



Citation: *Canada Employment Insurance Commission v GD*, 2024 SST 779

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Canada Employment Insurance Commission
Representative: Sandra Doucette

Respondent: G. D.
Representative: Celso Sakuraba

Decision under appeal: General Division decision dated August 24, 2023
(GE-23-872)

Tribunal member: Elizabeth Usprich

Type of hearing: Videoconference
Hearing date: February 20, 2024

Hearing participants: Appellant's representative
Respondent's representative

Decision date: July 8, 2024

File number: AD-23-881

Decision

[1] The appeal is allowed.

[2] The General Division made errors of law when it misinterpreted the exceptions to the general rule that a person can't get Employment Insurance (EI) benefits when out of Canada.

[3] I have given the decision that the General Division should have given. The Claimant isn't entitled to EI benefits.

Overview

[4] The Claimant is G. D.

[5] There is no dispute about the facts of this case. The Claimant was a full-time employee in Canada when he went for a vacation out of Canada. While on vacation, the Claimant had an accident which left him with a permanent injury. Unfortunately, he still has not recovered and remains out of Canada.

[6] The Claimant's employer let him go and his family applied for EI sickness benefits on his behalf. The Canada Employment Insurance Commission (Commission) denied benefits because he was out of Canada and didn't meet an exception which would allow payment.

[7] The Social Security Tribunal (Tribunal) General Division found the Claimant met an exception under the EI Regulations. It decided the Claimant was entitled to sickness benefits even though he was out of Canada. The Commission appealed this decision to the Tribunal's Appeal Division.

[8] The General Division made errors of law. I have given the decision the General Division should have given.

[9] I am allowing the appeal. The Claimant doesn't fall under one of the exceptions for receiving benefits while out of Canada.

Issues

[10] The issues in this appeal are:

- a) Did the General Division make error(s) of law by misinterpreting section 55(1)(a) of the *Employment Insurance Regulations (Regulations)*?
- b) If so, how should the error(s) 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.¹ 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.
- It made an error of law.
- It based its decision on an important error about the facts of the case.

[12] This case is about whether the Claimant meets an exception in the Regulations that would allow him to get EI benefits while he was outside of Canada.

– The law

[13] There is a general rule in the EI Act that says if you are out of Canada, you can't get EI benefits.² But there are exceptions to that rule.³

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

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

³ See section 55 of the *Employment Insurance Regulations*.

[14] Section 55(1)(a) of the *Regulations* says:

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 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 of Canada⁴ (emphasis added).

[15] The General Division had to decide whether any exceptions applied to the Claimant.

The General Division made errors of law because it misinterpreted section 55(1)(a) of the *Regulations*

[16] On a question of law, I don't have to defer to the General Division. That means I only need to decide if the General Division's interpretation of the law is right or wrong.

– The reason for leaving is important

[17] The General Division decided the Claimant was entitled to EI benefits while he was out of Canada. It decided it didn't matter that the Claimant left Canada for a vacation. It said the important thing was what happened while he was out of Canada. In this case, he needed medical treatment while he was away. So, the General Division found that, because the treatment was urgently needed, the Claimant fell under an exception that allowed EI benefits to be paid.

[18] The General Division mistakenly focussed only on the fact that this Claimant had to seek medical attention while outside of Canada. The General Division decided that it didn't matter why the Claimant left Canada only that he happened to need medical treatment while he was away.⁵ There is nothing in the legislation that provides for this.

⁴ Section 55(1)(a) of the *Employment Insurance Regulations*.

⁵ See the General Division decision at paragraph 23.

