



Citation: *EE v Canada Employment Insurance Commission*, 2024 SST 569

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: E. E.
Representative: H. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (629367) dated November 20, 2023 (issued by Service Canada)

Tribunal member: Catherine Shaw

Type of hearing: In person
Hearing date: February 19, 2024
Hearing participant: Appellant's representative

Decision date: February 22, 2024
File number: GE-24-58

Decision

[1] The appeal is allowed in part.

[2] The Appellant has proven that she was available while she was outside Canada.

[3] The Appellant was outside Canada from August 21, 2019, to September 12, 2019. She can be paid benefits during this time because she left the country to attend a job interview and conduct a job search.

[4] The Canada Employment Insurance Commission (Commission) had the power to extend the time to review the Appellant's benefits. And it made the decision to impose a penalty on the Appellant for her false statements fairly. So, I can't interfere with its decision to impose a warning.

Overview

[5] The Appellant traveled to Egypt for three weeks. She was attending a job interview and looking for work. She didn't report that she was outside Canada on her claim reports.

[6] The Commission decided the Appellant could only be paid EI benefits for one of the weeks she was outside Canada. This is because she was attending a job interview. It also decided that she wasn't available for work for the other two weeks she was in Egypt. The Commission imposed a penalty on the Appellant because it said she made false statements on her claim reports when she didn't say she was outside Canada.

[7] The Appellant disagrees. She was available and seeking work the entire time she was in Egypt. She was also attending an intensive job interview during that time.

[8] The Appellant agrees that she filled out her reports wrong. She had been told by Service Canada that she would be eligible for EI benefits while she was out of the country. But, when she reported that she had left Canada on her claim, the system wouldn't accept her reports. She couldn't afford to lose her EI benefits, so she didn't report that she was outside Canada.

Matter I had to consider first

The Appellant wasn't at the hearing

[9] The Appellant wasn't at the hearing. A hearing can go ahead without the Appellant if the Appellant got the notice of hearing.¹

[10] I think that the Appellant got the notice of hearing because she sent an authorized representative to speak on her behalf. So, the hearing took place when it was scheduled, but without the Appellant.

Issues

[11] Did the Commission have the power to review the Appellant's benefits?

[12] Did the Commission act fairly when it gave the Appellant a penalty?

[13] Was the Appellant available for work?

[14] Can the Appellant be paid benefits while she was outside Canada?

Analysis

Did the Commission have the power to review her benefits?

[15] The law gives the Commission broad powers to review any of its decisions about EI benefits.² But, the Commission has to follow the time limits set out by the law. Usually, the Commission has three years to review its decisions.³ If the Commission paid you EI benefits that you weren't really entitled to receive, it can ask you to repay those EI benefits.⁴

¹ Section 58 of the *Social Security Tribunal Rules of Procedure* sets out this rule.

² See section 52 of the *Employment Insurance Act* (EI Act). The Federal Court of Appeal sets out the Commission's broad power under this section in *Briere v Canada Employment and Immigration Commission*, A-637-86.

³ See section 52(1) of the EI Act and *Canada (Attorney General) v Laforest*, A-607-87.

⁴ See section 52(3) of the EI Act.

[16] In some cases, the Commission can go back even further than three years. The Commission can review decisions it made as much as six years earlier if it thinks you made an incorrect statement.⁵ This doesn't mean that it has to prove that you were lying on purpose; it just means the Commission has to have a reasonable reason for thinking that something you said about your benefits was wrong.

[17] The Commission says the Appellant submitted three bi-weekly reports for the weeks between August 11, 2019, and September 21, 2019. These reports asked the Appellant "Were you outside Canada between Monday and Friday during the period of this report?" The Appellant answered no to this question on the three reports.

[18] In May 2022, the Commission asked the Appellant if she was outside Canada during this time.⁶ She confirmed that she was.⁷

[19] In October 2023, the Commission decided that the Appellant couldn't be paid EI benefits for the time she was outside Canada because of her absence from the country and because she wasn't available for work during that time.⁸ It also decided to impose a non-monetary penalty because she had made false statements on her reports when she failed to say that she was out of the country.⁹

[20] I think it was reasonable for the Commission to think that the Appellant had given them incorrect information about her presence in Canada on her reports. This gave the Commission the power to go back more than three years to review her benefits. I don't think the Commission went beyond its authority when it extended its review period to look at the Appellant's benefits in August and September 2019.

