



Citation: *UP v Canada Employment Insurance Commission*, 2022 SST 739

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

Decision

Appellant: U. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (459681) dated March 2, 2022 (issued by Service Canada)

Tribunal member: Teresa M. Day

Type of hearing: Teleconference

Hearing date: July 4, 2022

Hearing participant: Appellant

Decision date: July 5, 2022

File number: GE-22-1143

Decision

[1] The appeal is dismissed, with modification.

[2] The Appellant is entitled to 7 days of employment insurance (EI) benefits (from October 7, 2019 to October 13, 2019) because he left Canada to visit an immediate family member who was seriously ill. But he is disentitled for the rest of his benefit period because he was outside of Canada and does not qualify for any of the exceptions in the law.

[3] The disentitlement on his claim is modified so that it starts on October 14, 2019 instead of October 7, 2019. It continues to the end of the Appellant's benefit period.

Overview

[4] The Appellant applied for EI benefits on October 1, 2019¹.

[5] On October 6, 2019, he left Canada and traveled to India to visit his seriously ill mother-in-law². He did not have a return date and did not know how long he would be away, but he had arranged to be contacted about any job opportunities and was ready to return home within 48 hours if offered a job³. The Respondent (Commission) decided he could not be paid EI benefits because he was not in Canada, and imposed a disentitlement on his claim starting from October 7, 2019.

[6] The Appellant returned to Canada on February 1, 2022.

[7] He asked the Commission to reconsider its decision not to pay him EI benefits. He said he was unable to return to Canada earlier because of travel restrictions imposed to combat the global Covid-19 pandemic.

¹ The Appellant qualified for EI benefits on this application, and his claim was made effective starting from October 6, 2019 (see GD4-1).

² The Appellant reported to the Commission that he would be gone for an unknown period of time (see GD3-14). See also the Out of Area/Canada questionnaire he completed on October 19, 2019 at Gd3-17 to GD3-18.

³ See footnote 2 above.

[8] The Commission maintained the disentitlement on his claim, and the Appellant appealed that decision to the Social Security Tribunal (Tribunal).

[9] He is asking to be paid EI benefits for his entire benefit period⁴ because he was unemployed and stranded outside of Canada through no fault of his own.

Issue

[10] I must decide if the Appellant is entitled to EI benefits starting from October 7, 2019⁵.

Analysis

[11] EI benefits are not payable to claimants while they are outside of Canada⁶ except as specifically prescribed in the *Employment Insurance Regulations*⁷ (EI Regulations).

[12] Subsection 55(1) of the EI Regulations allows a claimant to receive EI benefits while outside of Canada ***if*** their travel is for one of the following specific purposes, namely:

- to undergo medical treatment that is not readily available in Canada
- to attend the funeral of an immediate family member (7 days),
- to accompany an immediate family member to a hospital for medical treatment that is not available in Canada (7 days),
- to visit an immediate family member who is seriously ill or injured (7 days)

⁴ There is no evidence in the file showing the Commission's calculation of the maximum number of weeks of entitlement the Appellant qualified for on the application he filed on October 1, 2019. But he wants to be paid whatever number of weeks he would have been entitled to on this application.

⁵ The date of the disentitlement imposed on his claim.

⁶ Section 37 of the *Employment Insurance Act* (EI Act)

⁷ Section 55 of the *Employment Insurance Regulations* (EI Regulations), and *Attorney General of Canada v. Bendahan*, 2012 FCA 237

- to conduct a bona fide job search (14 days) or attend a bona fide job interview (7 days)

[13] The onus is on the Appellant to prove he meets the requirements of one or more of the exceptions in the EI Regulations in order to overcome the general rule against payment of benefits to claimants outside of Canada⁸.

Issue 1: Does the Appellant qualify for any of the exceptions?

[14] Yes, he does.

[15] The Appellant testified that:

- He had to go to India because his wife's mother was seriously ill.
- At GD3-29, the Commission says he was "not required" to go to India, but that's not true. He had to go because of his mother-in-law's health crisis.
- He left Canada and traveled to India on October 6, 2019.

[16] I considered whether the Appellant met the exception available to claimants who travel for the purpose of visiting an immediate family member who is seriously ill⁹.

[17] The law says that the mother of a claimant's spouse (i.e. a mother-in-law) is considered to be an immediate family member¹⁰.

