



Citation: *JS v Canada Employment Insurance Commission*, 2025 SST 114

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: J. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (670918) dated July 25, 2024
(issued by Service Canada)

Tribunal member: Katherine Parker

Type of hearing: Teleconference

Hearing date: January 7, 2025

Hearing participant: Appellant

Decision date: January 23, 2025

File number: GE-24-3799

Decision

[1] The appeal is dismissed. The Appellant's claim doesn't fall under one of the exceptions for receiving benefits while out of Canada.

[2] The Commission acted fairly when it reconsidered this claim.

Overview

[3] The Appellant was outside Canada for two periods of about one month each time. While he was outside Canada, he received regular EI benefits because on his EI claims, he reported that he wasn't out of the country.

[4] The Canada Border Services reported to the Commission that the Appellant was outside the country from October 16, 2019, to November 7, 2019 (period A).¹ And from February 2, 2020, to March 4, 2020—(period B).²

[5] Given the new information, the Commission investigated and found that the Appellant didn't declare his circumstances. It decided that he wasn't entitled to benefits for these periods of time. A notice of debt was sent to the claimant for the total overpayment of \$4,496.

[6] The Appellant disagreed with the Commission's decision. He said that he got injured when he was out of the country during period A. So he had no choice but to stay because he was incapacitated and couldn't fly home. He said that he went out of country during period B to seek medical attention that was less expensive than what was available in Canada.

¹ See GD3-49 to GD3-53.

² See GD3-49 to GD3-53.

[7] He said his finance made his weekly claim reports and she didn't read the question correctly about being out of the country. So he reported that he wasn't out of the country and that he was available for work. He provided an attestation that his application was true and that he knew and accepted his rights and responsibilities.³

Issues

[8] Is the Appellant entitled to receive benefits while outside Canada.

[9] Did the Commission act fairly when it reconsidered this claim.

Analysis

[10] The general rule is that a claimant is not entitled to receive employment insurance benefits if he is outside Canada.⁴ But the Regulations provide a limited list of exceptions to this rule.⁵ The Appellant says that one of these exemptions applies to him. He said he was seeking medical attention.

[11] 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

1. (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 Canada.⁶ (emphasis added.)

[12] Claimants have the burden of demonstrating that they meet the requirements for receiving benefits and that no circumstances exist that will disentitle or disqualify them

³ See GD3-10 to GD3-11.

⁴ Section 37 of the Employment Insurance Act.

⁵ Section 55 of the Regulations.

⁶ Section 55(1)(a) of the *Employment Insurance Regulations*.

from receiving benefits, including the availability requirements prescribed by section 18 of the EI Act.⁷

Is the Appellant entitled to receive benefits while outside Canada

– Period A, why he was out of the country

[13] The Appellant said that his reason for being out of the country during period A is unique. He said there isn't anything in the EI Act about being injured while out of the country. He said he was out of the country during period B to seek medical attention, but he was still available for work.

[14] The Appellant said that he left the country on October 16, 2019, to pay for an online course in person. He decided to sign up for the course in India because it was far less expensive than the course offered in Canada. It was also offered online. However, he was concerned it was a scam, so he wanted to go in person to verify.

[15] The Appellant had a friend who worked for Air Canada who gave him a standby ticket. He decided to travel to India for two days. He planned to go and come back right away.

[16] He didn't report being out of the country on his EI claim because he said there wasn't an option to report being away for a few days.

[17] The Appellant said he seized up on the day he arrived in India. He couldn't travel. He said that he had no choice but to stay in India to get medical treatment. He received treatment for lower back pain. These were medical treatments available in Canada, but he said he was stuck in India, so he had no choice.

⁷ See *Canada (Attorney General) v Picard*, 2014 FCA 46; *Canada (Attorney General) v Elyoumni*, 2013 FCA 151; *Canada (Attorney General) v Gibson*, 2012 FCA 166; *Canada (Attorney General) v Peterson*, A-370-95.

[18] He said that while he was stuck in India receiving medical attention, he wasn't able to travel back to Canada until he had recovered from his lower back pain. He returned to Canada on or around November 6, 2019.

