



Citation: *ES v Canada Employment Insurance Commission*, 2025 SST 333

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

## Decision

**Appellant:**

E. S.

**Respondent:**

Canada Employment Insurance Commission

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**Decision under appeal:**

Canada Employment Insurance Commission  
reconsideration decision (699165) dated January 16, 2025  
(issued by Service Canada)

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**Tribunal member:**

Bret Edwards

**Type of hearing:**

Teleconference

**Hearing date:**

March 11, 2025

**Hearing participant:**

Appellant

**Decision date:**

March 19, 2025

**File number:**

GE-25-472

## Decision

[1] The appeal is allowed in part.

[2] The Appellant was outside of Canada from January 20, 2021 to February 5, 2021. She was entitled to Employment Insurance (EI) benefits for the first 7 days of that period because she meets one of the qualifying exemptions, specifically that she was attending a bona fide job interview.

[3] The Appellant was also outside of Canada from March 29, 2021 to June 4, 2021. She wasn't entitled to benefits during that period because she doesn't meet any of the qualifying exemptions.

[4] The Appellant has been overpaid benefits and must pay back the money she owes. The overpayment is now smaller than it originally was because the Appellant was entitled to benefits for 7 days during her first absence from Canada. I can't write off the overpayment, but the Appellant may have other options.

## Overview

[5] The Appellant established a claim for EI benefits as of September 27, 2020.<sup>1</sup>

[6] The Canada Employment Insurance Commission (Commission) later discovered that the Appellant was outside of Canada for two different periods in the first half of 2021.<sup>2</sup>

[7] The Commission then decided that the Appellant wasn't entitled to benefits from January 20, 2021 to February 5, 2021 and from March 29, 2021 to June 4, 2021 because she was outside of Canada and didn't meet one of the qualifying exemptions to receive benefits during those periods.<sup>3</sup>

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<sup>1</sup> GD4-1.

<sup>2</sup> GD4-1.

<sup>3</sup> GD3-67 to GD3-68.

[8] The Commission's decision created an overpayment since the Appellant had previously received EI benefits during the above periods. The Commission asked the Appellant to pay back the overpayment.<sup>4</sup>

[9] Upon reconsideration, the Commission kept its original decision.<sup>5</sup>

[10] The Appellant has now appealed the Commission's reconsideration decision to the Tribunal.

## **Matter I have to consider first**

### **The Appellant isn't appealing the Commission's decision about the non-monetary penalty**

[11] After discovering that the Appellant was outside of Canada during the above periods, the Commission also decided to impose a non-monetary penalty on the Appellant for not declaring that information on her reports.<sup>6</sup>

[12] Prior to the hearing, the Appellant wrote that she's not appealing the Commission's decision about the non-monetary penalty.<sup>7</sup>

[13] At the hearing, I asked the Appellant to confirm what she wrote. She testified that yes, it's correct. She's not appealing the Commission's decision about the non-monetary penalty. She's only appealing the Commission's decision about her absences from Canada.

[14] As a result, I won't consider the issue of the non-monetary penalty here.

## **Issues**

[15] Was the Appellant entitled to benefits while she was outside of Canada from January 20, 2021 to February 5, 2021?

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<sup>4</sup> GD3-70.

<sup>5</sup> GD3-101, GD3-102 to GD3-103.

<sup>6</sup> GD3-67 to GD3-68, GD3-102 to GD3-103.

<sup>7</sup> GD5-1.

[16] Was the Appellant entitled to benefits while she was outside of Canada from March 29, 2021 to June 4, 2021?

## Analysis

### **Was the Appellant entitled to benefits while she was outside of Canada from January 20, 2021 to February 5, 2021?**

[17] Yes, but only for part of that period. I find the Appellant was entitled to benefits from January 20, 2021 to January 26, 2021 specifically.

[18] The general rule is that you can't get EI benefits if you are outside Canada.<sup>8</sup> But the law includes exemptions, such as if you are outside of Canada to attend a bona fide job interview or conduct a bona fide job search.<sup>9</sup>

[19] I find the parties don't dispute that the Appellant was outside of Canada from January 20, 2021 to February 5, 2021. The Appellant confirmed at the hearing that she was outside of Canada during that period.