[18] There is no dispute that the purpose of the Appellant's travel was to visit his wife's mother, who was seriously ill at the time. I therefore find that the reason for his travel comes within the exception for visiting an immediate family member who was seriously ill.

⁸ *Attorney General of Canada v. Peterson*, A-370-95.

⁹ Paragraph 55(1)(d) of the EI Regulations.

¹⁰ Paragraph 55(2)(a) of the EI Regulations.

Issue 2: Does this mean the Appellant is entitled to EI benefits under that exception?

[19] Yes, but only for 7 days.

[20] The exception provides for **up to 7 consecutive days** of EI benefits where the reason for the travel is to visit an immediate family member who is seriously ill¹¹.

[21] But the law says that the Appellant must still demonstrate his availability for work during those 7 days in order to be paid EI benefits¹².

[22] The 7 days start running the day after the date of departure from Canada. For the Appellant to be paid EI benefits for 7 days, he must show he was available for work from October 7 – 13, 2019.

[23] On October 19, 2019, the Appellant completed an Out of Area/Canada questionnaire. He provided his departure date (October 6, 2019); and reported he had made arrangements to be contacted, without delay, about any job opportunities that may arise while he was outside of Canada and that he was ready to return home within 48 hours if offered a job (GD3-18).

[24] I accept the Appellant's statements on the questionnaire as credible evidence of his availability. They were made contemporaneously with his departure from Canada and prior to any negative decisions on his claim¹³; and the Commission does not contest their reliability. I am also satisfied that, having made these arrangements and been ready to return home within 48 hours, the Appellant met the availability requirements for a claimant who benefits from one of the exceptions in subsection 55(1) of the EI Regulations¹⁴.

¹¹ Paragraph 55(1)(d) of the EI Regulations

¹² Subsection 55(1) of the EI Regulations

¹³ They were also made prior to the imposition of the travel restrictions that affected his ability to travel back to Canada (see paragraph 43 below).

¹⁴ See *Canada (Attorney General) v. Elyoumni*, 450 N.R. 175 (FCA).

[25] This means the Appellant is entitled to EI benefits for 7 days, from October 7, 2019 to October 13, 2019.

Issue 3: Is the Appellant disentitled to EI benefits after that?

[26] Yes, he is.

[27] The Appellant can only be paid a maximum of 7 days under the exception he qualified for.

[28] There is no evidence that he qualifies for any other exceptions.

[29] Since he continued to be outside of Canada after the 7-day exception expired, he is disentitled to EI benefits starting from October 14, 2019.

Issue 4: How long is the Appellant disentitled to EI benefits for?

[30] He is disentitled until the end of his benefit period.

[31] The Appellant says that the disentitlement on his claim should not be an indefinite disentitlement that carries on forever. He came back to Canada, but the Commission didn't lift the disentitlement on his claim when he returned.

[32] There is a reason for this.

[33] A benefit period is the period of time in which a qualified claimant may receive benefits. The **maximum** benefit period is usually 52 weeks¹⁵, but the actual entitlement of each claimant varies from case to case and depends on a number of factors¹⁶.

[34] A benefit period always begins on a Sunday. Specifically, the Sunday of the **later** of (a) the week in which the interruption of earnings occurs and (b) the week in

¹⁵ Subsection 10(2) of the EI Act.

¹⁶ See section 12(1) of the EI Act. The factors include the regional rate of unemployment in a claimant's area, the dates of their qualifying period, the hours of insurable employment that fall within their qualifying period and the maximum weeks of entitlement listed in the table in Schedule 1 of the EI Act.

which the initial claim for benefits is made¹⁷. Once a benefit period is established, it runs for consecutive weeks.

[35] A benefit period can be extended in certain specific circumstances¹⁸, up to a maximum of 104 weeks¹⁹. But no benefits are payable to any claimant more than 104 weeks after their claim is established.

[36] The Appellant applied for EI benefits on October 1, 2019. The Commission determined that he qualified for EI benefits on this application, and established a benefit period for him effective October 6, 2019²⁰.

[37] This means the Appellant's benefit period started on October 6, 2019.

[38] I do not know how long the benefit period for this claim was²¹.

[39] But I do know that the Appellant was outside of Canada until February 2, 2022, which is 121 weeks after his benefit period started. So even if his benefit period was extended out to 104-week maximum²², it ended before he returned to Canada. This means that the disentitlement imposed for being outside of Canada must continue for the remainder of his benefit period.