[19] The General Division interpreted section 55(1)(a) and the importance of the words “for the purpose of undergoing”. The General Division looked at the English and French versions of the provision.⁶ The General Division focussed on the fact that the French version of this section only says to “undergo”. There is no mention of having a purpose. So, it decided the reason why a person leaves Canada isn’t important. Rather, it is what the claimant is doing when they are outside of Canada.⁷

[20] But a careful reading of the French and English versions, of the relevant part of section 55(1) of the Regulations, shows that both versions are similar. In English it says, “is not disentitled from receiving benefits for the reason that the claimant is outside Canada”. The section then lists several permissible reasons for receiving benefits while out of Canada. In French, “n’est pas inadmissible au bénéfice des prestations du fait qu’il est à l’étranger pour l’un des motifs suivants”. Again, the French version then lists several permissible reasons for receiving benefits while out of Canada.

[21] The French part translates to say a claimant isn’t ineligible for benefits because he is abroad for one of the following reasons. This highlights that the English and French versions of the EI Regulations are to the same effect. Namely, a claimant has to be out of Canada for one of the reasons listed. This means that the reason the person leaves Canada is important. So, the General Division made an error of law with its interpretation.

– **Not readily or immediately available**

[22] The General Division decided the Claimant was undergoing a medical treatment while he was out of Canada. It found that due to the nature of the Claimant’s injuries he couldn’t come back to Canada to access the treatment.⁸ This was the basis of finding, “the necessary medical treatments are not, therefore, readily and immediately available to him in his area of residence in Canada”.⁹

⁶ See the General Division decision at paragraph 24.

⁷ See the General Division decision at paragraph 23.

⁸ See the General Division decision at paragraph 29.

⁹ See the General Division decision at paragraph 29.

[23] The General Division didn't explain, or have evidence before it, about how the medical treatment the Claimant received falls under the exception of being not readily or immediately available. The reasoning of the General Division was that because the Claimant was out of the Country it followed that the treatment could not be readily or immediately available in Canada. So, it based its finding on where the Claimant found himself to be, rather than focussing on the purpose of the EI Act.

[24] The purpose of the EI Act is to provide temporary assistance for those who, through no fault of their own, find themselves unemployed. The EI Act says there are no benefits payable if the person is outside Canada unless an exception applies.

[25] So, in this case, the reason the Claimant left Canada wasn't to seek medical treatment. He left for a vacation and then had an accident. So, the question as to whether the medical treatment would have been available in Canada if he had been in Canada should have been explored. Yet, there is no evidence that the type of medical treatment received wouldn't have been available to the Claimant if he had been in Canada. This is an error of law.

– **No analysis about whether the treatment was not available in the Claimant's area of residence**

[26] There is also a second part to the exception in the Regulations. It says the medical treatment needed is not readily or immediately available in the claimant's **area of residence in Canada**. There was no evidence before the General Division that the medical treatment wasn't readily or immediately available in the Claimant's area of residence in Canada. The Claimant had the burden to show that the treatment wasn't readily or immediately available in his area of residence in Canada.¹⁰ This is part of the legal test, so this is an error of law.

¹⁰ See *Canada (Attorney General) v Peterson*, A-370-95 (Federal Court of Appeal).

– **There isn't a component of an "exceptional circumstance" under this Regulation**

[27] The General Division decided the Claimant had exceptional circumstances and therefore couldn't travel back to Canada.¹¹ This isn't part of the legal test. Section 37(b) of the EI Act says, "except as may otherwise be prescribed, a claimant is not entitled to receive benefits for any period during which the claimant is not in Canada."

[28] Section 55 of the Regulations lists the prescribed exceptions. There is nothing in section 55 of the Regulations that allows for some type of "exceptional circumstances" to be considered. There was no case law referred to by either party, or the General Division, to show the courts had found that exceptional circumstances should be considered. This is an error of law.

[29] The General Division made errors of law. This means I have authority to intervene.

Remedy

[30] There is no suggestion by either party that they didn't present all of their evidence to the General Division. The facts aren't in dispute. This means I can give the decision that the General Division should have given. That includes deciding whether the Claimant is entitled to receive EI benefits.¹²

The Claimant isn't entitled to receive benefits

[31] The Claimant doesn't fall under an exception for the reasons that follow. This means he isn't entitled to receive EI benefits.

