



Citation: *Canada Employment Insurance Commission v EE*, 2024 SST 568

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Julie Villeneuve

Respondent: E. E.
Representative: H. S.

Decision under appeal: General Division decision dated February 22, 2024
(GE-24-58)

Tribunal member: Elizabeth Usprich

Type of hearing: Teleconference

Hearing date: May 7, 2024

Hearing participants: Appellant's representative
Respondent's representative

Decision date: May 17, 2024

File number: AD-24-175

Decision

[1] The appeal is allowed.

[2] The General Division made an error of law. It correctly decided that the Claimant was out of Canada and Employment Insurance (EI) benefits are not payable unless a prescribed exception applies. In this case, the General Division made an error of law when it combined two of the prescribed exceptions which isn't permissible.

[3] I have given the decision the General Division should have given. The Claimant was out of Canada but was entitled to benefits under one of the exceptions because she was conducting a *bona fide* job search. So, the Claimant is entitled to EI benefits for 14 days.

Overview

[4] E. E. is the Claimant. The facts of this case are not disputed. The Claimant left Canada while she was on EI benefits. While out of Canada she conducted a job search and attended an interview.

[5] The Canada Employment Insurance Commission (Commission) said she wasn't available for work, was out of Canada and imposed a penalty because she didn't report her absence from Canada. The Claimant appealed these decisions to the Social Security Tribunal (Tribunal) General Division.

[6] The General Division decided the Claimant proved she was available for work while she was out of Canada. The General Division said the Claimant was conducting a *bona fide* job search and attending a *bona fide* job interview.¹ The General Division combined the two exceptions and said the Claimant could receive 21 days of EI benefits.

[7] The Commission appealed this decision to the Tribunal's Appeal Division. It says the exceptions to receiving benefits when outside of Canada are limited. It also says

¹ See the General Division decision at paragraph 55.

that these exceptions cannot be combined. The Commission concedes the Claimant is entitled to 14 days of EI benefits because she did prove she was conducting a *bona fide* job search.

[8] I agree the General Division made an error of law. It combined two exceptions in the *Employment Insurance Regulations* (Regulations) which the law doesn't allow.²

[9] I am allowing the appeal. I am giving the decision the General Division should have given. The Claimant is entitled to 14 days of EI benefits because she met the exception of conducting a *bona fide* job search.

Issues

[10] The issues in this appeal are:

- a) Did the General Division make an error of law when it decided that two exceptions in the Employment Insurance Regulations could be combined to give the Claimant EI benefits for a longer period of time?
- b) If so, how should the error be fixed?

Analysis

[11] I can intervene (step in) only if the General Division made a relevant error. There are only certain errors I can consider.³ Briefly, I can intervene if the General Division made at least one of the following errors:

- It acted unfairly in some way.
- It decided an issue it should not have, or didn't decide an issue it should have.

² See section 55 of the *Employment Insurance Regulations* (Regulations). See also section 55(1.1) which says that the only exceptions that can be combined are section 55(b) and section 55(d) which deal with visiting an ill family member and then attending their funeral.

³ Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) sets out the grounds of appeal.

- It made an error of law.
- It based its decision on an important error about the facts of the case.

The General Division made an error of law when it decided that two exceptions in the Employment Insurance Regulations could be combined to give the Claimant EI benefits for a longer period of time

[12] The facts of this case are not in dispute. She was out of Canada from August 21, 2019 to September 12, 2019.⁴ She was out of Canada because she was searching for a job and attending job interviews.

[13] There is a general rule in the EI Act that says if you are out of Canada, you can't get EI benefits.⁵ But there are exceptions to that rule.⁶ Conducting a job search and attending interviews are two exceptions that are in the Regulations.⁷

[14] All of the exceptions in section 55 are subject to section 18 of the EI Act. This means that even if a person comes within an exception, they must still prove they were available under section 18 of the EI Act.

[15] The Claimant's Representative argues that the only consideration is whether the Claimant was available under section 18 of the EI Act. Respectfully, this is incorrect.

[16] The Claimant went out of Canada. The general rule is she should not get any EI benefits. She claims her situation falls under an exception, so she should still be able to get EI benefits. So, the Claimant has to prove that she meets an exception and that includes showing availability.

