



Citation: *MS v Canada Employment Insurance Commission*, 2023 SST 1984

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: M. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (613215) dated September 8, 2023 (issued by Service Canada)

Tribunal member: John Rattray

Type of hearing: Teleconference

Hearing date: December 13, 2023

Hearing participant: Appellant

Decision date: December 19, 2023

File number: GE-23-2904

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant can't get Employment Insurance (EI) benefits for the days he was outside Canada.

[3] The Appellant also hasn't shown that he was available for work while outside Canada.

Overview

[4] The Canada Employment Insurance Commission (Commission) decided that the Appellant can't receive EI benefits from April 24, 2023, to June 10, 2023, because he was outside Canada. The Commission says unless certain exemptions apply a claimant who is outside Canada isn't entitled to EI benefits. It determined that the Appellant didn't prove that any of the exemptions apply.

[5] The Commission also determined that the Appellant is disentitled because he wasn't available for work. A claimant has to be available for work to get EI regular benefits. Availability is an ongoing requirement. This means that a claimant has to be searching for a job.

[6] The Appellant says he was outside Canada to regain his mental health, and visit his mother who had previously been treated for cancer. He was available for work while he was outside Canada.

[7] I must decide whether the Appellant was outside Canada and disentitled to benefits. I must also decide whether he was available for work.

Issue

[8] Was the Appellant disentitled from receiving EI benefits because he was outside Canada?

[9] Was the Appellant disentitled from receiving EI benefits because he wasn't available for work while outside Canada?

Analysis

Outside Canada

[10] A claimant isn't entitled to EI benefits for any period that they're outside Canada.¹ There are limited exceptions that may allow benefits to be paid, but it depends on the reason that they're outside Canada.² It's the Appellant's responsibility to prove that one of the exceptions applied to him while he was outside Canada.³

[11] The parties says that the Appellant was outside Canada from April 24, 2023, to June 10, 2023, (period of absence). I see no evidence to the contrary and agree. I find that the Appellant was outside Canada for the period of absence.

[12] The Commission issued a disentitlement for the period of absence because the Appellant was outside Canada. It says the Appellant's reason for being outside Canada didn't qualify him for an exception. The Appellant disagrees.

– Do the exceptions apply?

[13] I find that the Appellant didn't prove that one of the exceptions allowing claimants who are outside Canada to received EI benefits applied. I find this for the reasons set out below.

[14] The Appellant had been coping with stress in the months before his dismissal. He was seeing a psychiatrist in his local area. He also spoke periodically with a psychotherapist, who lived outside Canada, who had assisted him over a period of more than 15 years when he was growing up outside Canada.

[15] Shortly after he lost his employment, the owner of his condominium unit told him that she was selling it. The unit was to be staged and readily available for viewings.

¹ See section 37(b) of the *Employment Insurance Act* (Act).

² See section 55(1) of the *Employment Insurance Regulations* (Regulations).

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

These two events, the loss of his employment and the impending loss of his accommodation, led to severe anxiety and panic attacks.

[16] After seeing his psychiatrist, as well as speaking with family, and his psychotherapist, he left Canada for the period of absence. During this period, he saw his psychotherapist regularly, visited his family, and obtained emotional support.

[17] The Commission says that the Appellant didn't prove that medical treatment wasn't available in his local area. He had been and continues to be under the care of his psychiatrist. It also says that his mother wasn't seriously ill or receiving medical treatment. His mother was now being monitored regularly but wasn't currently ill.

[18] The Appellant's testimony and statements indicate that:

- He had been and continues to see a local psychiatrist for his anxiety and panic attacks.
- His psychiatrist wasn't a psychotherapist and didn't provide counselling in the same manner as his psychotherapist outside Canada.
- He didn't ask his psychiatrist for a referral to a local psychotherapist.
- He had used a social media app to have counselling sessions with his psychotherapist who lived outside Canada.
- Poor internet connections made it challenging to do video conferences with his psychotherapist.⁴
- He would have stopped his counselling sessions and returned to Canada if he had received a job offer.
- His mother had been diagnosed with and treated for cancer in 2018.

⁴ See GD2-15.

- She wasn't receiving ongoing treatment, and was monitored regularly.
- He worried about his mother, and missed the emotional support of his family.

[19] I find that the Appellant didn't prove that medical treatment was not readily available in his area of residence in Canada. I find this because he was obtaining medical treatment in Canada with his psychiatrist and didn't seek a referral to a local psychotherapist. Though his psychiatrist prepared a letter in support of his reconsideration, it only stated that he travelled "to refresh his mood and reduce his anxiety."⁵ It didn't state that necessary medical treatment wasn't available in the large metropolitan city he lived in.

