



Citation: *TS v Canada Employment Insurance Commission*, 2022 SST 1271

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

Decision

Appellant (Claimant): T. S.
Respondent (Commission): Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (478719) dated June 2, 2022
(issued by Service Canada)

Tribunal member: Gerry McCarthy
Type of hearing: Videoconference
Hearing date: October 14, 2022
Hearing participant: Appellant
Decision date: October 17, 2022
File number: GE-22-2261

Decision

[1] The appeal is dismissed. The Claimant wasn't entitled to receive Employment Insurance (EI) sickness benefits while outside Canada.

Overview

[2] The Claimant travelled outside Canada on December 16, 2021, for a planned vacation in Florida. The Claimant had planned the vacation period with her employer. During her vacation in Florida, the Claimant became sick with Covid-19 on December 30, 2021. The Claimant's husband also became sick with Covid-19 while in Florida. The Claimant had to stay in Florida to look after her husband.

[3] The Claimant could not return to Canada until January 18, 2022, owing to isolation and quarantine. The Claimant returned to work on January 19, 2022. The Claimant applied for Employment Insurance (EI) sickness benefits on January 25, 2022, and established a claim on January 9, 2022.

[4] The Commission decided the Claimant was not entitled to EI benefits for the period from January 10, 2022, to January 17, 2022, because she was not in Canada.

[5] The Commission says the Claimant wasn't entitled to EI sickness benefits because her reason for being outside of Canada didn't meet any of the exceptions in the law.

[6] The Claimant says it wasn't fair she couldn't receive EI benefits while outside of Canada. She further says she was entitled to EI sickness benefits from January 9, 2022, to January 18, 2022, because she was temporarily residing in the United States from December 16, 2021, to January 18, 2022.

Issue

[7] Was the Claimant entitled to EI sickness benefits while outside Canada?

Analysis

[8] The law says a claimant is not entitled to receive EI benefits for any period during which the claimant was not in Canada.¹ However, a claimant was not disentitled from benefits while outside Canada if they were able to meet one of the exceptions listed in the law.²

[9] The law says the burden was on the claimant to prove their absence outside Canada would meet one of the exceptions prescribed in the law.³

Was the Claimant entitled to EI sickness benefits while outside Canada?

[10] I find the Claimant wasn't entitled to receive EI sickness while outside Canada, because she didn't meet any of the exceptions listed in the law. I recognize the Claimant argued she satisfied section 55(6) of the EI Regulations because she was temporarily residing in a state of the United States that was contiguous to Canada. However, the purpose of the Claimant's trip to Florida on December 16, 2021, was a vacation and she (and her husband) initially stayed at a condominium belonging to friends until they became sick with Covid-19. Under the circumstances, I'm not able to conclude the Claimant was temporarily "residing" in the United States as she was outside Canada on a planned vacation that was initially scheduled to last from December 16, 2021, to December 30, 2021.

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

² Section 55 of the *Employment Insurance Regulations* (EI Regulations) provides a list of exemptions for being outside Canada and not disentitled from benefits. Some of these exemptions include: Undergoing medical treatment not readily available in the claimant's area of residence; attending a funeral of a member of the immediate family or of a close relative; attending a bona fide job interview for up to 14 days or to conduct a bona fide job search.

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

Additional Testimony from the Claimant

[11] The Claimant further testified she had paid EI premiums while working and it was unfair to be disentitled to benefits while outside Canada. I recognize the Claimant was disappointed, unhappy, and frustrated that she wasn't eligible for EI sickness benefits while outside Canada. Nevertheless, I must apply the law to the evidence. In other words, I cannot ignore the law even for compassionate reasons.⁴

Conclusion

[12] The appeal is dismissed.

Gerry McCarthy

Member, General Division – Employment Insurance Section

⁴ *Knee v. Canada (Attorney General)*, 2011 FCA 301.