



Citation: *ST v Canada Employment Insurance Commission*, 2023 SST 1683

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

## Decision

**Appellant:** S. T.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (585880) dated June 1, 2023 (issued by Service Canada)

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**Tribunal member:** Teresa M. Day

**Type of hearing:** In person

**Hearing date:** September 13, 2023

**Hearing participant:** Appellant

**Decision date:** September 21, 2023

**File number:** GE-23-1612

## Decision

[1] The appeal is dismissed.

[2] The Appellant is disentitled to employment insurance (EI) sickness benefits from July 30, 2019 to August 22, 2019 because she was outside of Canada.

## Overview

[3] The Appellant received 15 weeks of EI sickness benefits from July 7, 2019 to October 19, 2019.

[4] On July 29, 2019, the Appellant traveled to Croatia to undergo laser eye surgery for her glaucoma. She returned to Canada on August 23, 2019.

[5] The Appellant did not declare her absence from Canada on her bi-weekly reports to claim EI benefits<sup>1</sup>.

[6] The Commission later found out that the Appellant was outside of Canada while on claim and reviewed her entitlement to EI benefits. Following its investigation, the Commission imposed disentitlements on her claim from July 29, 2019 to August 23, 2019 because she was not in Canada and because she did not prove she would be available for work if she were not sick. This resulted in a \$2,248 overpayment of EI benefits on her claim.

[7] The Appellant asked the Commission to reconsider. She explained that she went to Croatia for a medical procedure that was not recommended by her doctors in Canada. She nonetheless had the surgery on August 15, 2021 and it was successful.

[8] But the Commission maintained the disentitlements on her claim. The Commission said the Appellant did not provide a medical certificate from a Canadian

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<sup>1</sup> All claimants are required to report any absences from Canada during their benefit period. The Appellant accepted this responsibility when she submitted her application for EI benefits on June 24, 2019 (see GD3-10).

doctor confirming that the medical treatment was not readily available in Canada<sup>2</sup>, and did not prove that she would have been available for work if she was not sick<sup>3</sup>.

[9] The Appellant appealed to the Social Security Tribunal (Tribunal). She asks the Tribunal to approve her claim for sickness benefits while she was outside of Canada or forgive the overpayment on her claim.

## Issue

[10] Is the Appellant entitled to sickness benefits while she was outside of Canada?

## Analysis

[11] The law unequivocally says that a claimant is not entitled to receive EI benefits of any kind for any period during which the claimant is not in Canada<sup>4</sup>, unless the claimant falls under one of the exceptions set out in the regulations<sup>5</sup>.

[12] There is an exception for medical treatment, but it is limited in scope. It provides that a claimant may receive EI benefits while outside of Canada **if** the travel is for the specific purpose of undergoing medical treatment that is not readily or immediately available in Canada<sup>6</sup>.

[13] The Appellant is relying on the medical treatment exception. This means it is up to her to prove that the medical treatment she traveled to Croatia for is not available in Canada<sup>7</sup>.

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<sup>2</sup> This is a requirement for the medical treatment **exception** (provided for in paragraph 55(1)(a) of the *Employment Insurance Regulations*) to the rule against receiving EI benefits while outside of Canada (provided for in subsection 37(b) of the *Employment Insurance Act*).

<sup>3</sup> Even if a claimant comes within one of the exceptions to the rule against receiving EI benefits while outside of Canada, the law says they must still prove their availability for work (if claiming regular EI benefits) **or** that they would have been available for work but for their illness (if claiming sickness benefits): subsection 55(1) of the *Employment Insurance Regulations*.

<sup>4</sup> Section 37(b) of the *Employment Insurance Act*.

<sup>5</sup> Section 55 of the *Employment Insurance Regulations*.

<sup>6</sup> Paragraph 55(1)(a) of the *Employment Insurance Regulations*.

<sup>7</sup> See *CUB 60750*, and *C.E.I.C. v. G.Z.*, 2016 SSTADEI 136.

[14] If she meets the medical treatment exception, the Appellant must then demonstrate that, but for her illness, she would have been available for work<sup>8</sup>.

[15] The Appellant can only be paid sickness benefits for the period she was outside of Canada if she brings herself within the medical treatment exception **AND** proves that her illness was the only reason she was not available for work.

### **Issue 1: Does the Appellant meet the medical treatment exception?**

[16] No, she does not.

[17] To meet the medical treatment exception, the Appellant must prove that she traveled to Croatia at the behest of a doctor and for the purposes of medical treatment that was not readily or immediately available in Canada<sup>9</sup>.

[18] The words “immediately available” have to be interpreted as being immediately available within the realities of the medical system in Canada<sup>10</sup>.

[19] The Appellant concedes that the laser eye surgery she had in Croatia is readily and immediately available in Canada. But she says she had valid reasons for going to Croatia for her treatment.