[19] The Appellant said he didn't have any evidence that he was only planning to stay in India for two days because he travelled on standby.

– **Period B, why he was out of the country**

[20] The Appellant said that he travelled to India in period B to get medical attention. He said he appreciated the medical attention he got last time, and it was much cheaper than medical treatment in Canada. He said that while he was away, he was available for work. He looked for work online and was willing to travel back to Canada for a job offer.

[21] He acknowledged that the medical treatment he wanted was readily available in his area of residence in Canada. But it was expensive, and he didn't want to wait for the treatment.

[22] He argued that if he was still looking for a job while out of the country, he shouldn't be disentitled to benefits.

– **What were the circumstances when the Appellant was out of the country**

[23] The Appellant asked his fiancée to submit his weekly EI claim reports because he didn't have access to the portal while he was out of the country. He said that she misunderstood the question about being out of the country.

[24] The Appellant responded *NO* to the question, "*were you outside Canada between Monday and Friday during the period for this report?*" for every claim submitted during period A and B.⁸ He said the question didn't give him the option to say he would be out of the country for only a few days, so he responded *NO* when he was asked this question during the first week he was out of the country in period A.

⁸ See GD3-15 to GD3-48.

[25] The Appellant responded YES to the question, *“Were you ready, willing and capable of working each day, Monday through Friday during each week of this report”* for every claim submitted during period A and B. He didn’t contact the Commission to let it know he was sick. He received regular benefits while he was sick and incapacitated during period A.

[26] He wasn’t incapacitated during period B, but he was out of the country. He said he left the country to seek medical help. He said the medical treatment was available in Canada, but it was expensive. However, he wasn’t out of the country to find a job there, or to meet with employers.

[27] The Appellant received regular EI benefits during the period A while he was out of the country and medical incapacitated and unable to work. He received regular benefits while out of the country during period B seeking medical treatment.

[28] I find that the Appellant’s circumstances for period A and period B don’t qualify for an exemption under section 55 of the Regulations. Here is why.

[29] The Appellant left Canada for period A to pay for an online course in India. He said he was only going for two days but he was injured on the first day and had to stay for treatment. He didn’t tell the Commission he was sick. Instead, he continued receiving regular EI benefits and wasn’t truthful on his weekly claims. He said he misunderstood the questions.

- The Act doesn’t provide benefits for being out of country if the reason for leaving the country doesn’t fall under one of the exemptions listed in section 55 of the Regulations. Leaving the country to pay for a training course isn’t one of the exceptions that the law allows.
- If a claimant leaves the country for a reason other than what the law allows, he is disentitled for those benefits while he is out of the country.

- If the claimant is injured after deciding to travel for a reason that isn't allowed by law, he has to report this to the Commission. The Appellant didn't report his illness and continued receiving regular EI benefits. He said he couldn't work or travel, therefore he wasn't available for work. A claimant has to be available for work when he is receiving regular benefits. But the Appellant's availability while travelling outside the country isn't an issue in his appeal.
- The Appellant said that he didn't understand the question. However, ignorance of the law is not an excuse.⁹ A reasonable person would have called the Commission to report his circumstances when he was injured and out of the country at the same time.¹⁰

[30] The Appellant left the country during period B to seek medical attention. He said the treatment was available in Canada, but it was more expensive.

[31] Paragraph 55(1)(a) of the EI Regulations refers to acceptable situations where a claimant can claim employment insurance benefits while absent from Canada for a period of seven (7) days to receive medical treatment. The medical treatments referred to in paragraph 55(1)(a) of EI Regulations must not be readily or immediately available in Canada.¹¹ The Appellant was absent for about one month during period B which far exceeds seven days. He sought medical treatment that is readily available in Canada.

[32] The circumstances for travelling during period B don't fall under one of the exceptions for travelling outside Canada. It was a personal decision.

[33] The Appellant continued to report that he wasn't out of the country. He said he looked for a job while travelling but the job was for a position in Canada.

[34] I find that the Appellant's reasons for leaving the country from October 16, 2019, to November 7, 2019 (period A), and from February 2, 2020, to March 4, 2020,

⁹ See *Canada (Attorney General) v Kaler*, 2011 FCA 266 at paragraph 4.

