went to India to care for seriously ill relatives.

[12] The exception to visit seriously ill immediate family can be applied for up to seven days. The Commission applied this exception to the seven days from February 23, 2021 to March 1, 2021. The law prevents me from extending the exception beyond March 1, 2021.<sup>3</sup>

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<sup>1</sup> See section 37 of the *Employment Insurance Act and Canada (Attorney General) v Picard*, 2014 FCA 46.

<sup>2</sup> To see the other exceptions, see section 55(1) of the *Employment Insurance Regulations*.

<sup>3</sup> Section 55(1.1) of the *Employment Insurance Regulations* says that the only exceptions that can be cumulated during a single trip outside Canada are those to visit seriously ill immediate family and to attend the funeral of that same family member.

[13] The Claimant says he planned to come home earlier but couldn't because government policies prevented him from getting a return flight.

[14] There are no exceptions for a delayed return because of the pandemic or government policies affecting travel. There have been changes to the *Employment Insurance Act* (EI Act) because of the pandemic, but none of those changes are about the out of Canada exceptions.

[15] Considering all the circumstances, the Claimant hasn't shown that he falls within any of the exceptions other than the one the Commission already applied.

### **The Claimant can't receive benefits because he was out of Canada**

[16] The Claimant is disentitled from receiving benefits between March 2, 2021, and June 9, 2021, because:

- he was outside Canada
- the exception for visiting a seriously ill immediate family member can only be applied for up to seven days
- the exception was applied to the first seven days the Claimant was outside Canada, from February 23, 2021, to March 1, 2021.

### **The Claimant hasn't proven he was available for work**

[17] The Commission disentitled the Claimant from receiving EI benefits from March 2, 2021, to June 10, 2021, for not proving his availability.

[18] For each day they want EI benefits, claimants must prove that on that day they were capable of, available for, and unable to find suitable employment.<sup>4</sup>

[19] To prove this, they have to satisfy three conditions:

- have a desire to return to work as soon as possible

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<sup>4</sup> This is explained in s 18(1)(a) of the *Employment Insurance Act*. If a claimant doesn't meet this requirement, they will be disentitled from receiving benefits under this section of the EI Act.

- show that they were looking for suitable work
- have no personal conditions that would have unduly limited their chances of finding suitable work.<sup>5</sup>

[20] I find the Claimant hasn't proven that he was available for work but couldn't find a suitable job. This is what I considered:

- He hasn't shown that he had a desire to return to work as soon as possible. This is because he prioritized going to India over staying in Canada and looking for a job.
- I find that he was actively looking for work while in India. He looked for and applied for jobs online. He attended interviews by videoconference.
- He restricted his job search to jobs that he could do remotely from India. I find this is a personal condition that unduly limited his ability to find a job. I considered that the Claimant worked remotely before, and remote work has become commonplace. But I still find that he unduly limited his chances of finding a job by restricting his job search to remote work alone.

[21] Since the Claimant hasn't satisfied all three conditions, he hasn't proven that he was available for work under the law between March 2, 2021, and June 10, 2021.

[22] Even if the Claimant had proven his availability, the Commission still could not have paid him benefits from March 2, 2021, to June 9, 2021, because of his disentitlement for being outside Canada.

### **The Claimant has to repay the benefits he received during his disentitlements**

[23] The Commission isn't allowed to pay claimants benefits when they are disentitled. When claimants receive benefits that they aren't entitled to receive, they have to repay them.

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<sup>5</sup> I paraphrase the legal test found in *Faucher v Canada Employment and Immigration Commission* A-56-96.

[24] I know the Claimant thinks he shouldn't have to repay the benefits he received. But the law is clear that no matter the reason benefits are received, if a claimant isn't entitled to them, they have to be repaid.<sup>6</sup> I have no authority to change this, even if it seems unfair to require repayment.

[25] The Commission has the authority to write off overpayments in some very limited circumstances.<sup>7</sup> But I don't have that authority, nor do I have the power to review the Commission's write-off decisions.<sup>8</sup>

[26] So, the Claimant has to repay the benefits he received during his disentitlements.

## **Conclusion**

[27] The Commission cannot pay the Claimant EI benefits from March 2, 2021, to June 10, 2021, because of the disentitlements for being out of Canada and not proving availability. He has to repay the benefits he received then.

[28] The appeal is dismissed.

Angela Ryan Bourgeois

Member, General Division – Employment Insurance Section

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<sup>6</sup> Section 44 of the EI Act says that a person who has received benefits to which they aren't entitled have to return the amount without delay.

<sup>7</sup> See section 56 of the *Employment Insurance Regulations*.

<sup>8</sup> See sections 112, 112.1 and 113 of the EI Act.