[20] The Commission says the Appellant doesn't meet one of the exemptions for being outside of Canada during the above period. But it doesn't explain why.<sup>10</sup>

[21] The Appellant testified to the following about her absence from Canada from January 20, 2021 to February 5, 2021:<sup>11</sup>

- She was outside of Canada to conduct a bona fide job search after she lost her job in the hospitality industry during the COVID-19 pandemic.
- She went to Turks and Caicos to meet up with a fishing vessel and work on a trial basis.

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<sup>8</sup> See section 37(b) of the *Employment Insurance Act* (EI Act).

<sup>9</sup> See section 55 of the *Employment Insurance Regulations* (EI Regulations) for the full list of exemptions.

<sup>10</sup> GD4-3.

<sup>11</sup> The Appellant's testimony was similar to what she wrote in her notice of appeal. See GD2-7, GD2-14 to GD2-15.

- The work trial was pre-arranged and the whole experience was basically an interview, where the employer wanted to see her “in action” for 10 days to determine if she was qualified to work for them.
- She had duties outside (on the deck) and inside (within the living quarters) on the vessel.
- She was observed the whole time she was on the vessel, and her employer gave her feedback about her performance at the end of every day.
- She had 12-hour shifts on a rotational basis.
- There wasn’t much downtime between work and sleep. But she looked for other work whenever she could. The vessel had a Starlink connection, so she was on LinkedIn and applying for jobs before her shifts started, sometimes during lunch, and then before going to bed.
- She was sometimes restricted from using her cell phone during her shifts. She couldn’t use it when she was working on the deck. But she could check it when she was working inside in the living quarters.

[22] The Appellant also submitted the following evidence:

- A job advertisement for the fishing vessel’s employer. It says they are hiring and to join now.<sup>12</sup>
- A letter from the fishing vessel’s employer. It says the Appellant came for a bona fide job interview and work trial for them from January 19, 2021 to February 7, 2021.<sup>13</sup>

[23] Based on this evidence, I find the Appellant was outside of Canada from January 20, 2021 to February 5, 2021 to attend a bona fide job interview.

[24] More specifically, I find the Appellant’s time aboard the fishing vessel amounted to a multi-day job interview. I think it was an interview because she confirmed in her

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<sup>12</sup> GD2-1.

<sup>13</sup> GD2-11.

testimony that it was a pre-arranged work trial and that the whole experience was basically an interview where she was being observed the whole time and given feedback at the end of each day. The job advertisement from that employer says they are hiring, and they also wrote in their letter that the Appellant came for a job interview and work trial. To me, that evidence aligns with the Appellant's testimony and further supports my belief that she attended a job interview.

[25] I acknowledge that the Appellant testified that she was engaged in a bona fide job search while in Turks and Caicos because she was looking for work while she was there. And I believe her when she says she was looking for work while she was there.

[26] But I find the Appellant's job search efforts in Turks and Caicos don't change the fact that her **specific reason** for being there was to attend a multi-day job interview abroad a fishing vessel. She confirmed in her testimony that she had 12-hour rotational shifts with very little down time and looked for work mainly before or after her shifts or during her shifts if she had some downtime while she was working inside. To me, this shows that she was **only** looking for work when she **wasn't** carrying out her work duties on the fishing vessel, which means her job search efforts were **secondary** to the work trial itself.

[27] In other words, I find the evidence clearly shows that the Appellant spent the vast majority of her time in Turks and Caicos on a pre-arranged work trial that functioned as a multi-day job interview, even if she was also able to look for other work while she was there.

[28] I also find the Commission hasn't given any reason for me to question my findings. This is because the Commission doesn't explain why it feels the Appellant doesn't meet any of the outside of Canada exemptions.<sup>14</sup> And that's simply not enough for me to reach a different conclusion here.

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<sup>14</sup> GD4-3.

[29] The law says that if you're attending a bona fide job interview outside of Canada, you can receive EI benefits for up to 7 days.<sup>15</sup>

[30] Based on what the law says, I find the Appellant can be paid 7 days of benefits while she was outside of Canada, specifically from January 20, 2021 to January 26, 2021. She was attending a bona fide job interview during that period. And I'm satisfied that her efforts covered the entire period of her absence. This means she's entitled to the full 7 days of benefits that the law allows, starting from the first day of her absence (January 20, 2021).