¹⁰ See *Canada (Attorney General) v Trinh*, 2010 FCA 335 at paragraph 10.

¹¹ See *Canada (Attorney General) v Peterson*, A-370-95.

(period B) don't meet one of the exceptions provided for in the law. Section 55 of the Regulations lists the prescribed exceptions. There is nothing that allows for any exceptional circumstances such as getting injured while out of the country for personal reasons.

[35] I am persuaded by a decision made by the Appeal Division (AD) of the SST. Although I am not bound by these decisions, I can be influenced by them.

[36] In the decision *Canada Employment Insurance Commission v GD*, 2024 SST 779, the AD allowed the Commission's appeal. The facts are very similar to this case. The claimant in that appeal left the country for a vacation. While on vacation he was injured. He argued that the reason for leaving the country wasn't important. The AD disagreed.¹²

[37] The AD said that the reason for leaving does matter and that leaving for a vacation is a personal decision and one that doesn't meet the legal test for an exception to section 55 of the Regulations. I agree with the conclusion of this AD decision. It is the same conclusion I have made in this appeal.

[38] The Appellant left the country for personal reasons, and he was injured while out of the country. This was the risk he took when he decided to travel for two days to pay for a course. Then he made a personal decision to get medical treatment that was less expensive than what was available in Canada and continued to mislead the Commission by reporting that he wasn't out of the country.

Did the Commission act fairly when it reconsidered this claim

[39] The Canada Border Services Agency (CBSA) reported to the Commission that the Appellant was out of the country during period A and period B. This was new information provided to the Commission. It decided to review the claim.

¹² See *Canada Employment Insurance Commission v GD*, 2024 SST 779 paragraphs 17 to 21.

[40] The Commission may reconsider a claim for benefits within 36 months after the benefits have been paid. If, in its opinion, a false statement has been made, the time can be extended to 72 months.¹³ In this appeal, the Commission delivered its final decision on July 25, 2024. It denied benefits starting the week of October 16, 2019. The Commission completed its reconsideration within the timeframe allowed for claims where the Commission believed there were false reports made.

[41] The Commission reversed its decision about knowingly making false reports and it didn't issue a warning or penalty. This doesn't change my finding that the Commission had 72 months to reconsider the claim.

[42] The Appellant said that he was sick during period A. But he continued to report that he wasn't out of the country, and that he was available for work when he testified that he wasn't. During period B, he continued to report that he wasn't out of the country, and that he was available for work. It appears that the Appellant knew he was receiving benefits that he wasn't entitled to receive. He didn't tell the truth on his claim reports.

[43] He said it doesn't give the claimant the option to say they were out of the country for a few days. I read the actual question to the Appellant during the hearing. It specifically asks if the claimant was out of the country for any portion of the week. So the question is clear that being out of the country for any period of time during a week needs to be reported. He said he misread the question about being out of the country, but his testimony lacks credibility. Although he may have misread the question for the first week he was out of the country, it isn't credible that he misread the question for every week he was out of the country for the full five days.¹⁴

¹³ See section 52(5) of the Act.

¹⁴ See GD3-20. The question asked on the claim report is, "Were you outside Canada between Monday and Friday during the period of this report?"

[44] I find that the Commission exercised its power judicially when it decided to reconsider the Appellant's claim. Benefits were paid because the Appellant didn't report that he was out of the country from October 16, 2019, to November 7, 2019 (period A).¹⁵ And from February 2, 2020, to March 4, 2020—(period B).

[45] 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. The Act doesn't pay benefits because a claimant has paid into EI for many years.

[46] In this claim, the Appellant left the country on October 16, 2019, to pay for an online course in India. While he was there, he was injured and couldn't return for one month. He didn't report this to the Commission. He argued that he should be entitled to benefits while out of the country because he had to seek treatment.

[47] The Appellant left the country again on February 2, 2020, to seek medical treatment that was less expensive than in Canada. This was a personal decision, and it isn't an exception allowed for in section 55 of the Regulations.

Conclusion

[48] The appeal is dismissed.

Katherine Parker
Member, General Division—Employment Insurance Section

¹⁵ See GD3-49 to GD3-53.