[20] The Appellant testified at the hearing that:

- She was diagnosed with glaucoma in 2017.
- Her doctor prescribed eye drops for her condition, but her vision progressively worsened, and she was “slowly going blind”.
- She is a single mother and needs to be able to see in order to work to support herself and her child.
- She did her own research and educated herself about glaucoma.

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<sup>8</sup> See *Canada (Attorney General) v. Elyoumni*, 2013 FCA 151.

<sup>9</sup> See *M.L. v. C.E.I.C.*, 2019 SST 452.

<sup>10</sup> See *C.E.I.C. v. C.P.* 2019 SST 356.

- She learned of a “simple laser surgery” that would help to stop the progress of the disease, alleviate her migraine headaches and allow her to reduce and/or discontinue the eye drops.
- She asked her doctor if she could have this laser eye surgery but was told that her condition could be managed with eye drops.
- She then “bounced around to 11 different specialists”, but none of these doctors were prepared to recommend the laser eye surgery for her. Each of the doctors she saw refused to do the procedure on her because they said it was dangerous and her condition could be managed with eye drops. And they all refused to refer her to a private clinic in Canada because they said, “I don’t recommend it”.
- By early 2019, she was “desperate”. Her sister in Croatia found a doctor there who would perform the laser surgery on her. She was told she would need to remain in Croatia for a period after the procedure before it would be safe for her to fly back to Canada<sup>11</sup>.
- In February 2019, she arranged for time off from her employer in the summer and booked the surgery.
- She had the surgery 6 months later, on August 15, 2019.
- The procedure lasted for 20 minutes and was followed by a few days in total darkness for “post-surgical recovery”. Other than during the procedure, she was in her sister’s care the whole time.
- The procedure was successful. The pressure in her eye dropped from “35 to 9”<sup>12</sup> and her migraines have stopped.

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<sup>11</sup> This was due to issues with pressure in the eye.

<sup>12</sup> The Appellant testified that the specialists she saw told her that eye drops would control the pressure in her eye so it didn’t go above 22, but the “ideal is 12-15”.

- She doesn't understand why no doctor in Canada would do the surgery on her. She wonders if it was her age (she's not elderly) or because she's an immigrant.
- Why would she pay \$2,000 for the laser eye surgery "plus the costs of travel to Croatia" if she could have had the surgery in Canada?
- The doctors in Canada thought the laser eye surgery was elective surgery, but she disagreed. In her mind, the choice was to have the surgery or go blind.

[21] I am sympathetic to the Appellant's situation and experiences. She was suffering from terrible migraines and understandably frightened at the prospect of "going blind" due to her glaucoma.

[22] But there is no dispute that the laser eye surgery procedure she had in Croatia is readily and immediately available in or around Hamilton, Ontario, which is her area of residence in Canada.

[23] Nor can it be said that her travel to Croatia for the procedure was at the behest of a doctor.

[24] By the Appellant's own admission, 11 different doctors in Canada not only refused to perform the surgery on her – they refused to even refer her to a private clinic in Canada for the surgery. I cannot ignore the fact that the Appellant elected to travel to Croatia and undergo the surgery on her own initiative.

[25] This means the Appellant has not proven she traveled to Croatia for the purpose of receiving medical treatment that was not readily or immediately available in Canada.

[26] It also means she has not met the medical treatment exception and, therefore, is not entitled to EI benefits while she was in Croatia.

[27] Having failed to bring herself within an exception to the rule against receiving EI benefits while outside of Canada, the Appellant cannot be paid sickness benefits from July 30, 2019 to August 22, 2019 because she was outside of Canada during this time.

## Issue 2: Availability for work

[28] The law says that a claimant is not entitled to EI benefits for any of the time they spend outside of Canada, except for the limited exceptions described in the regulations.

[29] And a claimant can only rely on an exception if they can also show that they were available for work<sup>13</sup> (or, in the case of sickness benefits, that they would have been available for work but for their illness or injury) while outside of Canada.

[30] The Appellant has **not** brought herself within the medical treatment exception and, therefore, I do not need to consider whether she has proven her availability for purposes of sickness benefits<sup>14</sup>.

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<sup>13</sup> A claimant must meet all of the requirements to qualify for an exception under the regulations. One of those requirements is availability for work. Subsection 55(1) of the *Employment Insurance Regulations* states that it is “subject to” section 18 of the *Employment Insurance Act*. This means that a claimant cannot receive any benefits under any of the exceptions unless the claimant also meets the requirements of section 18. Subsection 18(1) of the *Employment Insurance Act* says that a claimant is not entitled to benefits for any working day in which the claimant cannot prove that he or she is capable of and available for work. The Federal Court of Appeal interpreted subsection 55(1) in a decision called *Elyoumni (supra)*. The Court said that claimants who ask for benefits under one of the exceptions must remain available for work for the purpose of section 18(1) of the EI Act.

