



Citation: *AE v Canada Employment Insurance Commission*, 2023 SST 1999

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: A. E.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (559166) dated January 9, 2023
(issued by Service Canada)

Tribunal member: Stuart O'Connell

Type of hearing: Teleconference

Hearing date: August 4, 2023

Hearing participant: Appellant

Decision date: December 22, 2023

File number: GE-23-571

Decision

[1] The appeal is dismissed. The Appellant was not entitled to receive Employment Insurance benefits from August 12 to October 2, 2019.

Overview

[2] The Appellant established an initial claim for employment insurance regular benefits effective May 5, 2019. The Appellant stopped applying for EI benefits on August 18, 2019. In late October, the Appellant requested that his claim be converted to sickness benefits and antedated to August 18, 2019. He stated that he was unable to work since August 18, 2019, due to a mental health issues. A medical noted dated October 19th supports this. It states that the Appellant was unable to work from August 18 to October 5, 2019.

[3] Information obtained from the Canada Border Services Agency (CBSA) revealed that the Appellant was outside the country from August 4 to October 2, 2019.¹ The Appellant failed to disclose that he was outside Canada, as he was required to do, on two bi-weekly EI reports.

[4] Subject to exceptions set out in the EI Regulations, a person outside Canada is not entitled to receive EI benefits. The Appellant says that he falls within two exceptions, as he travelled outside Canada for the following reasons:

1. To visit his sick parent, and
2. To obtain mental health treatment not readily or immediately available in Canada.

[5] The Commission found that the Appellant had established the first reason and was entitled to benefits for a seven-day period while outside the country, the maximum available under Section 55(1)(d) of the EI Regulations. However, it found he had not

¹ GD3-55.

established the second and, additionally, he was not 'otherwise available' during the remainder of the time that he was outside Canada.²

[6] Factoring in the seven days, the Commission retroactively imposed a definite disentitlement from August 12 to October 2, 2019. This resulted in the Appellant having been overpaid by 2417.00. The Commission issued a Notice of Debt for that amount.³

[7] The Appellant disagrees with the Commission and says that but for his illness he was available to work and able to return to Canada on 48 hours notice. He states that it was not his intention to lie about any information asked of him and the debt should be written off. He is on a fixed income and says the debt creates a significant financial hardship. The Appellant asks that this be taken into consideration.

Issue 1

[8] Has the Appellant shown that he is entitled to EI benefits while he was outside Canada?

Analysis

The rule – EI benefits aren't paid to claimants not in Canada

[9] EI claimants are not entitled to receive EI benefits for any period, expressed in complete, whole days, when they are not in Canada, except as prescribed by regulation.⁴

Exceptions to the rule

[10] If the Appellant was outside of Canada during the benefit period, the onus is on the Appellant to prove that he meets the requirements of one or more of the prescribed exceptions, which are currently set out at sections 55 and 55.01 of the EI Regulations.

² GD3-62, initial decision; GD3-75, reconsideration decision.

³ GD3-65.

⁴ Section 37 of the EI Act.

[11] One of those exceptions applies to claimants who are outside Canada to visit an immediate family member who is seriously ill. A claimant who qualifies under this exception may be entitled to benefits for a period not exceeding seven days. This exception is set out at section 55(1)(d) of the EI Regulations:

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... (d) for a period of not more than seven consecutive days to visit a member of the claimant's immediate family who is seriously ill or injured.

[12] The Commission decided that the Appellant fell within this exception. However, it did not accept that the Commission fell within section 55(1)(a) which deals with a claimant who is outside Canada to receive medical treatment.

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.

Evidence

[13] The information the Appellant provided included the following:

- The Appellant resides in a large city in Ontario.⁵
- During his benefit period, the Appellant traveled travelled to Beirut, Lebanon to assist his elderly mother who was suffering from Alzheimer's.
- Visiting his ill family member was not his only reason for travel. He also left the country to receive timely treatment for his severe depression and mental illness.

⁵ See also GD3-17.

- The care and counselling and treatment he required (and ultimately received) was not readily available in Canada. He might have had to wait over a year to get an appointment and receive comparable treatment in Canada.
- In his previous experience he has had to wait six months to up to a year to get an appointment with a psychiatrist.⁶
- Treatment for depression was needed immediately. His depression was severe and delaying treatment posed a serious risk to the Appellant.
- The Appellant was being treated in Canada (mostly by his family doctor) but believed that the treatment was not adequate to address his needs. He wanted to get other opinions, try a different type of therapy or a better treatment. English is not his first language, and he also wanted a mental health professional with whom he could converse in his native language. This would facilitate treatment.
- He has had poor experiences with psychiatrists and felt that he would benefit most from seeing a psychotherapist.
- The Appellant received medical treatment at a clinic in Beirut for his mental health issues.
- A note from a Beirut psychotherapy clinic states that the Appellant attended two therapy sessions per week from August 21st to September 26, 2019, to heal the symptoms of his depression.⁷
- He was outside of Canada from August 4, 2019, to October 2, 2019.⁸

⁶ See also GD3-73.

⁷ GD2-8.

⁸ GD3-52, GD3-56.

Findings

The Appellant was entitled to benefits for a maximum of seven days while outside of Canada.

[14] The Appellant fell within the exception at section 55(1)(d) of the EI Regulations and was entitled to benefits for up to seven days while outside the country. He established that he left Canada to visit a member of his immediate family who was seriously ill.

