



Citation: *TP v Canada Employment Insurance Commission*, 2023 SST 1972

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: T. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (627690) dated November 3, 2023 (issued by Service Canada)

Tribunal member: Elyse Rosen

Type of hearing: Teleconference

Hearing date: December 18, 2023

Hearing participant: Appellant

Decision date: December 19, 2023

File number: GE-23-3107

Decision

[1] The appeal is dismissed with modification.

[2] The Appellant wasn't entitled to Employment Insurance (EI) benefits from January 10 to February 28, 2021, because he wasn't in Canada.

[3] I don't believe that the Appellant was misinformed by the Commission. And even if he was, he still has to return the benefits he received and wasn't entitled to.

Overview

[4] The Appellant hurt his back at work. He applied for, and began receiving, EI sickness benefits as of January 10, 2021.

[5] The Appellant says he needed surgery and physiotherapy. He returned home to India to obtain these treatments and to recover from his injury.

[6] The Appellant left Canada on December 30, 2020, and returned on March 1, 2021. He didn't report his absence from Canada on his bi-weekly claim reports. So, he continued to receive benefits while outside Canada.

[7] The Canada Employment Insurance Commission (Commission) learned from the Canada Border Services Agency (CBSA) that the Appellant had been outside Canada while receiving benefits. It decided he was disentitled to benefits while he wasn't in Canada.¹ This is because the law says a claimant isn't entitled to benefits when they are outside Canada, except in certain specific situations. The Commission says none of those situations applies to the Appellant. It issued a notice of debt calling on the Appellant to pay back the benefits he received while outside Canada.

¹ The Appellant hasn't argued that the Commission acted in bad faith or for an improper purpose or motive, considered an irrelevant factor or failed to consider a relevant factor, or acted in a discriminatory manner when it reconsidered his claim based on the information it obtained from the CBSA. And I have no evidence to suggest that it did. So, I conclude that the Commission acted judicially when it reconsidered the Appellant's claim (see *Canada (Attorney General) v Purcell*, 1995 CanLII 3558). I also find that it followed its reconsideration policy, despite the fact that the reconsideration of the claim created an overpayment. This is because the overpayment results from false statements made by the Appellant on his bi-weekly claim reports (as I will explain in more detail, below).

[8] The Commission also imposed a penalty and a violation because the Appellant failed to report his absence from Canada. It says he made representations that he knew were false or misleading on his bi-weekly reports. However, after the Appellant asked it to reconsider its decision, the Commission withdrew the penalty and violation and issued a warning instead.

[9] The Appellant says he relied on information he obtained from the Commission when he decided to go to India to seek medical treatment and when completing his bi-weekly reports. He claims he did what the Commission told him to do. He argues that as a result, he shouldn't have to repay the benefits he received while outside Canada.

Issues

[10] Was the Appellant entitled to benefits while he was outside Canada?

[11] Can the Appellant keep the benefits he received because he was misinformed by the Commission?

Matter I have to decide first

The Appellant isn't appealing the decision regarding the warning

[12] At the hearing I asked the Appellant whether he was appealing both his entitlement to benefits while outside Canada and the issuance of a warning.

[13] I explained to him that if he was appealing the warning, I could end up deciding that the Commission should have imposed a penalty and violation instead. So, he decided not to appeal this issue and to limit the appeal to the question of his entitlement to benefits while outside Canada.

[14] So, I will only consider the issue of his entitlement to benefits while outside Canada. The warning will stand.

Analysis

Was the Appellant entitled to benefits while outside Canada?

[15] I find that the Appellant wasn't entitled to benefits while he was outside Canada.

– Claimants outside Canada aren't generally entitled to benefits

[16] The law says that claimants who aren't in Canada generally aren't entitled to receive benefits.²

[17] There are some limited, and very specific, exceptions to this general rule. Some situations where a claimant can continue to receive benefits while outside Canada include:³

- Seeking medical treatment not available in Canada or accompanying an immediate family member seeking such treatment
- Attending the funeral of an immediate family member
- Visiting a sick member of the immediate family
- Attending a job interview
- Looking for work

[18] There are also some very specific exceptions for claimants who are receiving certain types of special benefits, were working outside Canada, or who are outside Canada because they reside in the United States.⁴

– Do any of the exceptions apply to the Appellant?

[19] I find that none of the exceptions set out in the law apply to the Appellant. This means he wasn't entitled to benefits while he was outside Canada.

² See section 37 of the *Employment Insurance Act* (Act).

³ See section 55(1) of the *Employment Insurance Regulations* (Regulations).

⁴ See sections 55(4) to 55(6) of the Regulations.

[20] The Appellant was receiving sickness benefits following a back injury. The Appellant is from India. He was in Canada on a student visa. He claims he went home to India to have surgery and to get physiotherapy to recover from his injury.⁵

[21] The Appellant admits the medical treatments he received in India were available in Canada. But he says he couldn't afford to pay for them. This is because he wasn't eligible for provincial health coverage and his insurance would only pay for a small portion of the costs. And the treatments were more expensive in Canada than in India.

[22] The Appellant says he also needed care and support during his recovery. He didn't have anyone to provide that care and support in Canada.

[23] So, he chose to go to India, where the cost of treatment was lower and where he had family to care for him.

[24] Although I can understand why the Appellant chose to go to India given his circumstances, those circumstances don't fall into any of the limited exceptions set out in the law.

[25] So, I'm unable to find that the Appellant was entitled to benefits while he was outside Canada.

[26] The Commission decided the Appellant wasn't entitled to benefits from January 11 to February 26, 2021. I don't agree that these are the correct dates.

