



Citation: *AM v Canada Employment Insurance Commission*, 2022 SST 1329

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

Decision

Appellant: A. M.
Representative: D. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (460885) dated March 17, 2022
(issued by Service Canada)

Tribunal member: Lilian Klein

Type of hearing: Videoconference
Hearing date: July 18, 2022
Hearing participants: Appellant
Appellant's representative

Decision date: August 24, 2022
File number: GE-22-1420

Decision

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

[2] The Claimant was allowed one week of employment insurance (EI) benefits while overseas since she met one of the exceptions to the general rule that you cannot get benefits while outside Canada (the out-of-Canada rule).

[3] The Claimant is disentitled from receiving benefits for the rest of her absence.

Overview

[4] While receiving EI sickness benefits, the Claimant left Canada on September 15, 2018, to attend her sister's funeral overseas. She did not report her absence. She returned to Canada on October 21, 2018.

[5] The Canada Employment Insurance Commission (Commission) later found out about the Claimant's absence. It allowed her the one-week exception to the out-of-Canada rule because she left to go to her sister's funeral. But it disentitled her from receiving benefits for the rest of her absence and says she must repay some of her benefits.

[6] The Claimant says she has paid into EI for 25 years and needed time to follow the funeral practices of her culture, so she should get sickness benefits for her whole absence. She says she could not have worked anyway, so it should make no difference if she was in Canada or not. She says the exceptions to the out-of-Canada rule were never meant to cover someone who was sick *and* had to attend a family member's funeral overseas.

The issues I must decide

[7] Did the Claimant qualify for any of the exceptions to the out-of-Canada rule?

[8] Is she disentitled from receiving sickness benefits for any part of her absence?

Analysis

[9] Usually, you are disentitled from receiving EI benefits if you are outside Canada.¹ This rule is strictly applied.

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

[10] The disentitlement also applies to sickness benefits, unless you are outside Canada to get treatment that is not readily or immediately available in this country.²

[11] There are exceptions to the general disentitlement.³ For example, you can get up to seven days of benefits to visit an immediate family member who is seriously ill,⁴ or to attend a family member's funeral.⁵

The Claimant qualified for an exception to the out-of-Canada rule

[12] The Claimant left Canada on September 15, 2018, to attend her sister's funeral overseas. The reason for her absence is not in dispute.

[13] The Commission says the Claimant comes under the one-week exception to attend a family member's funeral. So, it allowed her seven days of benefits for the week starting September 15, 2018. It disentitled her from receiving benefits for the rest of her absence.

The Claimant cannot get more than one week of EI benefits while outside Canada

[14] I considered the Claimant's argument that she should get sickness benefits for the whole of her absence for the following reasons:

- i) she has paid into EI for 25 years and deserves benefits from that insurance
- ii) she could not have worked whether she was in Canada or overseas
- iii) the law does not apply to someone who is sick *and* has to travel to a funeral
- iv) the burial practices of other cultures take longer than those in Canada
- v) her employer would have paid her bereavement leave if she were not sick

[15] However, you cannot get benefits while you are outside Canada apart from the exceptions listed under the law. The out-of-Canada rule does not differentiate between claimants for regular benefits and claimants for sickness benefits. And there are no special exceptions for those who claim sickness benefits while they are away.⁶

² See s 55(1)(a) of the *Employment Insurance Regulations* (EI Regulations).

³ These exceptions are set out in s 55(1) of the EI Regulations.

⁴ S 55(1)(d) of the EI Regulations.

⁵ S 55(1)(b) of the EI Regulations.

⁶ *MT v Canada Employment Insurance Commission*, 2020-SST-382. I do not have to follow Appeal Division decisions but I can choose to do so, as in this case,

[16] So, the Claimant is disentitled from receiving benefits after the first week of her absence until her return to Canada on October 21, 2018.

[17] The Claimant argues that the situation of a person who is on sickness benefits *and* has to attend a funeral out of Canada is not explicitly mentioned in the law. She asks me to interpret this to allow her benefits..

[18] I sympathize with the Claimant's situation but the only exceptions to the out-of-Canada rule are those that the law allows. Despite what the Claimant believes, I have no authority to interpret the law in any other way than it is written and interpreted by the courts.⁷

[19] The Claimant says paying into EI should guarantee her benefits when she needs them. But, as with all insurance plans, you not only pay into the plan, you must meet all of its conditions to get benefits.⁸ The Claimant did not meet the conditions to get more than one week of sickness benefits while she was outside Canada.

Conclusion

[20] The Claimant can keep the one week of sickness benefits she got while she was away because she qualified for the exception to the out-of-Canada rule for attending a family member's funeral. She cannot get sickness benefits for the rest of her absence.

[21] This means that I am dismissing the Claimant's appeal.

Lilian Klein
Member, General Division – Employment Insurance Section

⁷ *Canada (Attorney General) v Knee*, 2011 FCA 301.

⁸ *Pannu v Canada (Attorney General)*, 2004 FCA 90.