⁵ See section 53(5) of the EI Act. The law says that the Commission has 72 months in these cases.

⁶ See GD3-37.

⁷ See GD3-38.

⁸ See GD3-46 to GD3-47.

⁹ See GD3-48 to GD3-49.

Did the Commission act fairly when it imposed a penalty?

[21] To impose a penalty, the Commission must show that the Appellant knowingly provided false or misleading information.¹⁰

[22] It's not enough to show that the Appellant provided false or misleading information. The Commission must show it's more likely than not that the Appellant provided this information **knowing** that it was false or misleading.¹¹

[23] The Commission says the Appellant knowingly made false statements on her claims when she failed to report that she was outside Canada from August 21, 2019, to September 12, 2019.

[24] The Commission says the Appellant knew at the time she completed her reports that she was out of the country but answered "no" to the questions asking her if she was outside Canada for any period during the report. These statements misled the Commission, and it paid the Appellant benefits that she wasn't really entitled to receive.

[25] The Appellant agreed that she gave incorrect information on her reports. However, she had been told by a Service Canada officer that she would be eligible for EI benefits while she was outside Canada. Then, when she tried to file her reports while out of the country, it wouldn't let her submit the reports if she answered that she was outside Canada.

[26] The Appellant has two children, one of whom is disabled. She needed EI benefits to support her family. She couldn't risk losing her benefits if her report didn't go through, so she answered that she wasn't outside Canada in order to submit her reports.

[27] I recognize that the Appellant had good reasons for filling out her reports incorrectly. It's understandable that she didn't want to risk losing her benefits, or even having her benefits delayed because of her travel outside Canada. I accept this and have looked at the Appellant's answers in this context.

¹⁰ See section 38 of the EI Act.

¹¹ See *Bajwa v Canada (Attorney General)*, 2003 FCA 341.

[28] However, the question on the reports is very clear. It asked the Appellant whether she was out of Canada for any days of her report. The meaning of the question is obvious. There is no reasonable way that the Appellant wouldn't have understood the question and how it applied to her situation.

[29] The Appellant knew that she was outside of Canada when she answered this question. Despite that, she answered "no" indicating that she was not outside of Canada for any period during that report. This was a false statement that she knowingly made on these reports.

[30] Since the Commission has shown that the Appellant knowingly made a false or misleading statement, it was entitled to impose a penalty.

[31] The Commission has the discretion to decide the amount of the penalty that it imposes, but it has to make that decision fairly. In this case, the Commission decided not to impose a monetary penalty at all. Instead, it gave the Appellant a warning (a warning is a "non-monetary penalty" meaning you don't have to pay any money related to the penalty).

[32] A warning is the lowest form of penalty the Commission could have given. So, I won't look at whether the Commission exercised its discretion fairly when it decided this amount.

Was the Appellant available for work?

[33] Yes. I find the Appellant has proven she was available for work during this time.

[34] To be paid EI benefits, you have to prove that you were available for work.¹² Availability is an ongoing requirement. This means you have to be looking for a job.

[35] Case law gives three things a claimant has to prove to show that they are “available” in this sense.¹³ The Appellant has to prove the following three things:¹⁴

1. She wanted to go back to work as soon as a suitable job is available.
2. She made efforts to find a suitable job.
3. She didn't set personal conditions that might have unduly (in other words, overly) limited her chances of going back to work.

[36] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.¹⁵

– Wanting to go back to work

[37] The Appellant has shown that she wanted to go back to work from August 21, 2019, to September 12, 2019.

[38] The Appellant says she was actively seeking work while she was outside Canada. She had travelled to Egypt to attend an intensive job interview. The interview included multiple stages spread out over three weeks. She was looking for work in Egypt. She has dual citizenship and was willing to move back to Egypt if she had found work.

¹² See section 18(1)(a) of the EI Act.

¹³ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

¹⁴ 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.

¹⁵ 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.

[39] Furthermore, the Appellant continued to look for work in Canada. She could have returned to Canada immediately if she had received an offer. She told the Commission and the Tribunal that her priority was finding work.

[40] The Appellant's attitude and conduct show that she wanted to return to work as soon as a suitable job was available.

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

[41] The Appellant has made enough effort to find a suitable job.

[42] The Appellant says she was networking, looking for job postings online, and applying for jobs while she was outside Canada. She could also be contacted by employers while she was away.