[17] The General Division decided because the Claimant was out of Canada for two reasons, it meant she could combine both exception and receive EI benefits for longer.⁸

⁴ See GD3-37.

⁵ See section 37 of the *Employment Insurance Act*.

⁶ See section 55 of the Regulations.

⁷ See section 55(1)(e) of the Regulations that says there is a seven consecutive days exception if the claimant is conducting a *bona fide* job interview. See section 55(1)(f) of the Regulations that says there is a fourteen consecutive days exception if the claimant is conducting a *bona fide* job search.

⁸ See the General Division decision at paragraphs 55 to 60.

The General Division said both exceptions together allow a person to get EI benefits for up to 21 days.⁹

[18] But section 55(1.1) of the Regulations clearly says there are only two exceptions that are cumulative.¹⁰ Specifically, section 55(1)(e) and section 55(1)(f) are not included. This means that those sections entitlements are **not** cumulative. Put another way, a person isn't allowed to make an exception claim under both of these sections.

[19] The General Division made an error of law when it decided the Claimant could get both exceptions and combine them to receive EI benefits for a longer time while out of Canada.

Remedy

[20] I have found an error. The parties agreed that all evidence was before the General Division. This means I can give the decision that the General Division should have given. That includes deciding whether the Claimant is entitled to EI benefits while she was out of Canada.¹¹

The Claimant meets an exception while she was out of Canada and is therefore entitled to some benefits

[21] Because the facts of the case aren't disputed, I am adopting all of the General Division's findings of fact. There is no reason to interfere and the parties agreed there weren't any errors with these findings.

[22] I am also not interfering with the General Division's findings about availability and the Commission's decision to impose a penalty for misrepresentations. Again, the parties agree those are not at issue in this appeal. So, I have adopted all of these findings.

⁹ See the General Division decision at paragraph 60.

¹⁰ See section 55(1.1) says the only exceptions that can be combined are section 55(b) and section 55(d) which deal with visiting an ill family member and then attending their funeral.

¹¹ Section 59(1) of the DESD Act allows me to fix the General Division's errors in this way.

[23] The General Division's key findings about the Claimant's being out of Canada included:

- that the Claimant was travelling for a job interview and to look for work in Egypt;¹²
- that the Claimant was making job search efforts while she was outside of Canada;¹³ and
- that the Claimant attended a multi-stage job interview between August 22, 2019 and September 11, 2019;¹⁴

[24] I have accepted these key findings of fact. I also accept the General Division's finding that the Claimant was involved in a *bona fide* job interview and *bona fide* job search.¹⁵

[25] The Regulations are clear that a *bona fide* job interview will allow an exception of receiving EI benefits of not more than seven consecutive days.¹⁶ A *bona fide* job search will allow an exception of receiving EI benefits of not more than 14 consecutive days.¹⁷

[26] These sections cannot be read together. This means the Claimant is only entitled to one exception. Because the Claimant supported both exceptions, the longer of the two should be granted. The Commission agrees and concedes the Claimant should be entitled to 14 days of EI benefits.

[27] So, the appeal is allowed. The Claimant is entitled to 14 consecutive days of EI benefits during the period she was out of Canada.

[28] The rest of the General Division decision remains the same.

¹² See the General Division decision at paragraph 54.

¹³ See the General Division decision at paragraph 57.

¹⁴ See the General Division decision at paragraph 58.

¹⁵ See the General Division decision at paragraph 59.

¹⁶ See section 55(1)(e) of the Regulations.

¹⁷ See section 55(1)(f) of the Regulations.

Conclusion

[29] The appeal is allowed.

[30] The General Division made an error of law. It correctly decided that the Claimant was out of Canada and Employment Insurance (EI) benefits are not payable unless a prescribed exception applies. In this case, the General Division made an error of law when it combined two of the prescribed exceptions which isn't permissible.

[31] I have given the decision the General Division should have given. The Claimant was out of Canada but was entitled to benefits under one of the exceptions because she was conducting a bona fide job search. So, the Claimant is entitled to EI benefits for 14 days.

Elizabeth Usprich
Member, Appeal Division