



Citation: *PF v Canada Employment Insurance Commission*, 2022 SST 411

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

Decision

Claimant: P. F.

Commission: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (447437) dated January 12, 2022
(issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: Videoconference

Hearing date: March 3, 2022

Hearing participant: Claimant

Decision date: March 7, 2022

File number: GE-22-310

Decision

[1] The appeal is dismissed. The Claimant is disentitled to benefits because he is outside Canada.

Overview

[2] The Claimant applied for employment insurance (EI) regular benefits. He has a home outside Canada. He left Canada on November 20, 2021. While there, he had been applying for jobs in Canada. The Commission decided that he is not entitled to EI benefits from November 22, 2021, because he is outside Canada. They decided that the Claimant has proven his availability for work.

[3] The Claimant argues that he is not on vacation outside Canada. He says he is at his permanent residence outside Canada. He states that the Commission should look at his residence outside Canada and his availability for work together, not independently.

Issue

[4] Is the Claimant entitled to EI benefits while he was not in Canada?

Analysis

[5] Claimants are not entitled to receive benefits for any period during which they are not in Canada.¹ There are some exceptions to this rule.²

[6] The onus is on claimants to prove that they meet the requirements of the law.³ The law does not give me the power to depart from its provisions, for any reason, no matter how compelling the circumstances.⁴

[7] The Claimant left Canada on November 20, 2021. He confirmed at the hearing that he is still outside Canada. The Claimant insists that he is not outside Canada on

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

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

³ *Canada (Attorney General) v. Peterson*, A-370-95

⁴ *Granger v. Canada Employment and Immigration Commission*, A-684-85.

vacation; rather, he is at his permanent residence outside Canada. He agrees that he does not meet any of the exemptions listed for in the law to disentitlement to benefits while outside Canada.

[8] I have reviewed the Claimant's arguments in favour of his position that he is entitled to EI benefits while outside Canada. He argues that the Commission should have considered the requirements of section 18 of the Act when deciding if he is entitled to benefits under paragraph 37(b) of the Act.

[9] Paragraph 37(b) of the Act has to be read together with section 55 of the Regulations. This is where the exemptions are listed. Section 55 does refer to section 18 of the Act. However, it appears to say if one of the exemptions applies, then one has to look at section 18 of the Act, not the other way around. I asked the Claimant about this.

[10] The Claimant referred to a decision of the General Division of the Social Security Tribunal who made arguments similar to his.⁵ In that case, the claimant was in Florida on vacation. She argued that paragraph 37(b) of the Act should be subject to section 18 of the Act. The Claimant said that the difference between his situation and the claimant in the case he cited is that he is not on vacation, but is at his permanent residence outside Canada.

[11] I don't agree with the Claimant's arguments. I find that section 18 of the Act and paragraph 37(b) of the Act are separate and distinct provisions under which claimants can be disentitled from receiving benefits. I am not persuaded from the Claimant's argument that I must take into account the requirements of section 18 of the Act to decide if he is entitled to EI benefits while outside Canada. Rather, I find that the only consideration in determining entitlement to benefits while outside Canada if the Claimant falls within one or more of the exemptions listed in Section 55 of the Regulations.

⁵ *J. B. v. Canada Employment Insurance Commission*, 2013 SSTGDEI 1

[12] The Claimant also pointed to the section of the law that contemplates entitlement to benefits for claimants who are in the United States⁶, in states contiguous to Canada. He acknowledges that his situation is not exactly the same. The Claimant said that he is not suggesting that allowing his appeal would be blanket approval for EI benefits for anyone who is outside Canada. He points to his particular circumstances.

[13] In view of his arguments, I asked the Claimant to point me to something in the law showing that section 37(b) of the Act doesn't apply in his circumstances. He said that there is nothing specific in the Act that would allow this. However, he argued that as long as the law does not say that the exemptions in section 55 of the Regulations are an exhaustive list, I have the authority to expand the exemptions.

[14] Again, I don't agree with the Claimant's argument. The text of paragraph 37(b) includes the phrase, "except as may otherwise be prescribed". The prescription is contained in section 55 of the Regulations. This section does not provide for consideration of other reasonable circumstances, as is the case in other parts of the law.⁷ I don't find that I have the authority to expand the list of exemptions in section 55 of the Regulations.

[15] The Claimant said that present-day circumstances are different from those when the EI Act was written. He spoke of the use of technology for remote work, applying for jobs and attending job interviews. He said that even though he's outside Canada, he can return home in less than three hours.

[16] I take the Claimant's argument to mean that he is suggesting that the law be updated to deal with current-day realities. While this argument is not unreasonable, I must apply the law as it is written today.

[17] I don't find that the Claimant has shown that he is outside Canada for one of the reasons listed in section 55 of the Regulations. This includes a finding that his residence outside Canada is not in a state that is contiguous to Canada.

⁶ Paragraph 55(6)(a) of the Regulations.

⁷ See subparagraph 29(c)(xiv) of the Act.

[18] I find that the Claimant is disentitled to EI benefits from November 22, 2021, because he is not in Canada.

Conclusion

[19] The appeal is dismissed.

Audrey Mitchell
Member, General Division – Employment Insurance Section