<sup>14</sup> Case law sets out 3 factors I would need to consider when deciding whether a claimant is available for work. A claimant has to prove the following 3 things:

- a) They want to go back to work as soon as a suitable job is available.
- b) They are making efforts to find a suitable job.
- c) They haven't set personal conditions that might unduly (in other words, overly) limit their chances of going back to work.

For sickness benefits, the Appellant doesn't have to show that she was actually available for work. She would just need to show that she would have been able to meet the requirements of all three factors if she hadn't been sick. In other words, the Appellant would have to show that her illness was the only reason she could not return to work between July 30, 2019 and August 22, 2019.

It is likely the Appellant would have met the first 2 requirements. She said she is a single mother who needs and wants to work, and that she tried to return to work after her medical leave of absence but then the Covid-19 pandemic happened and she couldn't find a job.

But the Appellant may have had a problem with the third requirement, as it appears her illness was not the only reason she was unable to return to work. There was also the fact that she was in Croatia and unable to do her job from there or return to Canada to resume her employment here. She may have had valid personal reasons for traveling to Croatia, but her absence from Canada was a personal condition that would have unduly limited her chances of returning to work if she had not been sick.

She would need to meet all 3 factors to prove that she would have been available for work even if she hadn't been sick between July 30, 2019 and August 22, 2019. Otherwise, she would be disentitled to EI sickness benefits even if she had met the medical treatment exception.

### Issue 3: The Overpayment

[31] The Appellant says she cannot repay the overpayment on her claim.

[32] I acknowledge the Appellant's concerns about her ability to pay this debt. I sympathize with her situation, but I cannot help her.

[33] There are two reasons for this.

[34] First, the law says that a decision to write-off any amount owing to the Commission is expressly excluded from the reconsideration process<sup>15</sup>. Since my jurisdiction is limited to decisions that have been properly reconsidered by the Commission<sup>16</sup>, the issue of the Appellant's overpayment is not something I can consider on this appeal.

[35] Second, I do not have any discretion to waive, forgive, void or write-off the overpayment – no matter how difficult the Appellant's financial circumstances may be. The law simply does not empower me to relieve any claimant from liability for an overpayment<sup>17</sup>, and I cannot ignore the law, even if the outcome seems unfair<sup>18</sup>.

[36] The Appellant is left with two options:

- a) She can ask the Commission to consider writing off the debt because of undue hardship<sup>19</sup>. If she doesn't like the Commission's response, she can file a Notice of Application for judicial review with the Federal Court of Canada<sup>20</sup>, but there is a 30-day timeframe for appealing to the Federal Court.

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<sup>15</sup> Section 112.1 of the EI Act.

<sup>16</sup> The *Social Security Tribunal Regulations* limit the Tribunal's jurisdiction to decisions of the Commission that have been reconsidered under section 112 of the EI Act.

<sup>17</sup> Sections 43 and 44 of the EI Act establish that a claimant is liable for an overpayment of EI benefits and must repay any EI benefits they received but were not entitled to.

<sup>18</sup> *Granger v. Canada (CEIC)*, [1989] 1 S.C.R. 141

<sup>19</sup> **Section 56(1)(f)(ii) of the *Employment Insurance Regulations*** gives the Commission broad powers to write off an overpayment when it would cause undue hardship for a claimant to repay it. The Appellant must contact the Commission and specifically refer to section 56 of the *Employment Insurance Regulations* in her request for a write-off.

<sup>20</sup> It is up to the Appellant to investigate the process and take the required steps to appeal to the Federal Court. Application forms are usually available by calling the Courts Administration Service (1-613-992-



or

- b) She can telephone the Debt Management Call Centre at Canada Revenue Agency (CRA)<sup>21</sup> at 1-866-864-5823 and ask about debt relief due to financial hardship<sup>22</sup>. She will need to present information about her financial circumstances for consideration.

## Conclusion

[37] The Appellant is disentitled to EI benefits because she was outside of Canada and failed to prove she qualifies for any of the statutory exceptions provided for in subsection 55(1) of the *Employment Insurance Regulations*.

[38] This means the disentitlement imposed on her claim from July 30, 2019 to August 22, 2019 for being outside of Canada must remain.

[39] I do not have jurisdiction to write-off the resulting overpayment on the Appellant's claim.

[40] The appeal is dismissed.

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

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4238) or by going to a local office of the Courts Administration Service. For a list of local Courts Administration Service offices, go to [www.cas-satj.gc.ca](http://www.cas-satj.gc.ca) and click on Registry Office.

<sup>21</sup> CRA collects overpayment debts on behalf of the Commission.

<sup>22</sup> The telephone number is also found on the Notice of Debt and account statements sent to the Appellant for the overpayment.