



Citation: *DU v Canada Employment Insurance Commission*, 2023 SST 2009

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

Decision

Appellant: D. U.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (612263) dated September 11, 2023 (issued by Service Canada)

Tribunal member: Greg Skelly
Type of hearing: Teleconference
Hearing date: November 16, 2023
Hearing participant: Appellant
Decision date: November 22, 2023
File number: GE-23-2632

Decision

[1] The appeal is dismissed. The Appellant is disentitled to benefits because he was outside of Canada.

Overview

[2] The Appellant applied for Employment Insurance (EI) benefits on January 6, 2023. He left Canada on February 3, 2023, and returned to the country on March 29, 2023.

[3] The Employment Insurance Commission (Commission) initially decided that he was not entitled to benefits from February 3, 2023 to March 29, 2023 as he was out of the country and was also not available for work during those dates.

[4] The Appellant requested that the Commission reconsider their decision and the Commission then determined that the Appellant was available for work, but he was still disentitled for benefits from February 3, 2023 to March 29, 2023 as he was out of Canada.

[5] The Appellant argues that he was not in the United States for vacation but that he has a relationship with someone there and needed to be there to maintain the relationship.

Issue

[6] Is the Appellant entitled to benefits while he was not in Canada?

Analysis

[7] Usually, you cannot receive EI benefits if you are outside of Canada.¹ There are some exceptions. The Employment Insurance Regulations has a list of the exceptions. If you are outside of Canada for one of the following reasons, you might be able to receive benefits:

- To undergo medical treatment that is not readily or immediately available in Canada;
- To attend a funeral of a family member;
- To travel with a family member while they are getting medical treatment outside of Canada;
- To visit a seriously ill or injured family member;
- To attend a job interview; or
- To conduct a job search.²

[8] It is always your responsibility to prove that you meet all of the requirements to receive EI benefits.³ This means that you have to prove that one of these exceptions apply to you if you want to collect benefits while you are outside of Canada.⁴

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

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

³ See section 49(1) of the EI Act.

⁴ See *Canada (Attorney General) v Peterson*, A-370-95.

Why was the Appellant outside of Canada?

[9] The Appellant told the Commission that while he was outside of Canada, he was online looking for work in Canada and the United States however he didn't have a work permit or authorization to work outside of Canada. But that he was mostly looking for work within Canada.⁵

[10] The Appellant also told the Commission that he was visiting his partner while in the United States and it would be difficult on his relationship if he went there less often.⁶

[11] In his request for reconsideration to the Commission; the Appellant says that he is in a serious relationship with someone in the United States and that he travels there frequently to pursue the relationship and that he can come back to Canada for work if he finds employment. He says that he is living his life there and is not on vacation and that he would not have left the country if he knew this would be an issue.⁷

[12] In his Notice of Appeal to the Social Security Tribunal, the Appellant again confirms that he is not on vacation while outside of Canada but he needs to be there to maintain his relationship and it seems improper and immoral that he is not allowed to collect benefits because of this.⁸

[13] The Appellant also says to the Tribunal that he pays into the EI program and should be able to use it.

[14] At the hearing the Appellant said that when he completed his request for EI benefits he saw the section on the form that gives information on Absence from Canada and said that he had previously been denied benefits for the same reason and that he called EI but didn't get a call back but he also didn't go to a Service Canada Centre to get more information.

⁵ See GD3-17.

⁶ See GD3-18.

⁷ See GD3-24.

⁸ See GD2-5.

[15] In testimony the Appellant said that he did speak to someone from Service Canada once and was told about the rules and exemptions which he didn't think applied to his circumstances.

[16] In testimony the Appellant said that he reviewed the exceptions listed above and didn't think that the met any but thought that the section dealing with someone who resides outside of Canada applies to him.⁹

[17] The Commission says that pursuing a relationship is not an exception under section 55 of the EI Regulations. And while it they have found that he was available for work, being out of Canada is a separate issue from availability.¹⁰

[18] The Commission also says that the Appellant was not out of country on a bona fide job search or interview as he is not authorized to work out of the country, so he had no reasonable expectation of getting a job.¹¹

[19] The Appellant told the Commission that he wanted to go to the United States to visit his partner who he is in a committed relationship with and that any of his job search efforts while there were online and could have been completed in Canada.

[20] In testimony the Appellant confirmed that he went to the United States to rejoin his partner.

[21] I find that the exception under section 55(6) of the EI Regulations do not apply to the Appellant. In testimony, he said that he has no driver's license, residency card or work visa in the United States. So, he could provide no evidence that he permanently or temporarily resides in the United States.

[22] I understand that the Appellant's position is that he is not on vacation and is living his life with his partner when he is in the United States, but it is clear to me that his address and work are in Canada.

⁹ See Section 55(6) of the *EI Regulations*.

¹⁰ See GD4-2.

¹¹ See GD4-3.

[23] The Appellant says he should get EI benefits for the time that he was out of Canada and that he continued to look for work. He says that he contributed to the EI fund and should be entitled to use it.

[24] I understand the Appellant's arguments. I agree that the work world has changed a lot since Parliament wrote the laws governing the EI program. I agree that remote job searches and remote work are common today. But even though I understand the Appellant's arguments on this point, I still have to follow the law.

[25] I don't have the authority to change the EI law. Instead, I have to apply the law according to its plain meaning.¹² The law starts with the general rule that you can't get EI benefits if you're out of Canada. Then, the law adds a few exceptions to the general rule. If you can't prove that one of the exceptions applies in your case, then you can't get EI benefits while you're out of Canada.

[26] So, this means that the Appellant can only get EI benefits if he proves that he falls under one of the exceptions. But he hasn't proven that any of the exceptions apply in his case.

[27] I find that the Appellant was outside of Canada to pursue his relationship. So, I find that he does not meet any of the exceptions listed under section 55 of the EI Regulations listed above.

[28] This means that the Appellant isn't entitled to EI benefits from February 3, 2023 to March 29, 2023.

Conclusion

The appeal is dismissed. The Appellant is not entitled to EI benefits from February 2, 2023 to March 29, 2023.

Greg Skelly
Member, General Division – Employment Insurance Section

¹² See *Canada (Attorney General) v Knee*, 2001 FCA 301.