



Citation: *EB v Canada Employment Insurance Commission*, 2022 SST 154

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: E. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (438393) dated November 3, 2021 (issued by Service Canada)

Tribunal member: Lilian Klein

Type of hearing: Teleconference

Hearing date: January 12, 2022

Hearing participants: Appellant

Decision date: January 28, 2022

File number: GE-21-2427

Decision

[1] I am dismissing the Claimant's appeal.

[2] The Claimant can only get Employment Insurance (EI) benefits for the first week of his absence from Canada. He cannot get a second week because he was not available for work until his return to this country on January 26, 2018.

Overview

[3] The Claimant applied for regular benefits on June 11, 2017, and payments began. On October 23, 2017, he called the Canada Employment Insurance Commission (Commission) to say that he had left Canada on October 6, 2017, to attend his grandmother's funeral. He said he was staying on to spend Christmas with his family. He returned to Canada on January 26, 2018.

[4] The Commission reviewed the Claimant's benefits when it found out from the Canada Border Services Agency (CBSA) that he had left Canada on September 20, 2017. It then saw that he had not reported his absence on his claim reports. So, it disentitled him from receiving benefits from September 20, 2017, to January 26, 2018.

[5] After the Claimant asked for a reconsideration, the Commission allowed benefits for the first seven days of his absence. It said this was because being outside Canada to attend the funeral of a close family member is an exception to the rule that you cannot get benefits while outside the country (the out-of-Canada rule).

[6] The Commission maintained two disentitlements for the rest of his trip, first for being outside Canada and second because he did not show he was available for work.

[7] The Claimant says he qualifies for a second exception to the out-of-Canada rule because he went to visit his seriously ill grandmother before she died. He says when he called the Commission, he was told that meant he could get a second week of benefits.

The issues I must decide

[8] Was the Claimant disentitled from receiving benefits because he was outside Canada?

[9] Was the Claimant disentitled from receiving benefits because he was not available for work while outside Canada?

Analysis

[10] Usually, you cannot get EI benefits if you are outside Canada.¹ However, there are exceptions.² For example, you can get up to seven days of benefits if you leave to visit an immediate family member who is seriously ill.³ Another exception allows seven days of benefits to attend the funeral of a close family member.⁴ If the family member who is seriously ill is the same person who dies, you might get both exceptions.⁵

[11] However, you still have to prove you were available for work, as discussed below.

[12] Due to the passage of time, the Claimant has no proof of travel dates such as airline tickets. So, for his departure and return dates I have relied on the CBSA card that he completed and signed on his return. He does not now dispute those dates.⁶

[13] The Claimant cannot recall the exact date of his grandmother's death, but estimates that it was in early October 2017.

[14] The Claimant's testimony supports the following timeline of events:

- a. He left Canada on September 20, 2017, to visit his grandmother, who was sick.
- b. He did not return to Canada because he planned to attend his grandmother's funeral and stay on to spend Christmas with his family.
- c. He attended her funeral on October 12, 2017.
- d. He returned to Canada on January 26, 2018.

[15] First, I will consider the disentitlement for being out of Canada. Then I will consider the disentitlement for not proving availability for work.

¹ S 37 of the *Employment Insurance Act (EI Act)*.

² These exceptions are set out in s 55(1) of the *Employment Insurance Regulations (EI Regulations)*.

³ The exception for visiting an immediate family member who is seriously ill is under s 55(1)(d) of the EI Regulations

⁴ S 55(1)(b) of the EI Regulations lists the exception to attend a funeral of a close family member.

⁵ S 55(1.1) says the above two exceptions can be combined if the funeral is for the seriously ill person.

⁶ The Commission says the warning penalty it imposed because the Claimant misrepresented his departure date has not yet been reconsidered, so that issue is not before me.

Was the Claimant disentitled to benefits while outside Canada?

[16] The Claimant left Canada on September 20, 2017, according to his CBSA card.

[17] The Commission allowed an exemption for the first week of his absence because he reported that he went for his grandmother's funeral and the law allows this exception. It allowed no further exceptions since he was outside Canada and not available for work.

[18] The Claimant argues that Commission agents told him he could get two weeks of benefits because he met two exceptions to the out-of-Canada rule: visiting his sick grandmother and attending her funeral. He says when he denied on his benefit claims that he was outside Canada and declared that he was available for work, he believed this was the way to claim those two weeks of benefits.⁷

[19] I accept the Claimant's sworn testimony that he left Canada to visit his grandmother who was seriously ill. I find that the exception allowing him seven days of benefits for that reason applies to the first week of his absence.