[40] The Commission doesn't have to lift the disentitlement on the Appellant's claim because it remains in place until the end of his benefit period. This does not mean the Appellant is disentitled to EI benefits indefinitely forever. It just means that he was disentitled for the entire benefit period²³.

¹⁷ Subsection 10(1) of the EI Act.

¹⁸ These circumstances are listed in subsections 10(10 to (15) of the EI Act.

¹⁹ Subsection 10(14) of the EI Act.

²⁰ His last day of work was September 30, 2019 (see GD3-10) and he filed his application for EI benefits on October 1, 2019. Since an interruption of earnings occurs after 7 consecutive days of no employment or earnings, the Appellant's interruption of earnings occurred on September 7, 2019. This is the later week, and the Sunday of this week was September 6, 2019.

²¹ See footnote 4 above.

²² To be clear, I see no evidence that the Appellant qualifies for any benefit period extensions and make no findings in this regard.

²³ Subject to the 7-day exception he has proven he qualifies for under section 55(1)(d) of the EI Regulations.

Issue 5: The Appellant's other arguments

[41] The Appellant says it was not his fault he could not return to Canada.

[42] He argues that the Commission failed to consider how the global Covid-19 pandemic prevented him from receiving the EI benefits he was entitled to.

[43] He testified that:

- He and his family have suffered greatly because of the pandemic.
- He tried 3 times to come back to Canada, but because of travel restrictions in both Canada and India, he could not return until February 1, 2022.
- In March 2020, the Canadian government stopped allowing people to return to Canada.
- He lost his EI benefits because Canada stopped him from coming home – not because of anything he did.
- Canada's decision was not his problem. He had already had a plane ticket. He and his wife were ready to leave India.
- The Canadian travel restrictions were lifted on November 21, 2020, but by then there were restrictions on air travel from India so he still couldn't leave.
- The pandemic restrictions in India were such that he couldn't even go outside.
- By the time he came back to Canada, his EI benefit period was over.
- How could he survive?
- The Canadian government put in EI amendments and programs for the pandemic. There should also be EI measures to help people like him who have also suffered because they were stranded outside of Canada due to the pandemic.

[44] I am sympathetic to the difficult situation the Appellant found himself in while in India, and I acknowledge the financial consequences he faced as a result. I agree that the imposition of the various travel bans due to the global Covid-19 pandemic was entirely beyond his control.

[45] However, being unable to return to Canada because of the pandemic is not one of the exceptions listed in the law. And there have been no emergency provisions enacted that would permit regular EI benefits to be paid to a claimant who is stranded outside of Canada due to the pandemic. The only permissible exceptions are those specific exemptions listed in subsection 55(1) of the EI Regulations²⁴.

[46] Unfortunately, I do not have discretion to add the Appellant's circumstances to the list of exceptions, or to interpret the law in any way other than its plain meaning. I must be guided by the Supreme Court of Canada's direction that an adjudicator is bound by the law and cannot refuse to apply it, even on grounds of equity²⁵.

[47] Aside from the first 7 days of his benefit period, the Appellant has failed to prove that he qualifies for any other travel exceptions listed in subsection 55(1) of the EI Regulations. I therefore find that section 37 of the EI Act applies and that he is disentitled to EI benefits from October 14, 2019 until the end of his benefit period because he was outside of Canada throughout that time.

Conclusion

[48] The Appellant is entitled to EI benefits for 7 days from October 7, 2019 to October 13, 2019. This is because his travel during this time comes within an exception provided for in the law²⁶ and he was available for work. The purpose of his travel was to visit an immediate family member (his mother-in-law) who was seriously ill. He had also

²⁴ See paragraphs 11 and 12 above.

²⁵ *Granger v. Canada (CEIC)*, [1989] 1 S.C.R. 141

²⁶ Paragraph 55(1)(d) of the EI Regulations

made arrangements to be contacted about employment opportunities and was ready to return to Canada within 48 hours if he received a job offer²⁷.

[49] But the Appellant is disentitled to EI benefits from October 14, 2019 until the end of his benefit period. This is because he was outside of Canada throughout this time and failed to prove that he qualified for any of the exceptions provided for in the law.

[50] The appeal is dismissed.

Teresa M. Day
Member, General Division – Employment Insurance Section

²⁷ These 7 days were prior to any of the travel restrictions described by the Appellant.