



Citation: *AY v Canada Employment Insurance Commission*, 2022 SST 489

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: A. Y.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (460569) dated March 10, 2022 (issued by Service Canada)

Tribunal member: Lilian Klein

Type of hearing: Videoconference

Hearing date: May 12, 2022

Hearing participants: Appellant

Decision date: May 26, 2022

File number: GE-22-1139

Decision

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

[2] The Claimant was not available for work from January 21, 2021, to November 17, 2021, because he was held in detention during this period.

[3] The Claimant does not meet the exception for those "not found guilty" of the charge for which they were detained. So, his benefit period cannot be extended beyond the usual 52 weeks.

Overview

[4] The Claimant was detained in Canada from January 21, 2021, to October 7, 2021, while awaiting extradition to the United States (US). After his transfer to detention in the US, he accepted a deal in which he pled guilty to one of the charges against him in return for time served. His detention ended on November 17, 2021, and he returned to Canada.

[5] The Claimant applied for benefits on November 18, 2021. The Tribunal allowed an antedate to January 31, 2021. The Canada Employment Insurance Commission (Commission) decided that he was disentitled from receiving benefits from January 31, 2021, to November 17, 2021, because he was not available for work while in detention.

[6] The Commission paid the Claimant 11 weeks of benefits from the week of November 14, 2021, until his claim ended on January 29, 2022. He wants 45 weeks.

[7] The Claimant now agrees he was not available for work but still says his benefit period should be extended so he can get more benefits. He argues that he was not detained on any *Criminal Code* offence while awaiting extradition and has no criminal record here. He says he was not found guilty in the US; he only pled guilty to avoid a trial.

[8] The Commission says the Claimant's benefit period cannot be extended because he pled guilty to one of the charges for which he was detained pending extradition. So, the Commission argues, the term "not found guilty" does not apply to him.

The issues I must decide

[9] Was the Claimant available for work while held in a detention centre?

[10] Does the Claimant meet the conditions to get a benefit period extension?

Post-hearing documents

[11] After the hearing, the claimant made a submission that I accepted as relevant to this appeal, I shared it with the Commission, which made no further comment.

Analysis

1. Availability for work

[12] To get EI regular benefits, you must show that you are capable of and available for work but unable to find suitable employment.¹ You have to show it is more likely than not that you were available on every working day during your benefit claim.

[13] To prove he was available for work, the Claimant had to meet all three of the following criteria. He had to show that

- a) he wanted to return to the labour market as soon as a suitable job was available;
- b) he tried to make this happen through efforts to find work; **and**
- c) he had no personal conditions that might have unduly limited his chances of returning to the labour market.²

The Claimant was not available for work

[14] I find that the Claimant did not meet the above availability criteria while he was held in a detention centre during his benefit period. So, he had a personal condition that unduly limited his chances of returning to the labour market until he was released.

[15] The Claimant no longer argues that he was available for work. So, given his circumstances, I do not need to analyze further the test for availability in his case.

¹ S 18(1)(a) of the *Employment Insurance Act* (EI Act) says claimants can only get benefits for a working day if they prove they were capable of and available for work on that day, but could not find a suitable job.

² This is a plain language version of the three factors used to assess availability for work, as set out in *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

2. Benefit period extensions

[16] The law sets out the length of the benefit period and the criteria claimants must meet to get an extension.

[17] The length of a benefit period is 52 weeks unless a claimant meets one of the conditions to get an extension.³ So, a benefit period will end when the 52 weeks are up or when the maximum number of weeks of benefits have been paid, whichever comes first.⁴ The benefit period will end even if all a claimant's benefits have not yet been paid.

[18] Sometimes claimants may have their benefit periods extended if they were unable to get all, or any, of their benefits for one of the reasons listed in the law.⁵

[19] For example, a benefit period can be extended for each week a claimant was "confined in a jail, penitentiary or other similar institution." But this is only if the claimant "was not found guilty of the offence for which the claimant was being held or any other offence arising out of the same transaction."⁶

What does the Claimant say?

[20] The Claimant reports that he was arrested and detained in Canada from January 13, 2021, to October 7, 2021, under an extradition order from the US.

[21] The Claimant says the extradition order was to face three charges in the US, one of which was international money laundering. He submitted no evidence to show what charges he faced. He did not submit the wording of his plea deal either. So, I base my decision on what he reported about these charges and the parameters of his guilty plea.

[22] The Claimant says his transfer to the US was delayed by COVID-19 restrictions and his own infection with COVID. In his post-hearing submission, he says trying to contest his extradition took time too. On October 7, 2021, the Claimant was transferred to a detention centre in the US. He argues that he left Canada "with no pending and/or proven charges."

³ S 10(2) of the EI Act.

⁴ S 10(8) of the EI Act.

⁵ See ss 10(10) to 10(13) of the EI Act for a list of exceptions

⁶ S 10(10)(a).

[23] The Claimant argues that he pled guilty to one of the charges against him as part of a plea bargain. In return, he says he was allowed time served instead of a jail sentence and the other charges were dropped. On November 17, 2021, the US authorities let him return to Canada.

[24] The Claimant says he pled guilty to “exporting without a licence,” arguing that this is not a *Criminal Code* offence. At his hearing, he gave more detail: the offence was exporting a controlled product (electric/electronic boards) from the US without a permit to a country under US sanctions.

[25] The Claimant says he was not found guilty; he only pled guilty to one charge to avoid a long wait for a trial and to allow him to return to Canada. He says he has no criminal record here and the charge to which he pled guilty is not an offence under the *Criminal Code*, only US law. So, he argues, he should be able to get a benefit period extension for the time he was detained pending extradition on that one specific charge.

What does the Commission say?

[26] The Commission argues that the law on benefit period extensions does not say the offence a claimant is detained for must be a *Criminal Code* offence. The law does not require that the offence lead to a criminal record here either. The Commission also argues that pleading guilty does not mean that you were not found guilty.

The Claimant does not meet the conditions for a benefit period extension

[27] I find that the Claimant did not meet the conditions to extend his benefit period; the wording of the law on benefit period extensions makes this clear. I agree with the Commission that the following text does not say the offence must be a crime in Canada or lead to a criminal record here.

[28] The Claimant was incarcerated in a detention centre during his benefit period, which falls under the phrase “**jail, penitentiary or other similar institution.**”⁷ He was “**confined,**” which means detention on a continuous basis without day parole for work or other reasons.

⁷ All phrases in bold in paragraphs 28, 29 and 30 appear in s 10(10)(a) of the EI Act.

[29] As well, it is not credible for the Claimant to argue that he was “**not found guilty**” of the charges for which he was held given that he pled guilty to one charge. A guilty plea means that he conceded his guilt for one of the charges on which he was detained.

[30] The Claimant says he was not found guilty of the more serious charges against him; they were dropped as part of his plea deal. But the law refers to “**any other offence arising out of the same transaction.**” A plain reading of this wording supports the argument that being found guilty of (or pleading guilty to) *any of the charges* on which the Claimant was detained meant that he did not qualify for a benefit period extension.

Conclusion

[31] The Claimant is disentitled from receiving benefits while in detention since he was not available for work.

[32] The Claimant’s benefit period cannot be extended. This is because he did not meet the exception for those “not found guilty” of the charges on which they were held.

[33] This means that I am dismissing the Claimant’s appeal.

Lilian Klein
Member, General Division – Employment Insurance Section