



Citation: *LL v Canada Employment Insurance Commission*, 2024 SST 1717

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: L. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (683449) dated October 15, 2024
(issued by Service Canada)

Tribunal member: Stuart O'Connell

Type of hearing: Teleconference

Hearing date: December 17, 2024

Hearing participants: No party attended the hearing

Decision date: December 30, 2024

File number: GE-24-3729

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant established a renewal claim for employment insurance benefits effective June 26, 2022.¹ Information came to light that the Appellant was outside of Canada from July 20, 2022, to August 19, 2022. During this period, she was claiming EI regular benefits. On her EI online claimant reports over this period, she indicated that she was within Canada and available to work.

[3] The Canada Employment Insurance Commission (Commission) decided that the Appellant was disentitled from receiving Employment Insurance (EI) regular benefits from July 21, 2022, to August 18, 2022, because she was outside of Canada. EI claimants are not entitled to receive EI benefits for any period, expressed in complete, whole days, when they are not in Canada, though there are some exceptions to this in the EI Regulations.

[4] The Commission also disentitled the Appellant from benefits during the slightly longer period of July 20, 2022, to August 19, 2022, as it concluded that she was not available to work while she was outside the country. A claimant has to be available for work to get EI regular benefits. Availability is an ongoing requirement. This means that a claimant has to be searching for a job.

[5] The Commission also decided that the Appellant knowingly provided false information contrary to the EI Act when she declared on her online weekly reports that she was not outside Canada and that she was ready and available for work. It imposed a monetary penalty of \$1,314.00 for making false statements and issued her with a notice of 'serious' violation.

¹ GD3-3 to GD3-13.

[6] The Appellant appeals the reconsideration decision of the Commission and states that while she was out of the country, she was available.

The Appellant wasn't at the hearing

[7] The Appellant wasn't at the hearing. A hearing can go ahead without the Appellant if the Appellant got the notice of hearing.² I think that the Appellant got the notice of hearing. So, the hearing took place when it was scheduled, but without the Appellant. Here is why I think the Appellant received notice of the hearing.

[8] The Notice of Hearing was sent via courier to the Appellant's address on December 3, 2024.³ At this time, Canada Post was not delivering mail due to a labour strike that began November 15, 2024. The Notice of Hearing stated that the hearing would occur as a teleconference hearing on December 17, 2024, at 10:00 a.m. It also provided information on how the Appellant could participate, for instance, how she could dial into the teleconference.

[9] On December 10, 2024, Tribunal staff attempted to call the Appellant to remind her of the hearing. There was no answer and no opportunity to leave a voicemail. Staff made a second attempt to call the Appellant on December 12, 2024. Again, there was no answer and no opportunity to leave a message.

[10] The Appellant did not attend the hearing on December 17, 2024. After waiting approximately 10 minutes after its scheduled start time, I asked Tribunal staff to try to contact the Appellant and determine whether the Appellant intended to participate in the hearing that day. Staff attempted to call the Appellant. Again, there was no answer and no opportunity to leave a voicemail. I kept the hearing open for twenty minutes and at 10:20 a.m., I closed the hearing. Neither party was in attendance.

² Section 58 of the *Social Security Tribunal Rules of Procedures* sets out this rule.

³ GD-01. At this time, Canada Post was not delivering mail due to a labour strike that began November 15, 2024. The Appellant had requested a hearing in writing. However, having reviewed the appeal file, I concluded that the appeal should be conducted as teleconference hearing. I sought the input of the parties, but no objections were voiced.

[11] In summary, information regarding the appeal hearing was sent by courier to the Appellant's address on file. The Appellant has not updated her contact information, and I have no reason to conclude that the notice was not delivered to the Appellant. Prior to that the Appellant was sent a separate communication notifying her that I was considering changing the format of the hearing. She did not respond to that. The Tribunal diligently attempted to follow up with three reminder telephone calls. While the reason for her non-responsiveness remains unknown, I conclude that she did receive notice of the hearing.

Issues

[12] I must decide the following issues:

1. Was the Appellant outside of Canada during her EI benefit period and if so, has the Appellant shown that she is, nonetheless, entitled to EI benefits?
2. Was the Appellant available for work from July 20, 2022, to August 19, 2022?
3. Did the Appellant knowingly provided false or misleading information on her EI claim reports? If she did, then I must also decide the following two issues:
 - a. Did the Commission properly decide the penalty amount?
 - b. Did the Commission properly decide to impose a violation?

Absent from Canada

Issue

[13] Was the Appellant outside of Canada during her benefit period and if so, has the Appellant shown that she is entitled to EI benefits while she was outside Canada?

Position of the Commission

[14] The Commission says that the Appellant was outside of Canada and has not established that she falls within one of the exceptions at section 55 of the EI Regulations. She is therefore disentitled from benefits from July 21, 2022, to August 18, 2022. This period does not include the days on which she travelled.