The Appellant can't receive benefits under the medical treatment exception

[15] It is clear that the Appellant received some medical treatment outside of Canada for his mental health issues. I do not find that the Appellant fell within the exception at section 55(1)(a) of the EI Regulations, however. The Regulations refer to medical treatment outside Canada not readily or immediately available in Canada. The onus is on the Appellant to prove that the medical treatment was not available to him.

[16] The Appellant provided a personal account of his past difficulties in accessing timely mental health care under the Canadian medical system, but his past experiences do not necessarily reflect the reality at the time he traveled to Beirut. In this case more was required than anecdotal evidence about systemic delays. Also, the Appellant was vague as to the nature of the treatment he received abroad. He characterized it in broad terms, essentially psychotherapy for severe depression. This lack of specificity did not help his argument that the treatment he required was not readily available within the Canadian health system.⁹

[17] I am mindful that mental health issues can sometimes require immediate intervention and that a delay in treatment can, in some instances, be catastrophic. Nevertheless, the Appellant has not established that the medical treatment he required was not readily or immediately available to him in his area of residence in Canada.

⁹ Additionally, no evidence was provided regarding the lack of availability of suitable mental health professionals in the Appellant's area who spoke his first language, Arabic.

[18] The Appellant is disentitled from receiving benefits under Section 37 of the EI Act from August 12 to October 2, 2019. He was outside of Canada but does not fall within any of the prescribed exceptions.

Issue 2

[19] Has the Appellant established that he was 'otherwise available' to work?¹⁰ The Appellant wasn't able to work because of his illness, but was his illness the only thing stopping him from being available for work?

[20] Given my finding that the Appellant was disentitled to benefits under section 37 of the EI Act from August 12th until his return to Canada, it is unnecessary for me to determine if the Appellant was also disentitled for that same period because he was not 'otherwise available' to work.¹¹

Issue 3

[21] Did the Appellant knowingly make a false representation?

Evidence

[22] The Appellant gave evidence that he did not state that he was outside of Canada because he thought that he was allowed to leave Canada in an emergency. He says he would have come right back if he had gotten a call for work.¹²

[23] The Commission provided the following information:

- Information obtained from CBSA showed that the Appellant was outside the country from August 4 to October 2, 2019. The Appellant agrees that he was outside Canada for this period.

¹⁰ The requirement to be 'otherwise available for work' is found at section 18(1)(b) of the EI Act.

¹¹ The requirement to be 'otherwise available for work' is found at section 18(1)(b) of the EI Act.

¹² See also GD3-57.

- The Appellant failed to disclose that he was outside Canada, as he was required to do, on two bi-weekly EI reports.

The Law

[24] Pursuant to section 38 of the Act, the Commission may impose a penalty for any misrepresentation which is knowingly made by a claimant. In this case, pursuant to sections 38 and 41.1 of the EI Act, the Commission imposed a warning instead of a monetary penalty.

[25] In a finding of misrepresentation, the onus of proof first rests with the Commission. Once the Commission can reasonably conclude benefits were paid as a result of misrepresentation, the burden then shifts to the Appellant to prove that the events are open to innocent interpretation. The standard of proof is the balance of probabilities. It is not sufficient to simply disbelieve a claimant's statement of innocence. To establish a false statement was knowingly made, the evidence must show:

- (1) an objectively false statement;
- (2) that misleads the Commission;
- (3) resulting in the real or possible payment of benefits to which the claimant was not entitled;
- (4) at the time of the statement, the claimant knew it did not accurately reflect the facts.

Findings

[26] The Appellant stated “no” on two bi-weekly EI reports to a very straightforward question: “Were you outside Canada between Monday and Friday during the period of this report?”¹³ The reports covered the periods from August 4, 2019, to August 17, 2019; and from September 29, 2019, to October 12, 2019. Yet, the Appellant was absent from Canada during both reporting periods.

¹³ GD3-22 & GD3-43.

[27] The “Rights and Responsibilities” section of the Application for Benefits which the Appellant completed clearly explains that one must report all absences from Canada.¹⁴ I find that the Appellant was aware of his obligation to report absences.

[28] The Appellant says he did not intend to lie. However, he did not provide a plausible innocent explanation as to why the incorrect statements were made. Knowledge may be inferred from the plain facts of the case.

[29] Even if the Appellant thought he was allowed to leave Canada for an emergency, in stating that he was not absent from Canada he knowingly misrepresented the facts.

[30] On the evidence I find that the Appellant knowingly made false or misleading statements and the Commission supplied benefits to the Appellant relying, at least in part, on the statements that the Appellant had provided.

[31] The Commission had the authority to impose a warning pursuant to section 38 and 41.1 of the EI Act.

Conclusion

[32] I find that the Appellant was not in Canada and was not entitled to receive EI benefits from August 12, 2019, to October 2, 2019. The Commission had the authority to issue a warning to the Appellant as the Appellant knowingly made two false or misleading statements.

[33] The Appellant must now pay back money to which he believed he was entitled. This will be understandably difficult. The Appellant is retired and lives on a fixed income. However, this Tribunal does not have the jurisdiction to be able to write off this debt.¹⁵ The decision to write off the debt (or not) remains with the Commission.

¹⁴ GD3-12.

¹⁵ *Arksey v. Canada (Attorney General)*, 2019 FC 1250 (CanLII), at para 35.

[34] The appeal is dismissed.

Stuart O'Connell

Member, General Division – Employment Insurance Section