[20] I considered whether the Claimant can get a second seven-day exemption for attending his grandmother's funeral on October 12, 2017. However, to get this second exemption, he has to show that he was available for work.

Was the Claimant available for work while outside Canada?

[21] To receive benefits for a working day in a benefit period, claimants must prove that on each day they claimed benefits they were "capable of and available for work and unable to obtain suitable employment."⁸ The test for this is called the *Faucher* test.⁹

[22] Claimants who are outside Canada may qualify for one of the exceptions to the out-of-Canada rule and still be considered available for work even if they do not meet the *Faucher* test.¹⁰ The *Elyoumni* decision says their availability cannot be evaluated in the same way as when they are in Canada, so their claims must be assessed on a case-by-case basis.¹¹

⁷ See his claims covering the period from September 22, 2018, to October 7, 2018 (GD3-22 to GD3-29).

⁸ S 18(1)(a) of the EI Act. *Canada (Attorney General) v Whiffen*, A-1472-92, weighs attitude & conduct too.

⁹ This test is set out in *Faucher v Canada Employment Insurance Commission*, A-56-96 and A-57-96.

¹⁰ *HR v Canada Employment Insurance Commission*, 2021 SST 221.

¹¹ *Canada (Attorney General) v Elyoumni*, 2013 FCA 151.

[23] I will first look at the Claimant's availability under the *Faucher* test and then evaluate it according to the *Elyoumni* decision.

[24] The *Faucher* test looks at three criteria. I find that the Claimant was not available for work under this test, as follows:

i) Did the Claimant want to return to work as soon as possible?

The Claimant did not show that he wanted to return to work as soon as possible. When he called the Commission on October 23, 2017, to report his absence, he said he only planned to return to Canada in January 2018.¹²

ii) Did the Claimant make efforts to find suitable work?

The Claimant told the Commission that he was starting to look for work when he returned to Canada on January 26, 2018, and not at any other time since his departure.

After visiting his grandmother, the Claimant did not return to search for work, even though he says her funeral was delayed. He did not return to look for work after the funeral either.

The Claimant did not request benefits for the week of his grandmother's funeral. He did not declare availability for work that week, or any other week until his return to Canada. He would have to show that he was looking for a job to claim availability. Not claiming benefits indicates that he was not making efforts to find suitable work.

iii) Did the Claimant set personal conditions that limited his chances of finding work?

I find that not being prepared to return to Canada to accept a job within 48 hours was a personal condition that unduly prevented the Claimant from finding work. Wanting to stay outside Canada with his family until January 2018 was another personal condition.

[25] Moving to the *Elyoumni* decision, I considered whether the Claimant met the minimum availability standards for out-of-Canada claimants who qualify for an exception.

¹² GD3-13

[26] Claimants outside Canada cannot immediately attend an interview in person or start a new job promptly. But, according to *Elyoumni*, they may be able to prove availability if they can, at the very least, show that they arranged to be contacted if offered a job.¹³

[27] The Claimant told the Commission on two occasions that he had not made these arrangements.¹⁴ This means that he cannot show availability for work according to *Elyoumni*.

Considering all the circumstances, has the Claimant proved his availability for work?

[28] No. The Claimant has not proved that he was available for work under the *Faucher* test or the *Elyoumni* criteria. His attitude and conduct do not reflect availability either.¹⁵

[29] The Commission allowed one week of benefits under the exception to the out-of-Canada rule for attending a family member's funeral.¹⁶ I am not changing its decision in substance, but find that the exception should be under the provision that allows a week of benefits to visit a seriously ill immediate family member.¹⁷

[30] The disentitlements for being outside Canada and not being available for work after that first week still stand.

Conclusion

[31] The Claimant can only get one week of EI regular benefits during his absence from Canada, as the Commission has already allowed.

[32] This means that I am dismissing the Claimant's appeal.

Lilian Klein

Member, General Division – Employment Insurance Section

¹³ See above, *Elyoumni*.

¹⁴ See GD3-13 and GD3-15.

¹⁵ *Carpentier v Attorney General of Canada*, A 474-97.

¹⁶ S 55(1)(b)(i) of the EI Regulations.

¹⁷ S 55(1)(d) of the EI Regulations.