[31] I acknowledge the law also says that if you're conducting a bona fide job search outside of Canada, you can receive EI benefits for up to 14 days.<sup>16</sup> The Appellant may wonder if she qualifies for this exemption too.

[32] But I find the Appellant doesn't also qualify for this exemption, unfortunately.

[33] The Tribunal's Appeal Division has recently said that the outside of Canada exemptions for a bona fide job interview and a bona fide job search cannot be combined.<sup>17</sup> I find this reasoning to be persuasive and will follow it here. To me, the law does make clear that these exemptions cannot be combined since the word "or" is present between these exemptions.<sup>18</sup>

[34] In other words, the law doesn't allow a person to qualify for both the bona fide job interview and bona fide job search exemptions. They can only qualify for one for them. And for the reasons set out above, the Appellant qualifies for the bona fide job interview exemption. This means she was entitled to 7 days of benefits while outside of Canada, but not more than that.

[35] I therefore find the Appellant was entitled to benefits while outside of Canada from January 20, 2021 to January 26, 2021. But she wasn't entitled to benefits from

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<sup>15</sup> See section 55(1)(e) of the EI Regulations.

<sup>16</sup> See section 55(1)(f) of the EI Regulations.

<sup>17</sup> See *Canada Employment Insurance Commission v EE*, 2024 SST 568, paragraphs 17 to 19.

<sup>18</sup> See section 55(1)(e) and 55(1)(f) of the EI Regulations.

January 27, 2021 to February 5, 2021 because the qualifying exemption doesn't cover that period.

[36] I will now look at whether the Appellant was entitled to benefits during the other period that she was absent from Canada.

**Was the Appellant entitled to benefits while she was outside of Canada from March 29, 2021 to June 4, 2021?**

[37] No, unfortunately. I find the Appellant wasn't entitled to benefits while she was outside of Canada from March 29, 2021 to June 4, 2021. She doesn't meet any of the qualifying exemptions.

[38] I find the parties don't dispute that the Appellant was outside of Canada from March 29, 2021 to June 4, 2021. She confirmed in her testimony that she was absent during that period.

[39] The Appellant testified to the following about her absence from Canada from March 29, 2021 to June 4, 2021:<sup>19</sup>

- Her absence was due to financial hardship caused by the COVID-19 pandemic.
- She went to Florida to help out a person in exchange for a place to stay. A friend had put her in touch with that person.
- She figured if she could have her computer with her and apply for jobs in Canada, she could do that from anywhere and that's what she did here.
- She went home after her employer notified her that they had gotten approval to re-open their business.
- Her absence doesn't fall under any of the qualifying exemptions, but she thinks she deserves an exception on humanitarian grounds.

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<sup>19</sup> The Appellant's testimony was similar to what she wrote in her notice of appeal. See GD2-7, GD2-14 to GD2-15.



- El's outdated rules didn't apply in a global crisis. The government was supposed to help displaced persons, not penalize them.
- She couldn't afford rent or basic living expenses during that time, and someone was able to give her housing and food in exchange for help. It was a barter system and felt like fair exchange. And it was better than being homeless.
- She did the best she could in her circumstances.

[40] The Appellant also submitted a letter from the person she stayed with in Florida. The letter says that the Appellant "volunteered for me" from March 28, 2021 to June 6, 2021.<sup>20</sup>

[41] Based on this evidence, I find the Appellant doesn't meet any of the qualifying exemptions while she was outside of Canada from March 28, 2021 to June 6, 2021.

[42] I acknowledge that the Appellant was absent from Canada from March 28, 2021 to June 6, 2021 for the reasons she says.

[43] But unfortunately, I find the Appellant's reasons for her absence don't meet any of the exemptions under the law to qualify for benefits while outside of Canada. Volunteering in a household in return for shelter and food isn't one of the exemptions.

[44] I acknowledge that the Appellant testified that she was looking for work while she was in Florida. And I believe her when she says this.

[45] But I find there's not enough evidence to show that the Appellant went to Florida to conduct a bona fide job search.

[46] To be bona fide, a job search or interview must be genuine, it must be carried out in good faith, and it can't be limited to online activity that could have been performed from inside Canada.

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<sup>20</sup> GD2-18.

