



Citation: *PT v Canada Employment Insurance Commission*, 2023 SST 1306

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

## **Decision**

**Appellant:** P. T.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (594461) dated June 2, 2023 (issued by Service Canada)

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**Tribunal member:** Angela Ryan Bourgeois

**Type of hearing:** Videoconference

**Hearing date:** September 27, 2023

**Hearing participant:** Appellant

**Decision date:** September 29, 2023

**File number:** GE-23-1711

## **Decision**

[1] The appeal is dismissed. The Appellant is disentitled from receiving Employment Insurance (EI) benefits while out of Canada. He has not proven that he meets one of the exceptions to the rule that claimants can't be paid EI benefits while outside Canada.

## **Overview**

[2] To receive EI benefits, claimants have to be in Canada. But there are some exceptions. One exception is if you're out of Canada is to undergo medical treatment that isn't readily or immediately available where you live in Canada.

[3] The Appellant left Canada for a vacation. He planned to be away from late January to mid-February 2023. While away, he had to have spinal surgery. He was in the hospital for five weeks, which was followed by months of physiotherapy. He returned to Canada in August 2023.

[4] The Appellant applied for EI sickness benefits.

[5] The Canada Employment Insurance Commission (Commission) decided the Appellant was not entitled to benefits while he was out of Canada. The Commission says the Appellant didn't leave Canada for a medical treatment that wasn't readily available where he lived in Canada.

## **Issue**

[6] Did the Appellant leave Canada to undergo a medical treatment that wasn't readily or immediately available where he lived in Canada?

## **Analysis**

### **What happened**

[7] The Appellant was outside Canada from January 26, 2023, to August 8, 2023.

[8] He was injured on February 12, 2023, and had surgery on February 15, 2023.

[9] He applied for EI sickness benefits on March 9, 2023, and a benefit period was established as of February 19, 2023.

### **The rule - EI benefits aren't paid to claimants not in Canada**

[10] Claimants are not entitled to receive EI benefits for any period, expressed in complete, whole days, when they are not in Canada.<sup>1</sup>

[11] Unless the Appellant falls within an exception to the rule, he isn't entitled to benefits from February 19, 2023 (the start of his benefit period) to August 7, 2023.<sup>2</sup>

### **An exception to the rule**

[12] There is an exception for medical treatment.<sup>3</sup>

[13] To fall within the medical treatment exception, the Appellant must meet all these conditions:

- a) he was outside Canada for the purpose of undergoing medical treatment
- b) the medical treatment wasn't readily or immediately available in the area of residence in Canada
- c) the treatment was at a hospital, medical clinic or similar facility accredited to provide the medical treatment
- d) he was otherwise available for work.<sup>4</sup>

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<sup>1</sup> See section 37(b) of the *Employment Insurance Act* (EI Act) and *Canada (Attorney General) v Picard*, 2014 FCA 46, paragraph 29.

<sup>2</sup> The Appellant left Canada at 5 p.m. on January 26, 2023, and returned to Canada at 2 p.m. on August 8, 2023. The disentitlement would end on August 7, 2023, not August 8, 2023. This is because these disentitlements are for complete, whole days only. The parties don't dispute this date. See pages GD8-1, GD7-1, and GD7-5.

<sup>3</sup> The exceptions are set out in Section 55 of the *Employment Insurance Regulations* (EI Regulations). The only exception relevant to this appeal is the one about medical treatment (section 55(1)(a)).

<sup>4</sup> See section 55(1)(a) of the EI Regulations and section 18 of the EI Act.

[14] The onus is on the Appellant to prove that he falls within the exception. He has to prove this on a balance of probabilities.

[15] Only the first two conditions are relevant to this appeal. There is no dispute about whether the treatment was done at an accredited medical facility or whether the Appellant was otherwise available for work.

