Citation: *GD v Canada Employment Insurance Commission*, 2023 SST 779

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	G. D.
Representative:	Sakuraba Celso
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (570420) dated March 10, 2023 (issued by Service Canada)

Tribunal member:	Nathalie Léger
Type of hearing:	Videoconference
Hearing date:	May 19, 2023
Hearing participants:	Appellant Appellant's representative
Decision date:	July 2, 2023
File number:	GE-23-872

Decision

[1] The appeal is allowed. The Appellant is entitled to receive employment insurance sickness benefits from the beginning of his claim.

Overview

[2] The Appellant travelled to Brazil, where his family lives, during his winter vacations. He was scheduled to be back at his job in Canada on January 15, 2022. Unfortunately, during this period, he suffered an accident which left him severely handicapped and unable to travel back to Canada[1].

[3] His father, acting on his behalf, presented a claim for sickness benefits. The Employment Insurance Commission (Commission) refused the claim because the Appellant was outside of Canada when his accident happened and is therefore disentitled from receiving benefits.

[4] The Appellant's representative does not agree. He claims the Appellant should benefit from subsection 55(1)a) of the Employment Insurance Regulations (Regulations). This paragraph allows a claimant who is outside of Canada to receive benefits while undergoing medical treatment in an accredited facility if this treatment is not readily and immediately available to him in Canada.

[5] The facts in this case are not contested. The parties agree that the Appellant left Canada to take vacations and that he would have returned in Canada if not for his accident. The parties also agree that the Appellant is treated in a medical facility that is accredited by the local government and that he cannot travel back to Canada to receive his treatment in his area of residence.

Issue

[6] Has the Appellant proven he meets all the requirements to avail himself of the exception provided for by subsection 55(1)a) of the Regulations?

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[1] GD2-17-18

Analysis

[7] The general rule is that a claimant is not entitled to receive employment insurance benefits if he is outside Canada[2]. But the Regulations provide a limited list of exceptions to this general rule[3]. Those include, for example, being outside Canada to attend the funeral of a family member, to care for a sick family member or to do a job search.

[8] The exception in paragraph a), which is at issue in this case, is that a claimant is entitled to receive benefits if:

a) He is outside Canada for the purpose of undergoing medical treatment;

b) That medical treatment is not readily or immediately available in the claimant's area of residence in Canada; *and*

c) the medical treatment is provided at a care facility that is accredited by the governmental authority outside Canada[4].

The Appellant's Submissions

[9] The Appellant's representative submits that nowhere in the Act or in the Regulations does it say that a claimant must leave Canada with the only goal of getting treatment outside of Canada for subsection 55(1)a) of the Regulations to apply. He submits that the reason why a claimant left Canada is not relevant. Because it is not contested that the Appellant is undergoing treatment in an accredited facility outside Canada, he should benefit from the exception provided by this paragraph.

[10] He also submits that it is not contested that the Appellant cannot travel back to Canada because of his health[5]. Therefore, this means that no medical treatment is readily or immediately available to him in Canada.

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[2] Section 37 of the Employment Insurance Act.
[3] Section 55 of the Regulations
[4] Subsection 55(1)a) of the Regulations
[5] GD2-9

[11] The Appellant's representative finally submits the decision *K. I.* v *Canada Employment Insurance Commission*[6] as a persuasive authority, even if he recognizes that it is not binding on me. In this decision, the Tribunal found that a claimant who had to receive medical treatment outside of Canada for a condition that worsened during a trip abroad met the requirements of subsection 55(1)a) of the Regulations.

The Commission's Submissions

[12] The Commission submits that the primary purpose of the Appellant's absence from Canada was on vacation and not to seek medical treatment. They argue that he therefore does not meet the first requirement of subsection 55(1)a) of the Regulations[7]. Not other decisions or persuasive authority is provided in support of this argument.

[13] The Commission also submits that the exception invoked by the Appellant is only applicable when a claimant leaves Canada to obtain treatment that he could not otherwise readily obtain in his area of residence in Canada[8]. Because this seems redundant with their first argument, I must infer that the Commission's position is that treatment was readily available to the Appellant[9]. They did not provide any evidence pointing to this or explained it in any other way, so I take this argument with serious reservations.

[14] Finally, the Commission submits that the Tribunal is not bound by a decision rendered by another member of the Tribunal in a different case and that the decision submitted by the Appellant's representative can be factually distinguished. But again, because the Commission does not point to how or why this decision should be distinguished from the situation of the Appellant, this argument is taken with serious reservations.

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[6] *K. I.* v *Canada Employment Insurance Commission*, 2015 CanLII 107554 (SST) See GD2-10
[7] GD4-4
[8] GD4-4
[9] Since no one from the Commission was present at the hearing, I have no other choice but to infer this from their written submissions.

Analysis by the Tribunal

[15] The question to be answered in this case is not so much a question of facts as a question of law. Essentially, I must decide what is the correct interpretation of subsection 55(1)a) of the Regulations. The main point of contention between the parties is the meaning and importance of the words "*for the purpose of undergoing*" that stand at the beginning of paragraph a.

[16] Rules of statutory interpretation are first provided for by the Interpretation Act[10]. Those are complemented by common law rules of interpretation that have been expressed by the Supreme Court of Canada or other appellate courts.

