



[TRANSLATION]

Citation: *ML v Canada Employment Insurance Commission*, 2022 SST 1042

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

**Decision**

**Appellant:** M. L.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (510843) dated July 11, 2022  
(issued by Service Canada)

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**Tribunal member:** Nathalie Léger  
**Type of hearing:** Teleconference  
**Hearing date:** September 26, 2022  
**Hearing participant:** Appellant  
**Decision date:** October 21, 2022  
**File number:** GE-22-2560

## Decision

[1] The appeal is dismissed.

## Overview

[2] The Appellant was a manager in an Ontario university for many years. During his years of employment, he regularly worked from his second home, in Florida.

[3] In April 2021, the Appellant was laid off. He made a claim for Employment Insurance (EI) benefits, and it was approved. He then diligently completed his weekly reports.

[4] In December 2021, he indicated in his report that he was outside Canada, specifically in Florida. The system didn't let him continue. He talked to a Commission agent, who told him that claimants aren't entitled to benefits when they are outside Canada. But this agent also told him that his case might be different because he often worked from his second home and that a follow-up would be done.

[5] It wasn't until April 2022, after he had called the Commission back many times, that a Commission agent confirmed to him that no exception could be applied to him. He then immediately came back to Canada.

## Issue

[6] Can the Appellant receive benefits for the period he was outside Canada?

## Analysis

[7] The general rule is that you can't get EI benefits when you are outside Canada.<sup>1</sup> There are exceptions to this rule,<sup>2</sup> but they are all for short periods. For example, you

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<sup>1</sup> See section 37(b) of the *Employment Insurance Act*.

<sup>2</sup> The exceptions are set out in section 55 of the *Employment Insurance Regulations* (Regulations).

can be outside Canada for a period of not more than seven days to attend a funeral<sup>3</sup> or to accompany a sick family member.<sup>4</sup>

[8] The Appellant left Canada on December 4, 2021, to go live in his second home in Florida. That isn't in dispute. He duly warned the Commission that he wasn't in Canada anymore, and he had frank discussions with its agents about the consequences of his absence from Canada. He made the necessary arrangements to be contacted by any potential employer.

[9] The Appellant essentially argues that he was always frank and honest with the Commission. His stay was only extended because he was waiting to hear back from a Commission agent who had led him to believe that he might qualify for an exception. This agent also told him that he would get an answer shortly.<sup>5</sup> He would have come back to Canada a lot sooner if someone had clearly told him that staying in his second home would result in him being denied benefits.<sup>6</sup>

[10] I have absolutely no doubt as to the Appellant's good faith. He acted as any diligent and reasonable person would have acted in the circumstances. It is too bad that he was led to believe that an exception might apply. But the *Employment Insurance Act* (Act) is clear and uses limiting language. This means that neither the Commission nor the Tribunal can accept a reason for absence that isn't mentioned in the Act, since this would have the effect of changing the Act.<sup>7</sup> So, it is difficult to understand how a Commission agent could lead the Appellant to believe that he might qualify for an exception not found in the Act.

[11] Also, the case law<sup>8</sup> is clear that an error by a Commission agent can't have the effect of going against the clear words of the Act.

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<sup>3</sup> Section 55(1)(b) of the Regulations.

<sup>4</sup> Section 55(1)(c) of the Regulations.

<sup>5</sup> GD2-4.

<sup>6</sup> GD3-24.

<sup>7</sup> *Canada (Attorney General) v Knee*, 2011 FCA 301.

<sup>8</sup> See, for example, *Zadoyan v Canada (Attorney General)*, 2019 FC 544.

[12] As a result, I find that I can't accept the Appellant's arguments.

## **Conclusion**

[13] The appeal is dismissed.

[14] The Appellant can't get EI benefits for the period from December 6, 2021, to April 18, 2022.

Nathalie Léger  
Member, General Division – Employment Insurance Section