### **What the Appellant says**

[16] The Appellant wants me to consider the exceptional circumstances that prevented him from returning to Canada. While in Portugal, his health condition became severe. He had to have immediate spinal surgery. He didn't make the decision to have the surgery lightly.<sup>5</sup>

[17] The Appellant told me that he isn't scheduled to return to work until February 2024 - a year after his surgery.

### **What the Commission says**

[18] The Commission says the Appellant hasn't proven that the reason he was out of Canada falls within one of the exceptions. It says he required surgery, but he hasn't shown that he left Canada for a medical treatment that wasn't available where he lived in Canada.<sup>6</sup>

### **The medical treatment exception doesn't apply**

[19] I agree with the Commission. Although it seems harsh, I can't apply the exception because the Appellant doesn't meet all the conditions.

#### **– Outside of Canada for the purpose of undergoing medical treatment**

[20] The Appellant was outside of Canada for a vacation. He didn't leave Canada for the purpose of undergoing medical treatment. It's unfortunate that his time outside Canada had to be extended because of his medical condition. But it remains that the

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<sup>5</sup> The Appellant's position is set out in more detail in a letter to the Tribunal starting on page GD2-10.

<sup>6</sup> See the Commission's submissions on page GD4-3.

reason he was outside Canada wasn't for the purpose of undergoing medical treatment, it was to take a vacation.

[21] This is not the first time a claimant has required medical treatment while on vacation outside Canada. Other decision makers have made similar findings. They have found that to benefit from this exception the claimant must have left Canada for the purpose of receiving the medical treatment, not for the purpose of a vacation with a subsequent accident.<sup>7</sup>

[22] Since the Appellant doesn't meet the first condition, he can't fall within the exception.

– **Treatment not readily available in the Appellant's area of residence**

[23] The Appellant told me that the treatment might not have been readily available to him in Canada. He explained that his doctor in Toronto didn't take his condition seriously and refused to offer surgery. And in Nova Scotia, where he now lives, the surgery was likely to be only available in Halifax, which is many kilometres from where he lives.

[24] The Appellant hasn't shown that the treatment wasn't readily available where he lived in Canada.

[25] First, the fact that his doctor in Toronto didn't recommend the treatment doesn't prove that the treatment wouldn't have been readily available had it been recommended.

[26] Secondly, the evidence before me doesn't support a finding that the Appellant's treatment wouldn't have been readily available to him in Nova Scotia, had the injury happened at home.

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<sup>7</sup> See CUB 57105 and CUB 20711. I don't have to follow these decisions, but I found the reasoning compelling.

[27] Given the size and population of Nova Scotia, I find that any medical treatment that is available within the province, is within the Appellant's "area of residence in Canada." The exception doesn't refer to a claimant's town or county, but to their "area of residence." In the context of Nova Scotia, it is commonplace for Nova Scotians to travel to Halifax for specialized medical treatment, like spinal surgery.

[28] Since the Appellant hasn't met either the first or second condition, he doesn't fall within the exception.

– **I can't modify the exception**

[29] I am sympathetic to the Appellant's situation. The fact that he will be off work for a full year speaks to the severity of his health condition when he was out of Canada.

[30] But I have to follow the strict rules of the *Employment Insurance Act* and its regulations.<sup>8</sup> The Appellant doesn't meet the conditions that would allow me to apply the exception, so he isn't entitled to benefits. I can't change the rules to accommodate his situation.<sup>9</sup>

## **Conclusion**

[31] The Appellant doesn't fall within an exception to the rule that claimants can't receive EI benefits while outside Canada.

[32] So he is disentitled from receiving EI benefits from February 19, 2023 (the start of his benefit period) to August 7, 2023.

[33] The appeal is dismissed.

Angela Ryan Bourgeois

Member, General Division – Employment Insurance Section

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<sup>8</sup> See *Canada (Attorney General) v Lévesque*, 2001 FCA 304.

<sup>9</sup> See *Pannu v Canada (Attorney General)*, 2004 FCA 90.