[43] In addition to that, the Appellant was looking for work locally in Egypt. She was in touch with her connections and applied for several jobs in person. She was also attending a promising job interview.

[44] I believe the Appellant was looking for work. She made reasonable efforts to find a suitable job. She has met this second factor.

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

[45] The Appellant didn't set personal conditions that might have unduly limited her chances of going back to work.

[46] The Commission said being outside of Canada overly limited the Appellant's chances of going back to work.

[47] The Appellant disagrees. She was actively seeking work by looking for jobs online, applying for jobs, and attending an interview.

[48] She had also made arrangements so she could be contacted by an employer if she had received a job offer while in Egypt. She had activated her roaming service on her cell phone, she had constant access to her email, and she was in touch with her

family back home to see if she had received any mail. She could have returned to Canada immediately if she had received a job offer.

[49] The evidence supports that the Appellant wasn't limiting her job search or her willingness to accept employment because she was outside Canada. She was able to be contacted while she was out of the country and was willing to return to Canada if needed. Further, she was looking for work in the area that she had travelled to, so this was not a significant restriction on her availability.

– **So, is the Appellant available for work?**

[50] Based on my findings on the three factors, I find that the Appellant has shown that she was available for work but unable to find a suitable job from August 21, 2019, to September 12, 2019.

Can she be paid benefits while she was outside Canada?

[51] As a general rule, you are not entitled to receive benefits while you are outside of Canada.¹⁶ There are some exceptions to this rule, such as if you are outside Canada to conduct a *bona fide* job search.¹⁷

[52] The basic facts are not in dispute. The Appellant traveled outside of the country on August 21, 2019. She returned to Canada on September 12, 2019.

[53] The day you traveled is not typically included in the disentanglement from benefits.¹⁸ The Appellant departed Canada on August 21, 2019, so her disentanglement began on August 22, 2019. She returned to Canada on September 12, 2019. This means her disentanglement ended on September 11, 2019.

[54] The Appellant said that her reasons for travelling were to attend a job interview and look for work in Egypt.

¹⁶ Section 37(b) of the EI Act.

¹⁷ These exceptions are listed at section 55 of the *Employment Insurance Regulations* (Regulations).

¹⁸ The Federal Court of Appeal sets out in *Canada (Attorney General) v. Picard*, 2014 FCA 46, that the length of the disentanglement is to be calculated in complete, whole days, during which the Appellant was outside of Canada.

[55] If you're out of Canada to conduct a *bona fide* job search, you can receive EI benefits for up to fourteen days.¹⁹ And if you're attending a *bona fide* job interview, you can receive benefits for another seven days.²⁰

[56] To be *bona fide*, a job search or interview must be genuine, it must be carried out in good faith, and it can't be limited to online activity that could have been performed from inside Canada.

[57] At the hearing, the Appellant's representative gave a detailed account of the Appellant's job search efforts while she was outside Canada. This included meeting with her connections and applying for prospective jobs.

[58] The Appellant provided a letter from an employer in Egypt dated July 15, 2019. The letter invited her to attend a multi-stage job interview between August 22, 2019, and September 11, 2019.²¹

[59] I accept that the purpose of the Appellant's travel was to conduct a *bona fide* job search and attend a *bona fide* job interview. This is supported by the evidence, and her actions of networking and applying for jobs while in Egypt.

[60] Since she carried out a *bona fide* job search and attended a *bona fide* job interview, I find that she meets the conditions to the exceptions to the disqualification for being outside Canada. Together, these exceptions allow you to get EI benefits for up to 21 days.²²

[61] This means the Appellant isn't disqualified from receiving EI benefits for the period from August 22, 2019, to September 11, 2019.

¹⁹ See section 55(1)(f) of the Regulations.

²⁰ See section 55(1)(e) of the Regulations.

²¹ See GD3-39.

²² See section 55(1.1) of the Regulations.

Conclusion

[62] The appeal is allowed in part.

[63] The Appellant has shown that she was available for work while she was outside Canada. She is also entitled to exceptions to the disentitlement for being out of the country. This means she can be paid benefits from August 21, 2019, to September 12, 2019. On these issues, the appeal is allowed.

[64] On the issues of whether the Commission had the power to review her benefits and whether it fairly imposed a penalty, the appeal is dismissed.

Catherine Shaw
Member, General Division – Employment Insurance Section