



Citation: SC v Canada Employment Insurance Commission, 2024 SST 1711

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: S. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (649760) dated March 12, 2024
(issued by Service Canada)

Tribunal member: Jean Yves Bastien

Type of hearing: In Writing

Decision date: July 8, 2024

File number: GE-24-1451

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] This means the Appellant can't get benefits for the time he was outside of Canada receiving medical treatment that is available in Canada.

Overview

[3] The Appellant was employed as a school crossing guard but was laid off (shortage of work) during the COVID-19 pandemic because schools had been closed. The Appellant's last day at work was December 17, 2021. He applied for Employment Insurance (EI) regular benefits on January 5, 2022. The Commission established an initial claim effective January 1, 2022, and paid him regular EI benefits.

[4] The Appellant returned to work at the employer on January 19, 2022. He left again on June 30, 2022 because he was sick. He applied for EI sickness benefits on July 11, 2022. He didn't provide a medical certificate with his application for benefits.

[5] The employer issued a Record of Employment (ROE) on July 11, 2022, indicating that the Appellant's last day was June 30, 2022 and that he was laid off because of a shortage of work or the end of the season.

[6] The Appellant is a senior citizen who chose not to be vaccinated against COVID-19. That is his right. But because of his choice, the Appellant says that he was unable to see any doctors in person or get any treatment in Canada.¹

[7] The Appellant left Canada on July 12, 2022, to seek medical treatment from his son in the USA who is a medical doctor. The Appellant said that he had various problems including a swollen left leg, back pain, difficulty sleeping, depression, and

¹ See the Commission Supplementary Record of Claim on page GD3-47 of the appeal record.

blood pressure. He said that the telemedicine available to him during the pandemic wasn't working for him. The Appellant returned to Canada just over a week later on July 21, 2022.

[8] The Appellant told the Commission that he didn't have a medical recommendation or note saying that the medical treatment he received in the USA was not available in Canada and that it had to be received in the USA.²

[9] So the Commission told the Appellant that it was unable to pay him EI benefits from July 14, 2022 until July 20, 2022 because he wasn't in Canada.

Matter I have to consider first

The Appellant was given an opportunity to respond to the Commission's representations

[1] The Appellant requested a hearing "In Writing". The Commission gave the Tribunal its case against the Appellant (Representations to the Tribunal) after the Appellant had submitted his Notice of Appeal to the Tribunal. So just to be sure that the Appellant had an opportunity to see, and then comment on the Commission's case against him, I sent him a letter on April 24, 2024.³

[2] This letter contained duplicate copies of everything the Tribunal had sent the Appellant. I gave the Appellant until May 9, 2024 to say anything that he wanted to tell the Tribunal. The Appellant chose not to respond by the deadline (or afterwards), so the hearing was held without further input from the Appellant.

Issue

[3] Has the Appellant proven that the medical treatment he received in the USA was something that wasn't readily or immediately available where the Appellant lives in Canada?

² See page GD3-47 of the appeal record.

³ See the letter in document GD5 of the appeal record.

Analysis

[4] Section 37(b) of *Employment Insurance Act* (*Act*) says that you can't get EI benefits if you are not in Canada. Section 55(1)(a) of the *Employment Insurance Regulations* (*Regulations*) makes an exception for persons who have to go outside of Canada for medical treatment that is not "readily or immediately available" where the Appellant lives in Canada.

[5] Although I am not bound by this Tribunal's previous decisions, they provide useful guidance. This Tribunal has previously said that before a claimant can get EI benefits for medical treatment outside of Canada, they need a note from a doctor that says that they have to leave Canada for the purposes of medical treatment that they can't get in Canada.⁴

[6] The application form for EI benefits has an information section called "Absence from Canada" which basically repeats section 55(1)(a) of the *Regulations*. This section tells people making an EI claim that: "You must report any absences from Canada. You may be able to receive EI benefits when you are temporarily outside of Canada. For example, you can receive sickness benefits if you are in the United states **receiving medical treatment that is not readily or immediately available in Canada.**"

[7] The Appellant acknowledged this when he accepted his rights and responsibilities on both of his applications for benefits.⁵

⁴ See *M.L. v Canada Employment Insurance Commission*, 2019 SST 452.

⁵ See pages GD3-13, and GD3-29 of the appeal record.

Was the medical treatment the Appellant received outside of Canada readily available where he lives in Canada?

[8] The Appellant told the Commission that he suffered from high blood pressure, back pain, depression, and that he was unable to sleep at night.⁶ The Appellant lives in the Greater Toronto Area, Canada's largest city where there are many medical resources. On the face of it, these conditions appear to be easily treatable in Canada. The Appellant hasn't provided any information that his medical condition required special care not available where he lives in Canada

[9] The Appellant argues that the Canadian health system wasn't available for him because he wasn't vaccinated against COVID-19.

[10] The Commission says that the Appellant's argument that the Canadian healthcare system wasn't available to him relies on "his willful choice not to get vaccinated against COVID-19. The Commission argues that "the Appellant made a personal choice to disregard Canada public health recommendations. Healthcare was available in Canada during the period he chose to leave the country in July 2022."⁷

[11] The Tribunal agrees with the Commission. I find that it is more likely than not that the Appellant could have readily or immediately received medical treatment near where he lives in Canada.

Did the Appellant have a note from a doctor saying that he had to leave Canada to get treatment that wasn't available in Canada?

[12] No, the Appellant has no such note. He decided on his own to visit his son, a physician in the USA for treatment.

⁶ See the Commission's Supplementary Record of Claim at page GD3-47 of the appeal record.

⁷ See page GD4-3 of the appeal record.

Conclusion

[13] The Appellant hasn't proven that that the medical treatment he received in the USA was something that wasn't readily or immediately available where he lives in Canada.

[14] The Appellant made a personal choice not to be vaccinated against COVID-19. But the Law is clear, it only deals with the ability of the Canadian healthcare system to readily or immediately provide treatment where a person lives in Canada. The Law doesn't take into account personal choices to limit a person's access to the healthcare that is available.

[15] The appeal is dismissed.

Jean Yves Bastien

Member, General Division – Employment Insurance Section