



Citation: *AB v Canada Employment Insurance Commission*, 2024 SST 948

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

Decision

Appellant: A. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (636636) dated February 2, 2024
(issued by Service Canada)

Tribunal member: Catherine Shaw

Type of hearing: In writing

Decision date: July 16, 2024

File number: GE-24-2306

Decision

[1] The appeal is dismissed.

[2] The Appellant was outside Canada from November 24 to December 19, 2020. She can be paid up to seven-days of benefits because she left the country to attend a family member's funeral. She remains disentitled from December 2 to December 19, 2020.

Overview

[3] The Appellant traveled to India after her brother-in-law's passing. She and her spouse travelled for the funeral and to attend to her brother-in-law's affairs. She didn't report that she was outside Canada on her claim report for those weeks.

[4] Nearly three years later, the Canada Employment Insurance Commission (Commission) decided the Appellant couldn't be paid EI benefits while she was outside Canada. It also decided that she made false or misleading statements when she failed to report that she was out of the country. It imposed a penalty, but later reduced the penalty to a warning with no monetary fine.

[5] The Appellant agrees that she was out of the country. She had a family emergency that she had to attend to. And even though she was in India, she was ready, willing, and capable of returning to work at anytime.

Matters I have to consider first

The hearing was held in writing

[6] The Appellant chose a hearing in writing as her preferred method of hearing. A hearing in writing means that I make a decision based on the written arguments and documents sent in by the parties.

[7] After the Appellant received a copy of all the parties' documents, I asked her if he wanted to submit anything else. If she wanted to send anything further, I asked him to

do so by July 15, 2024. She provided additional submissions on July 12, 2024, which were taken into consideration in the writing of this decision.

The Appellant isn't appealing the penalty

[8] On July 8, 2024, I sent the Appellant a letter stating that the issues under appeal were whether she could be paid benefits while outside Canada and the Commission's decision to impose a penalty for false or misleading statements.

[9] On July 10, 2024, the Appellant submitted a document clarifying that she was not appealing the decision regarding the penalty. She was only appealing the issue of being paid EI benefits while out of the country.

[10] As the Appellant is not appealing the penalty, I will not consider this issue as part of this decision.

Issues

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

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

Analysis

Did the Commission have the power to review her benefits?

[13] Yes. The Commission had the power to review the Appellant's benefits, even three years later.

[14] The law gives the Commission broad powers to review any of its decisions about EI benefits.¹ If the Commission paid you EI benefits that you weren't really entitled to receive, it can ask you to repay those EI benefits.²

¹ 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.

² See section 52(3) of the EI Act.

[15] 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 In some cases, the Commission can go back further than three years.

[16] I find the Commission respected the law about time limits when it reviewed the Appellant's entitlement to benefits. This is because the Commission paid EI benefits to the Appellant starting in November 2020. The Commission finished its review and notified the Appellant of its decision on October 25, 2023, less than three years later.

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

[17] As a general rule, you are not entitled to receive benefits while you are outside of Canada.⁴ There are some exceptions to this rule, such as if you are outside Canada to attend the funeral of an immediate family member.⁵

[18] The basic facts are not in dispute. The Appellant traveled outside of the country on November 24, 2020, to attend her brother-in-law's funeral. She returned to Canada on December 19, 2020.

[19] The day you traveled is not typically included in the disentitlement from benefits.⁶ The Appellant departed Canada on November 24, 2020, so her disentitlement began on November 25, 2020. She returned to Canada on December 19, 2020. This means her disentitlement ended on December 18, 2020.

[20] The Appellant has been clear and consistent about her reason for travel. She had to go to India because of a family emergency following her brother-in-law's passing.

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

⁴ Section 37(b) of the EI Act.

⁵ These exceptions are listed at section 55 of the *Employment Insurance Regulations*.

⁶ The Federal Court of Appeal sets out in *Canada (Attorney General) v. Picard*, 2014 FCA 46, that the length of the disentitlement is to be calculated in complete, whole days, during which the Appellant was outside of Canada.

[21] Travelling to attend the funeral of a family member is an exception to the disentitlement for being outside Canada.⁷ This exception allows you to be entitled to EI benefits for up to seven days while outside the country.

[22] I find the Appellant is entitled to a seven-day exemption from the disentitlement for being outside Canada. In other words, the Appellant can be paid benefits from November 25 to December 1, 2020. However, she remains disentitled from being paid benefits for her remaining time outside of the country. So, from December 2 to December 18, 2020.

[23] The Appellant has said that she was ready, willing, and capable of working each day that she was absent from Canada. I don't doubt that is true, and the Commission seems to have accepted that she was available for work during this time.

[24] Unfortunately, even if the Appellant was available for work, she still can't be paid EI benefits for any of the time that she is outside Canada without meeting an exception to the disentitlement. She meets **one** of those exceptions and so can be paid for seven days that she was out of the country. But that is all.

Does the Appellant have to repay the overpayment?

[25] Yes. The Appellant has to repay benefits that he wasn't entitled to receive.

[26] The law says that you are required to repay any amount paid to you as benefits by the Commission to which you were not entitled to receive.⁸

[27] The Appellant asked the Tribunal to reduce or eliminate the \$1,282 overpayment that resulted from being outside Canada while receiving EI benefits.

[28] I have no authority to waive or write-off the overpayment or to direct the Commission to do so. That authority rests with the Commission.⁹

⁷ This exception is listed in section 55 of the *Employment Insurance Regulations*.

⁸ See section 43(b) of the EI Act.

⁹ See sections 112.1 and 113 of the EI Act.

[29] The Commission has the authority to write-off overpayments in some very limited circumstances.¹⁰ If the Commission refuses to write-off his overpayment, the Appellant can appeal that refusal to the Federal Court.

[30] And if repayment will cause the Appellant financial hardship, he can contact the Debt Management Call Centre of the Canada Revenue Agency and ask about applying for debt relief.

Conclusion

[31] The appeal is dismissed.

[32] The Appellant is entitled to a seven-day exception to the disentitlement for being out of the country. This means she can be paid benefits from November 25 to December 1, 2020. She remains disentitled from benefits from December 2 to December 19, 2020.

Catherine Shaw
Member, General Division – Employment Insurance Section

¹⁰ See section 56 of the EI Regulations.