Position of the Appellant

[15] The Appellant says she was not notified of the decision to reduce her EI payments and that the decision created significant financial hardship for her.⁴

Analysis

[16] Except as otherwise prescribed by the legislation, a claimant is not entitled to receive Employment Insurance benefits for any period during which the claimant is not in Canada. Parliament decided upon a very strict approach to the question of entitlement to Employment Insurance benefits for persons outside of Canada, presumably with a view to avoiding abuse of the employment insurance system.

[17] Parliament enacted a clear and unequivocal restriction of employment insurance benefits for persons not in Canada. The governing principle is described by section 37(b) of the EI Act. It states: “Except as may otherwise be prescribed, a claimant is not entitled to receive benefits for any period during which the claimant a) is not in Canada...”

[18] Section 55 of the EI Regulations goes further to add certain exemptions to that rule. For instance, benefits may be provided for up to seven days for scenarios that include the following:

- a) attending the funeral of an immediate family member or close relative,
- b) accompanying a family member undergoing medical treatment,
- c) visiting an immediate family member who is seriously ill or injured, and
- d) conducting a bona fide job search or interview.

[19] The evidence is clear that that the Appellant was out of Canada from July 20, 2022, to August 19, 2022, while she was on a claim for EI regular benefits. The

⁴ GD2-2.

information about the Appellant's travel abroad was obtained from the Appellant's Traveller Declaration Cards, created at the time of her return to Canada.

[20] The onus is on the EI claimant to prove that they meet the requirements of one or more of the prescribed exceptions, which are currently set out at sections 55 and 55.01 of the EI Regulations. The Appellant has not provided a reason for being outside the country and so has not discharged this onus.

[21] The Appellant is therefore disentitled from receiving EI benefits from July 21, 2022, to August 18, 2022.

Availability

Issue

[22] Was the Appellant available for work from July 20, 2022, to August 19, 2022?

Analysis

[23] Two different sections of the law require claimants to show that they are available for work. The Commission decided that the Appellant was disentitled under both of these sections. So, the Appellant has to meet the criteria of both sections to get benefits.

[24] First, the *Employment Insurance Act* (Act) says that a claimant has to prove that they are making "reasonable and customary efforts" to find a suitable job.⁵ The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" mean.⁶

[25] Second, the Act says that a claimant has to prove that they are "capable of and available for work" but aren't able to find a suitable job.⁷ Case law gives three things a claimant has to prove to show that they are "available" in this sense.⁸

⁵ See section 50(8) of the *Employment Insurance Act* (Act).

⁶ See section 9.001 of the *Employment Insurance Regulations* (Regulations).

⁷ See section 18(1)(a) of the Act.

⁸ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

[26] The Commission decided that the Appellant was disentitled from receiving benefits because she wasn't available for work based on these two sections of the law.

[27] I will now consider these two sections myself to determine whether the Appellant was available for work.

Reasonable and customary efforts to find a job

[28] The law sets out criteria for me to consider when deciding whether the Appellant's efforts were reasonable and customary.⁹ I have to look at whether her efforts were sustained and whether they were directed toward finding a suitable job. In other words, the Appellant has to have kept trying to find a suitable job.

[29] I also have to consider the Appellant's efforts to find a job. The Regulations provide a non-exhaustive list of nine job-search activities I have to consider. However, there is no evidence of her job-seeking efforts. I find that she hasn't proven that her efforts to find a job were reasonable and customary for the period July 20, 2022, to August 19, 2022.

Capable of and available for work

[30] Case law sets out three factors for me to consider when deciding whether the Appellant was capable of and available for work but unable to find a suitable job. The Appellant has to prove the following three things:¹⁰

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

⁹ See section 9.001 of the Regulations.

¹⁰ 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.

[31] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.¹¹ There is no evidence before me on any of these factors. The Appellant must establish her availability for each day of the benefit period. She has not. I find that she has not established that she was capable of and available for work during the period July 20, 2022, to August 19, 2022.

Did the Appellant knowingly make false statements on her claimant reports?

[32] For the Commission to impose a penalty, the Commission must prove on a balance of probabilities that the Appellant knowingly made a false or misleading statement. If it does, the onus then shifts to the Appellant to explain why the incorrect information was given.

[33] The initial application for benefits states that knowingly making a false or misleading statement is an act or omission that could result in an overpayment of benefits as well as severe penalties.¹² A claimant must also confirm their understanding that there are penalties for knowingly making false statements.

[34] The Internet Reporting Service is a system used by Employment Insurance claimants to provide information about their continuing eligibility to benefits. The questions the Appellant incorrectly answered were not ambiguous. They were simple yes/no questions.

[35] According to the evidence provided by the Commission, which I accept, the Appellant declared "NO" on each claimant report when asked, "Were you outside Canada between Monday and Friday during the period of this report?"; and declared "YES" on each claimant report when asked, "Were you ready, willing and capable of

¹¹ 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.