[20] In making this finding, I accept the Appellant's evidence that he found it beneficial to return home to obtain emotional support from his family, and to meet directly with his psychotherapist because of internet connection issues. However, he didn't prove that medical treatment was not readily available in his area of residence in Canada and was willing to stop in person counselling sessions and return to Canada if he received a job offer.

[21] Similarly, I accept that it was helpful for him to visit his mother and that he was concerned about her well-being. However, she was not currently receiving medical treatment, nor was she seriously ill or injured.⁶

[22] This means that the Appellant is disentitled to EI benefits for the period of absence.

Was the Appellant available for work while outside Canada?

[23] Two different sections of the law require claimants to show that they're available for work. The Commission decided that the Appellant was disentitled under both of these sections. So, he has to meet the criteria of both sections to get EI benefits.

⁵ See GD2-13.

⁶ See GD2-21, and GD3-38.

[24] First, the Act says that a claimant has to prove that they're making "reasonable and customary efforts" to find a suitable job.⁷ The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" mean.⁸ I will look at those criteria below.

[25] Second, the Act says that a claimant has to prove that they are "capable of and available for work" but aren't able to find a suitable job.⁹ Case law gives three things a claimant has to prove to show that they are "available" in this sense.¹⁰ I will look at those factors below.

[26] The Commission decided that the Appellant was disentitled from receiving benefits because he wasn't available for work based on these two sections of the law.

[27] I will now consider these two sections myself to determine whether the Appellant was available for work.

Reasonable and customary efforts to find a job

[28] The law sets out criteria for me to consider when deciding whether the Appellant's efforts were reasonable and customary.¹¹ I have to look at whether his efforts were sustained and whether they were directed toward finding a suitable job. In other words, the Appellant has to have kept trying to find a suitable job.

[29] I also have to consider the Appellant's efforts to find a job. The Regulations list nine job-search activities I have to consider. Some examples of those activities are the following:¹²

- networking
- contacting employers who may be hiring
- applying for jobs

⁷ See section 50(8) of the Act.

⁸ See section 9.001 of the Regulations.

⁹ See section 18(1)(a) of the Act.

¹⁰ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

¹¹ See section 9.001 of the Regulations.

¹² See section 9.001 of the Regulations.

[30] The Commission says that the Appellant didn't do enough to try to find a job. The Appellant reported that he left Canada to take a vacation.¹³

[31] The Appellant disagrees. He says he didn't travel on vacation, but to visit family and seek help for his anxiety and panic attacks. He also says that he looked online and applied for jobs. He applied when he felt better.

[32] I find that the Appellant didn't make reasonable and customary efforts. His efforts weren't sustained. I find this because his primary focus was on regaining his health, well-being, and ability to work effectively.¹⁴

Capable of and available for work

[33] Case law sets out three factors for me to consider when deciding whether the Appellant was capable of and available for work but unable to find a suitable job. The Appellant has to prove the following three things:¹⁵

- a) He wanted to go back to work as soon as a suitable job was available.
- b) He has made efforts to find a suitable job.
- c) He didn't set personal conditions that might have unduly (in other words, overly) limited his chances of going back to work.

[34] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.¹⁶

¹³ See GD3-14.

¹⁴ See GD2-10.

¹⁵ These three factors appear in *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96. This decision paraphrases those three factors for plain language.

¹⁶ Two decisions from case law set out this requirement. Those decisions are *Canada (Attorney General) v Whiffen*, A-1472-92; and *Carpentier v Canada (Attorney General)*, A-474-97.

– **Wanting to go back to work**

[35] I find that the Appellant hasn't shown that he wanted to go back to work as soon as a suitable job was available. The purpose of his trip was to visit family and regain his health. This was his priority over seeking work.

– **Making efforts to find a suitable job**

[36] The Appellant hasn't made enough effort to find a suitable job.

[37] I have considered the list of job-search activities given above in deciding this second factor. For this factor, that list is for guidance only.¹⁷

[38] The Appellant's efforts to find a new job included updating one resume and looking online when he felt better. He explained that it would have added to his stress level to be looking for a new job before he felt better.

[39] I find that those efforts weren't enough to meet the requirements of this second factor because his focus was on his family and his mental health, not searching for a new job.

– **Unduly limiting chances of going back to work**

[40] I find that the Appellant didn't set personal conditions that might have unduly limited his chances of going back to work.

[41] I find this because he could monitor email, receive calls, and could return to Canada within 48 hours of a job opportunity.¹⁸

– **So, was the Appellant capable of and available for work?**

[42] Based on my findings on the three factors, I find that the Appellant hasn't shown that he was capable of and available for work but unable to find a suitable job.

¹⁷ I'm not bound by the list of job-search activities in deciding this second factor. Here, I can use the list for guidance only.

¹⁸ See GD3-16.

Conclusion

[43] The disentitlements for being outside Canada and not being available for work still stand.

[44] This means that the appeal is dismissed.

John Rattray

Member, General Division – Employment Insurance Section