¹¹ See the General Division decision at paragraph 29.

¹² Section 59(1) of the *Department of Employment and Social Development Act* allows me to fix the General Division's errors in this way.

[32] The Regulations are exceptions to the general rule that you can't get EI benefits while you are out of Canada. These are prescribed exceptions that Parliament turned their minds to.¹³

– **The Claimant doesn't meet an exception under the Regulations that would entitle him to benefits**

[33] The Claimant left Canada for vacationing purposes. An accident occurred. With no evidence or binding case law to say otherwise, an accident on vacation isn't covered under section 55 of the Regulations. That isn't what this section of the Regulations was intended for.

– **The Claimant is a claimant as considered by the EI Act**

[34] The Commission argues the Claimant isn't a "claimant" as considered by the EI Act. It argues that the Claimant should have already been receiving EI benefits prior to leaving Canada to be considered for the exception.¹⁴ So, the Commission says the Claimant must have been a claimant first before the exception under section 55(1)(a) of the Regulations can be applied.

[35] The Claimant's Representative argues there is a broad definition of the word "claimant" under section 2 of the EI Act. It says, "claimant means a person who applies or has applied for benefits under this Act."

[36] I agree with the Claimant's Representative. "Claimant" is broadly defined. When the Claimant's family applied for EI benefits on his behalf, that made him a claimant under the EI Act.

¹³ See *Fiorino v Canada (Employment Social Security Commission)*, 2022 FC 1705 at paragraph 23 where it reviews the applicant's argument, in that case, that the Tribunal should take a liberal interpretation of the legislation. But the Federal Court decided, at paragraphs 30 and 31, that the exceptions are listed in section 55 and that there is nothing that currently supports reading additional exceptions into the legislation.

¹⁴ Listen to the Appeal Division hearing at 00:52:25.

– **Section 18 doesn't prevent the Claimant from receiving EI benefits**

[37] The Commission argues the first sentence of section 55(1) which says it is subject to section 18 of the Act must be considered and that a claimant must prove availability. The Commission argued the Federal Court of Appeal has been clear that section 55 requires an examination of section 18 of the EI Act.¹⁵ This is case law that must be followed.

[38] I accept the Commission's position that the exception in section 55(1) must be read with section 18 of the EI Act. The statute clearly states that. But I don't find this is of significance here. In this case, the Claimant is applying for sickness benefits. This means, to get EI benefits, he must show that "but for" his illness (or here injury) he would have been available for work.

[39] The Claimant was employed full-time until January 15, 2022. There didn't seem to be any dispute that if the Claimant had gone back to Canada that he would have continued in his full-time job. So, I find this means the Claimant's injury was the only reason he wasn't available for work.

– **The exceptions under section 55 are all reasons why a claimant is out of Canada**

[40] If a person comes within an exception under section 55 of the Regulations, then they **may** be entitled to EI benefits. All of the exceptions under section 55 are, in fact, reasons why a claimant is outside of Canada. I interpret this as meaning the reason **why** the claimant is outside of Canada is therefore important.

[41] In this case, an unfortunate accident occurred while the Claimant was on vacation. This isn't one of the covered exceptions in the Regulations. The reason the Claimant was originally outside Canada was for a vacation.

¹⁵ See *Canada (Attorney General) v Elyoumni*, 2013 FCA 151 at paragraph 14.

– **Emergency care while vacationing doesn't fall within the exception of the Regulations**

[42] In this case, in December 2021, there is no doubt the Claimant required emergency medical care while he was vacationing outside of Canada. That care can easily be said to have been needed immediately. As already stated, it is unknown if the immediacy continued. It doesn't matter though because there are other parts of the exception requirement that are not met in this case.

[43] First, the plain language of section 55 of the Regulations can't be ignored. The reason why a claimant is out of Canada is important. Second, there is no evidence that the same emergency treatment couldn't have been received in Canada in the Claimant's usual area of residence. This is a **required** aspect of the test.

