



Citation: *DM v Canada Employment Insurance Commission*, 2022 SST 350

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

Decision

Appellant: D. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (451953) dated January 23, 2022
(issued by Service Canada)

Tribunal member: Amanda Pezzutto

Type of hearing: Videoconference

Hearing date: March 29, 2022

Hearing participant: Appellant

Decision date: April 4, 2022

File number: GE-22-600

Decision

[1] D. M. is the Claimant. The Canada Employment Insurance Commission (Commission) decided that he wasn't entitled to Employment Insurance (EI) benefits for part of the time he was out of Canada. The Claimant is appealing this decision to the Social Security Tribunal (Tribunal).

[2] I must dismiss the Claimant's appeal. He isn't entitled to EI benefits from November 15 to December 10, 2021. This is because the law only allows for seven days of benefits when you are outside of the country to visit a seriously ill family member. I don't have the power to add any new exceptions to the law.

Overview

[3] The Claimant travelled out of Canada to visit his father, who was ill. He made arrangements with his employer to keep working remotely while he was out of Canada. But not very long after he left Canada, his employer laid him off. The Claimant applied for EI benefits while he was still out of Canada.

[4] The Commission says that he is entitled to EI benefits for the first seven days he was out of Canada because he was visiting a sick family member. But the Commission says he isn't entitled to EI benefits for the rest of the time he was out of Canada: November 15 to December 10, 2021.

[5] The Claimant says he should get EI benefits for the entire time he was out of Canada. He says he wouldn't have travelled out of Canada if he had known his employer was going to lay him off. He says he could look for work and even do job interviews remotely because that is normal in his industry.

Issues

[6] I must decide if the Claimant is entitled to EI benefits from November 15 to December 10, 2021, while he was outside of Canada.

Analysis

[7] Usually, you cannot receive EI benefits if you are outside of Canada.¹ There are some exceptions. The *Employment Insurance Regulations* has a list of the exceptions. If you are outside of Canada for one of the following reasons, you might be able to receive benefits:

- To undergo medical treatment that is not readily or immediately available in Canada;
- To attend a funeral of a family member;
- To travel with a family member while they are getting medical treatment outside of Canada;
- To visit a seriously ill or injured family member;
- To attend a job interview; or
- To conduct a job search.²

[8] Some of these exceptions come with time limits. For instance, the Commission gives you seven consecutive days if you are out of Canada to visit a seriously ill family member. After seven days, the Commission disentitles you.

[9] It is always your responsibility to prove that you meet all of the requirements to receive EI benefits.³ This means that you have to prove that one of these exceptions apply to you if you want to collect benefits while you are outside of Canada.⁴

¹ Paragraph 37(b) of the *Employment Insurance Act*.

² Subsection 55(1) of the *Employment Insurance Regulations*.

³ Subsection 49(1) of the *Employment Insurance Act*.

⁴ *Canada (Attorney General) v Peterson*, A-370-95.

Why was the Claimant out of Canada?

[10] The Claimant has always said he travelled out of Canada to visit his father, who was sick. The Commission agrees with the Claimant on this point.

[11] Both parties agree that the Claimant was out of Canada to visit his father. The law says that you get seven consecutive days before the Commission stops paying EI benefits if you are out of Canada to visit a sick family member.

[12] The Commission and the Claimant both agree on how the Commission calculated the seven consecutive days. The Claimant and the Commission agree that he is entitled to EI benefits before November 15, 2021. But, the Claimant wants EI benefits for the entire time he was out of Canada, and so this is the question I have to consider.

Is the Claimant entitled to EI benefits during the entire time he was out of Canada?

[13] The Commission says the Claimant isn't entitled to EI benefits after November 14, 2021 because the law only allows him seven consecutive days.

[14] The Claimant argues that his situation was unusual, and so he should be entitled to EI benefits for the entire time he was out of Canada.

[15] At the hearing, the Claimant explained his arguments. He said that he didn't know his employer was going to lay him off. He had arranged to keep working from abroad, but his employer laid him off only a few days after he left Canada. He says he wouldn't have left Canada in the first place if he had known that his employer was going to lay him off.

[16] The Claimant also argues that the pandemic has made the job search process very different. He says that his field relies entirely on remote work. He says he can conduct a job search and even attend job interviews remotely. He even had interviews while he was still abroad.

[17] I understand the Claimant's argument. He says that his field allows him to work remotely from anywhere in the world. He can conduct his job search remotely from anywhere in the world. The requirement to be in Canada to get EI benefits doesn't reflect the reality of remote work. But even though I understand his argument, the law doesn't allow benefits in his case.

[18] I know the law says you can get EI benefits if you are out of Canada to look for work or to attend a job interview. Even though the Claimant was looking for work and attended job interviews while he was out of Canada, I don't think this part of the law applies to him.

[19] The law says that the job search or interview has to be the reason for the absence. I interpret this to mean that you can only get EI benefits if you are outside of Canada to conduct a job search or attend an interview that you wouldn't have been able to do if you had stayed in Canada. In other words, if you need to leave Canada to conduct the job search or attend the interview, you would fall under this exception.⁵

[20] But in this case, the Claimant didn't need to be out of Canada to perform his job search or any of his interviews. He was looking for work with Canadian employers, not employers overseas. His job search didn't require him to be out of Canada; he just happened to be out of Canada when he started his job search.

[21] So, I find that the exceptions about being out of Canada for a job search or an interview don't apply to the Claimant. The only exception that applies to him is the one that allows him to receive benefits while visiting a seriously ill family member. The Claimant was out of Canada to visit his sick father, and so the law only allows for seven consecutive days. After the seventh day, the Claimant isn't entitled to EI benefits.

[22] The law doesn't give me the power to extend the number of days allowed. The law doesn't give me the power to add new reasons for anyone to get EI benefits if they

⁵ I am guided by the Appeal Division decision in *DC V Canada Employment Insurance Commission*, 2016 SSTADEI 214

are out of Canada. I have to apply the law as it is written and I can't interpret the law in a way that goes against the plain meaning.⁶

[23] So, I find that the Claimant isn't entitled to EI benefits from November 15 to December 10, 2021. This is because he was out of Canada and none of the exceptions listed in the law apply to this period.

Conclusion

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

Amanda Pezzutto
Member, General Division – Employment Insurance Section

⁶ *Canada (Attorney General) v Knee*, 2001 FCA 301, at paragraph 9.