[27] Case law says that a claimant is only disentitled from receiving benefits during full days outside Canada.⁶ The Appellant left for India on December 30, 2020, and returned on March 1, 2021. He says that March 1, 2021 was a travel day, and he was in Canada for part of the day. So, I find that the disentitlement should be from January 10 (the day he began receiving benefits while outside Canada) to February 28, 2021 (the last full day he was outside Canada).

⁵ The Appellant didn't provide any medical evidence, but I'm prepared to accept that he had surgery and went for physical therapy while in India.

⁶ See *Canada (Attorney General) v Picard*, 2014 FCA 46.

[28] Can the Appellant keep the benefits he received because he was misinformed?

[29] The Appellant says he relied on information he received from the Commission when he decided to go to India. He also claims he followed their instructions when completing his bi-weekly reports. He argues he shouldn't have to give back the benefits he wasn't entitled to because he was misinformed by the Commission. I disagree.

[30] The Appellant claims that he called the Commission before leaving for India. He did so to enquire if he would continue to get benefits if he had his surgery and did his physiotherapy there. He says the agent he spoke with confirmed that he would. He claims the agent instructed him to indicate on his bi-weekly reports that he was still in Canada, because his trip wasn't for leisure purposes. He was told that as long as he kept documentation that proved he had received medical treatment in India, he wouldn't have a problem and would remain entitled to benefits.

[31] The Appellant claims he relied on this information when making his decision to go to India for treatment. He argues that had he known he wouldn't receive benefits, he would have stayed in Canada and been treated there, despite the cost.

[32] He says he spoke with another Commission agent while in India. That agent would have supposedly told him that there was no specific timeframe for completing bi-weekly reports, and that he could complete them once he returned to Canada. He claims the agent confirmed that he should indicate that he was in Canada when completing the reports.

[33] The Appellant testified that when he answered no to the question "were you outside Canada...during the period of this report" on his bi-weekly reports, it's because this is what he was instructed to do by the Commission.

[34] I didn't find the Appellant to be a credible witness. I don't believe that he was misinformed by the Commission for the reasons that follow:

- The Appellant gave the Commission's agent reviewing his reconsideration request a different version of events than the one he gave me at the hearing.⁷ He told the agent that when he first called the Commission, he was told he would continue to be eligible for benefits as long as he remained available for work. And he said that he believed the agent he spoke with from India completed his bi-weekly reports for him. There was no mention of the facts he testified to at the hearing during these conversations with the Commission. If what he told me at the hearing were true, then surely he would have told the Commission the same thing he told me at the hearing. The fact that he didn't leads me to believe that what he told me isn't true.
- During the reconsideration process, the Appellant was told there was no record of any conversations he had with the Commission before leaving for India or while he was there. He was also told that his bi-weekly reports show that he completed them himself and that they weren't completed by an agent on his behalf. I believe that after learning these facts, he altered his story to try to make it consistent with the documents and information (or lack thereof) in the record.
- The Appellant also changed his explanation as to why he said he was in Canada on his bi-weekly reports. At first, he told the Commission that he believed an agent had completed his bi-weekly reports for him, suggesting that it was the agent, and not him, who would have entered the false information. Once he was told this couldn't be the case,⁸ he claimed he had only completed his reports when he returned to Canada. He said he understood the question about being in Canada to apply to the period during which he completed the reports, rather than to the period of the claim.⁹ But the reports that the Commission produced show that most of them were completed while he was still in India. So, at the hearing

⁷ See GD3-67 and GD3-68.

⁸ The reports were filed electronically by the Appellant (see GD3-17 to GD3-59 and GD3-58).

⁹ See GD3-68.

the Appellant gave a third account to try to explain this away. He now says some reports for the period during which he was in India were completed by him in India, and others were completed in Canada after he returned. But he says he always answered that he was in Canada because this is what he was told to do by the Commission agents he spoke with. Not only has the Appellant changed his story multiple times, but none of his stories are credible.

- The Commission usually records the conversations it has with claimants. I can accept that some conversations may not get recorded. But I consider it highly suspicious that neither conversation the Appellant claims to have had where he was told to say he was in Canada when completing his reports were recorded in this case.
- I find it difficult to believe that two agents of the Commission would have encouraged the Appellant to falsely report that he was in Canada when he wasn't. And although agents do sometimes make mistakes, it is implausible that the Appellant would have been told that he was entitled to benefits if he sought treatment in India, without regard to whether the same treatment was available in Canada. It's equally implausible that the Appellant would have been told there are no timelines for completing bi-weekly reports and that he could wait until he returned to Canada to do so.

[35] Given all of the inconsistencies in his testimony, and the unlikelihood that things transpired as he says they did, I don't believe the Appellant. So, I'm unable to conclude that the Appellant was misinformed. Nor can I conclude that he relied on misinformation from the Commission when he decided to go to India, or when he completed his bi-weekly reports.

[36] In all events, case law says that reliance on mistaken information received from a Commission agent doesn't entitle a claimant to benefits that they aren't otherwise entitled to according to law.¹⁰ So regardless of whether the conversations he testified to

¹⁰ See *Granger v Canada Employment and Immigration Commission*, [1986] 3 FC 70.

took place or not, he must nonetheless return the benefits he received while he was outside Canada.

Conclusion

[37] The appeal is dismissed with modification.

[38] The Appellant is disentitled from receiving benefits between January 10 and February 28, 2021. This is because he wasn't in Canada on those days and none of the exceptions set out in the law apply to him.

[39] I don't accept that the Appellant was misinformed by the Commission. Even if he was, this doesn't mean he can keep the benefits he received and wasn't entitled to. He must repay them.

[40] The warning issued by the Commission stands.

Elyse Rosen
Member, General Division – Employment Insurance Section