[44] The Claimant's Representative says it would be absurd to expect the Claimant's family to transport him back to Canada where he would then be entitled to EI sickness benefits.

[45] The Commission's Representative says it would be absurd to expect the EI system to cover unexpected incidents while someone is on vacation. It argues this is what traveller's insurance is for.¹⁶

[46] The Claimant's Representative argues the Claimant wasn't able to travel back to Canada. Yet, there is no medical evidence to suggest this was the case.¹⁷ I accept the medical evidence that the Claimant was admitted to the hospital's intensive care unit on December 18, 2021. The medical report also says that the Claimant was "later transferred to the Medical Clinic ward where care was followed."¹⁸ The date of the transfer isn't clear.

[47] The Claimant's Representative argues because the Claimant was in Brazil there was "no hospital, no doctor, and no medical treatment in Canada readily and immediately available to treat [the Claimant], because such treatment would require [the

¹⁶ See AD3-8.

¹⁷ See GD3-16 medical report was the only medical evidence provided to the General Division.

¹⁸ See GD3-16.

Claimant] to travel to Canada, and [the Claimant] is unable to travel to Canada due to his medical condition.”¹⁹ But there is no medical evidence to say that the Claimant was unable to travel, especially in something like an air ambulance.

[48] The Claimant’s Representative argues the Claimant’s condition “would be too uncomfortable and too painful for him to take a long flight home with his symptoms.”²⁰ But there was no medical evidence submitted to confirm that this assertion is true.

[49] The Claimant’s Representative also argues, “it would be nonsensical and cruel to demand a family member or caregiver put him on a plane to be treated in Canada, far away from his family, to be treated 24/7 by a person his family has never seen, and whose quality of care cannot be assessed by them.”²¹ I certainly empathize and can understand the Claimant’s family would want to have him close to them. Yet, even though that makes sense, it doesn’t mean that the Claimant’s situation falls within the exception under section 55(1)(a).

[50] Parliament chose to write the exceptions the way that they are. The Claimant is arguing he falls within section 55(1)(a) of the Regulations. But this exception is not based on personal feelings. The section is clear that the medical treatment must **not** be readily or immediately available in the claimant’s area of residence in Canada. There was no evidence presented by the Claimant, other than practical considerations, that the medical treatment the Claimant received wasn’t readily or immediately available in Canada.

– **Other case law**

[51] There are no recent reported decisions that were submitted by the parties. But two Canadian Umpire-Benefit (CUB) decisions dealt with similar issues. In CUB 11513, the claimant was out of Canada on vacation and was in an accident. He was denied benefits. The Umpire said, “Regulation 54(3) must be interpreted so that it makes sense and not absurdity. Obviously the very medical treatment which is actually accorded

¹⁹ See AD4-6 at paragraph 15.

²⁰ See AD4-6 at paragraph 18.

²¹ See AD4-6 at paragraph 18.

abroad is not of itself available in Canada, **simply because it has occurred abroad** (emphasis added).²²

[52] I am not bound by a CUB decision but I find this persuasive. It is similar to the present case. Both parties were on vacation and something unexpected happened. They needed immediate medical attention. That doesn't mean they are entitled to EI benefits. In both cases, if the claimants were in Canada, they would likely have received EI benefits.

[53] There is a second CUB decision 20711 that is also similar. The claimant in that case went on vacation and was involved in an accident that resulted in serious injuries. She had emergency medical treatment while abroad. She wasn't able to return to Canada.

[54] In this CUB decision, the focus was that the claimant didn't leave Canada in order to undergo a medical treatment. Instead, the claimant was on vacation, had an accident, and then needed medical treatment. The Umpire decided the exception didn't apply.²³

[55] I am also persuaded by this decision. In the current case, the Claimant didn't travel to Brazil to seek medical treatment. Rather, he went to Brazil for a vacation and then experienced an injury while there. CUB 20711 is similar.