[17] The act of interpretation has four main objectives to discern the true intent of Parliament when adopting a specific section of a legislation. This is done by examining the words used in the section in question, in the context of the whole law. The provision that is examined must also be given a fair, large and liberal interpretation to allow it to attain its object.[11]

[18] To facilitate the understanding of the legal reasoning that follows, I think it is useful to reproduce the exact wording of section 55(1)a) of the Regulations:

> **Claimants Not In Canada**
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> 55 (1) Subject to section 18 of the Act, a claimant who is not a self-employed person is not disentitled from receiving benefits for the reason that the claimant is outside Canada
>
> > (a) for the purpose of undergoing, at a hospital, medical clinic or similar facility outside Canada, medical treatment that is not readily or immediately available in the claimant's area of residence in Canada, if the hospital, clinic or facility is accredited to provide the medical treatment by the appropriate governmental authority outside Canada;

[10] Interpretation Act, RSC 1985, c. I-21
[11] Section 12 of the Interpretation Act. See also: *R.* v. *Jarvis*, 2002 SCC 73 at paragraph 77.

[19] Section 55 of the Regulations carves a series of exceptions to the general rule provided by section 37 of the Act. The object of section 55 is therefore to lift the disentitlement that claimants would normally face for being outside Canada, but only for a limited list of situations, and generally for a limited number of days.

a) Interpretation and Application of the First Requirement

[20] As mentioned above, the first thing to do when interpreting a law, is to look at the exact words used by Parliament. The heading of section 55 reads: "*Claimants Not In Canada*". It helps to find the purpose of section 55. In my view, those words denote a state of fact, not an intent or a desire.

[21] As for the words "*for the purpose of undergoing*", they do seem to refer to an intention. The word "purpose" is defined in the Cambridge dictionary as: "why you do something or why something exists". While those words do point to an intention or reason for being outside Canada, they are still accompanied by verbs in their present tense, therefore referring to what is being done by a claimant while he is outside Canada, and not why he left Canada.

[22] Furthermore, when we look at all the other exceptions listed in subsections b) to f) of paragraph 55(1) of the Regulations, we notice that, unlike for subsection a), they all use action words (verbs) to qualify for the reason why a claimant is outside Canada. For example, the following terms are used: "to attend the funeral" in paragraph b), "to accompany a member of the claimant's immediate family" in paragraph c) or "to attend a *bona fide* job interview" in paragraph e).

[23] In other words, it is not why they left Canada that is important, but what they do when they are outside Canada. With this in mind, "for the purpose of undergoing" must refer to the act of preparing to receive or receiving medical treatments when outside Canada and no to the reason that justified leaving Canada in the first place.

[24] Finally, when comparing the English and French version of this subsection, we notice that the English version is broader than the French. In French, the beginning of paragraph a) reads as follows: "*subir (…) un traitement médical (…)*", which can be

translated as : "*undergo … a medical treatment*". It is immediately obvious that in the French version of the text, there is no mention of purpose, intent, or objective. The word "*subir*" is a word of action, not of intent.

[25] When provisions of a bilingual statute are both unambiguous, but with one version broader than the other, we must find the common meaning that exists in both versions and disregard what is different.[12] What is common to both the English and French versions of this subsection is that if a claimant is outside Canada and undergoes a medical treatment, he could benefit from the exception if all the other conditions are met. The notion of purpose is what is not common to both version and must therefore be ignored.

ii) Interpretation and application of the second requirement

[26] As we have seen in paragraph 7 above, to avail himself of the exception, a claimant must also show that the medical treatment he needs is not readily or immediately available in his area of residence in Canada.

[27] The words "readily and immediately available" point to an element of urgency and easy access.[13] If the medical treatment can only be accessed with difficulty, or if it requires a long and arduous process, then it does not meet this criterion.

[28] On that point, I find the reasoning of my colleague in *K. I.* v *Canada Employment Insurance Commission*[14] to be persuasive. I believe that each case must be evaluated with regards to the specific situation faced by the claimant, the extent of the medical treatment needed, the alternatives to such treatment that are available to the claimant and the severity of the condition he is facing. Only when all those elements are taken into consideration is it possible to decide if the treatment can be considered being readily and immediately available in the claimant's area of residence in Canada.

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[12] *R.* v. *Daoust*, 2004 SCC 6, at paragraphs 26-31
[13] The Cambridge dictionary defines « readily » as follows: "quickly, immediately, willingly, or without any problem."
[14] *K. I.* v *Canada Employment Insurance Commission*, 2015 CanLII 107554 (SST)

[29] Because of the exceptional circumstances of the Appellant, where he cannot communicate or travel back to Canada, it becomes obvious that no medical treatment in Canada can be readily and immediately available to him. Even if such treatment was offered, he could not access them because of his medical condition. An enormous amount of planning would be necessary to transfer him to Canada, and even then, he would have to travel too far, and for too long, to access them. The necessary medical treatments are not, therefore, readily and immediately available to him in his area of residence in Canada.

Conclusion

[30] The Appellant has successfully shown that he can benefit from the exception provided for in subsection 55(1)a) of the Regulations because, for the period for which he claims sickness benefits, he was undergoing medical treatments in a recognized medical facility, treatments which were not readily and immediately available to him in his area of residence in Canada.

[31] The appeal is allowed. The Appellant is entitled to receive employment insurance sickness benefits from the beginning of his claim.

Nathalie Léger
Member, General Division – Employment Insurance Section