¹² GD3-9.

working each day, Monday through Friday during each week of this report?”¹³ This was not the Appellant’s first claim for benefits in which she had to complete claimant reports.

[36] In her initial application for benefits, she was advised of her responsibility to report any absences from her area of residence and/or any absence from Canada, and, additionally, each time a claimant completes a report, they are warned against providing false information.¹⁴

[37] I find on the circumstantial evidence before me that the Appellant knew that the information that she was providing was false. She has not provided a reasonable explanation for giving it.

Did the Commission exercise its discretion judicially when it set the penalty amount?

[38] The Appellant knowingly made false statements, so the Commission is allowed to impose a penalty amount within the limitations of the Act. The Commission’s decision about the amount of penalty is discretionary. I can only set aside the decision if the Commission made the decision in bad faith, considered irrelevant factors, ignored relevant factors, or acted in a discriminatory manner.¹⁵ If it did any of these things, it acted outside the limits of its discretion.

[39] The Appellant’s misrepresentations resulted in the Appellant being overpaid by \$2,627.00. The Commission set the monetary penalty at \$1,314.00.¹⁶

[40] The Commission was unable to contact the Appellant to determine if there were any mitigating circumstances that would warrant a modification or rescinding of the

¹³ The Appellant did not report her absence from Canada, or her unavailability for work, for the reporting period of July 17, 2022, to August 20, 2022: that is, the week July 17, 2022, to July 23 (GD3-19), the two weeks July 24, 2022, to August 6, 2022 (GD3-23) and the two weeks from August 7, 2022, to August 20, 2022 (GD3-29).

¹⁴ GD3-21; GD3-26; GD3-31.

¹⁵ See *Canada (AG) v. Uppal*, 2008 FCA 388; *Canada (AG) v. Tong*, 2003 FCA 281.

¹⁶ GD3-39 to GD3-41.

initial decision to impose a monetary penalty of \$1,314.00 for making false statements knowingly. In the Appellant's Notice of Appeal, she mentions that she is on a single income and that she had to rely on credit to make her mortgage payments after her EI payments were reduced in July and August of 2024.¹⁷ However, there is no information about the extent of the Appellant's shortfall on the mortgage payments. More generally, there are not a lot of details about the Appellant's financial situation. This leaves a lot to speculation.

[41] While I sympathize with the Appellant, I do not find that the Commission failed to act judicially in setting the penalty amount.

Did the Commission act judicially when it decided to impose a violation?

[42] As with deciding the penalty amount, the decision to impose a violation is also discretionary. So, I must review how the Commission exercised its discretion when it decided to impose a violation. I will take the same approach as I did when I reviewed how it decided the penalty amount.

[43] The Commission classified the violation as serious. This classification was based on the amount of overpayment (\$2,627¹⁸). Section 7.1(5) of the EI Act categorizes the violation according to the amount of the overpayment resulting from the misrepresentation.

[44] A violation increases the number of hours of insurable employment that a claimant requires to qualify for benefits. Accumulating a serious violation puts the Appellant at significant risk of not qualifying for benefits in the future.

¹⁷ GD2-2. See GD3-44, Request for Reconsideration, in which the Appellant also mentions financial hardship.

¹⁸ GD3-38; GD3-39.

[45] The Commission considered whether there were any relevant factors which might alter its decision regarding the classification of the violation.¹⁹ It sought further information from the Appellant, but the Appellant was not contactable. I agree that the Commission considered all relevant information available to it at the time in deciding to issue a serious violation. There is no additional information before me that was not before the Commission on this issue, and I find the Commission exercised its discretion judicially.

Conclusion

[46] The Appellant was outside Canada during her benefit period and was not entitled to receive EI benefits during that time (July 21, 2022, to August 18, 2022). Further, she has not established she was available and is disentitled for this reason as well (July 20, 2022, to August 19, 2022).

[47] I have found that the Appellant knowingly made false statements on some of her claimant reports. The Commission acted judicially when it imposed a violation and set a monetary penalty.

[48] The Appellant must repay the money she received as an overpayment and pay the imposed penalty. While I sympathize with the Appellant, I have no authority to write off or reduce the Appellant's overpayment. The law doesn't allow me to do this, even if the circumstances are unfair. The overpayment remains the Appellant's responsibility to repay.

[49] These options are available to the Appellant:

- She can ask the Commission to consider writing off the debt because of undue hardship.²⁰ Should the Commission deny this request, the Appellant can appeal to the Federal Court.

¹⁹ GD3-52; GD3-53.

²⁰ Section 56 of the *Regulations* gives the Commission broad powers to write off an overpayment when it would cause undue hardship were an Appellant to repay it.

- She can contact the Debt Management Call Centre at CRA at 1-800-864-5823 about a repayment schedule or other debt relief measure.²¹

[50] The appeal is dismissed.

Stuart O'Connell

Member, General Division – Employment Insurance Section

²¹ That is the phone number found on the Notice of Debt that was sent to the Appellant.