[56] Both parties raised K.I., a decision by the Social Security Tribunal General Division.²⁴ In K.I. the claimant was on EI sickness benefits and then decided to leave Canada to seek medical treatment. The General Division denied benefits for this first

²² See CUB 11513. See the *Unemployment Insurance Act*, 1971 section 45(b) and Regulation 54. Section 45 of that Act says that a claimant isn't entitled to benefit for any period during which he is not in Canada. Regulation 54(3) says, "a person who is a claimant in Canada is not disentitled from receiving benefit when admitted to a hospital or equivalent institution in a country other than Canada for the purpose of medical treatment not available in Canada." This is similar, but not exactly the same, as the current section 55 of the Regulations.

²³ See CUB 20711.

²⁴ See *K.I. v Canada Employment Insurance Commission*, 2015 CanLII 107554 (K.I.).

period because it found that the treatment received was readily or immediately available in Canada.

[57] But while K.I. was recuperating from the first medical treatment, a different medical issue arose. The General Division decided, based on medical evidence, that it would have been too uncomfortable and too painful for K.I. to have taken a flight home.²⁵ The General Division allowed benefits for this subsequent period on the basis that the “treatment can be seen to have not been readily or immediately available in his area of residence for the purposes of paragraph 55(1)(a) of the Regulations.”²⁶

[58] I am not bound by a General Division decision. Additionally, I don’t find K.I. persuasive because it is substantially different from the present case. First, the General Division in that case decided that K.I. left Canada for the purpose of seeking medical treatment. Second, medical documentation was presented that confirmed that travel would be painful. There is no medical documentation in this case that discusses the possibility of travel. Third, K.I. was on sickness benefits and then left to go and seek treatment. That isn’t the case here. Here, the Claimant left Canada for a vacation when an unfortunate accident occurred. So, I will not be following the General Division’s reasoning in this case.

– The entirety of the exception can’t be met so the Claimant can’t get EI benefits

[59] I don’t accept the argument that the reason a claimant leaves Canada isn’t important. Even if I did accept that, I would also have to accept that the reason can change while outside of Canada. Which I don’t. Yet, it still would not change the outcome here. The Claimant has not shown the medical treatment he received wasn’t readily or immediately available in his area of residence in Canada.

[60] So, this means the Claimant, despite the unfortunate circumstances, was not out of Canada for the purpose of undergoing medical treatment that is not readily or immediately available in the claimant’s area of residence in Canada.

²⁵ See *K.I. v Canada Employment Insurance Commission*, 2015 CanLII 107554 at paragraph 81.

²⁶ See *K.I. v Canada Employment Insurance Commission*, 2015 CanLII 107554 at paragraph 82.

[61] This is truly a sad case. No one disputes that. I find the EI Act, and Regulations, are clear. Claimants can't get EI benefits while they are out of Canada unless they meet an exception in the Regulations. In this case, the Claimant doesn't meet an exception. This means the Claimant isn't entitled to EI benefits.

[62] The Claimant argues that because his situation is unique and exceptional that he should be entitled to benefits. But that isn't part of the legal test. The Claimant has the burden to show that he met the exception. There is nothing in the exception that deals with practicalities or what is more convenient for the Claimant and/or his family who are supporting him.

[63] So, I find the Claimant isn't entitled to EI benefits. This is because there is no evidence that the Claimant left Canada to seek medical treatment. Once out of Canada, there is no evidence to show the treatment wasn't readily or immediately available in Canada in the Claimant's area of residence. This means the Claimant doesn't fall within an exception listed in the EI Regulations. So, while unfortunate, he isn't entitled to EI benefits.

Conclusion

[64] The appeal is allowed.

[65] The General Division made errors of law when it misinterpreted the exceptions to disentitlements when out of Canada.

[66] I have given the decision that the General Division should have given.

Elizabeth Usprich
Member, Appeal Division