[47] I'm not persuaded from the Appellant's evidence that she was in Florida to conduct a bona fide job search. She confirmed in her testimony that she went there for a different reason, which was to help out a person in exchange for a place to stay. She also confirmed that she was using her computer to apply for jobs in Canada. To me, this means that looking for work wasn't the **purpose** of her trip to Florida and that any efforts she made to look for work while in Florida were focused on jobs in Canada and could have been done from Canada instead.

[48] I note the Appellant also testified that the EI benefits that she received were different from the "CERB" benefit that was introduced later because CERB allowed people to be outside of Canada under COVID-19 circumstances. And if she had known about that difference, she would have fought much harder to get CERB instead.<sup>21</sup>

[49] I acknowledge the Appellant's testimony. But, respectfully, it isn't correct.

[50] At the start of the COVID-19 pandemic, the federal government introduced two different emergency support programs: the Canada Emergency Response Benefit (CERB), which was overseen by the Canada Revenue Agency, and the EI Emergency Response Benefit (EI ERB), which was overseen by the Commission. The CERB was in effect from March 15, 2020 to September 26, 2020, and the last day to apply was December 2, 2020.<sup>22</sup> The EI ERB was in effect from March 15, 2020 to October 3, 2020, and the last day to make a claim was December 2, 2020.<sup>23</sup> The regular EI benefits system was suspended while the EI ERB was in effect, but it resumed immediately afterwards.

[51] I also note that the periods of EI entitlement that are under appeal here relate to the Appellant's absences from Canada from January 20, 2021 to February 5, 2021 and from March 28, 2021 to June 6, 2021, as discussed above.

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<sup>21</sup> The Appellant also makes this argument in her notice of appeal. See GD2-15.

<sup>22</sup> See Government of Canada, *Canada Emergency Response Benefit (CERB)*, <https://www.canada.ca/en/revenue-agency/services/benefits/apply-for-cerb-with-cra.html>.

<sup>23</sup> See section 153.8(1) of the EI Act.

[52] What this all means is that during the Appellant's absences from Canada, neither the CERB nor the EI ERB was still in effect. Both programs had ended prior to 2021, so the Appellant simply couldn't have asked for a different type of benefit instead of the one she received (regular EI).

[53] As a result, the Appellant is mistaken when she says that she would have asked for "CERB" instead of EI if she had known she could get CERB in 2021. CERB (and the EI ERB) had ended by then. So, I won't consider this argument any further here.

[54] Lastly, I acknowledge that the Appellant testified that her appeal should be considered on humanitarian grounds because of her unique circumstances and that EI policies didn't adapt well to the COVID-19 pandemic.

[55] I understand the Appellant had good reasons for leaving Canada. And I don't doubt that she found herself in a very challenging situation.

[56] I also understand that the Appellant feels the EI system wasn't properly equipped to handle the unique and rapidly changing conditions of a global pandemic.

[57] I think the Appellant makes some thoughtful points. But, unfortunately, they don't change my decision here. This is because I have to follow the law the way it's written and can't interpret it in a way that's contrary to its plain meaning.<sup>24</sup> And I can't make an exception for the Appellant either, no matter how difficult or compelling her circumstances are.<sup>25</sup>

[58] In other words, the Appellant wasn't entitled to benefits while she was outside of Canada (except for the first 7 days during her first absence) because she doesn't meet any of the qualifying exemptions. And I have no flexibility when it comes to the law.

[59] I therefore find the Appellant wasn't entitled to benefits while she was outside of Canada from March 29, 2021 to June 4, 2021.

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<sup>24</sup> See *Canada (Attorney General) v Knee*, 2011 FCA 301.

<sup>25</sup> See *Pannu v Canada (Attorney General)*, 2004 FCA 90.

## **Does the Appellant have to pay back the money she now owes?**

[60] Yes, unfortunately.

[61] The Appellant received benefits while she was outside of Canada. But I've now found that she wasn't entitled to benefits during that period except for 7 days (from January 20, 2021 to January 26, 2021). She meets one of the qualifying exemptions for those 7 days (bona fide job interview), but not for the rest of her absence from Canada.

[62] This means the Appellant has been paid more benefits than she was entitled to, so there is now an overpayment.

[63] That said, my decision means that the overpayment will be less than the original amount.<sup>26</sup> This is because I've found that the Appellant was entitled to benefits for the first 7 days during her first absence from Canada.

[64] I therefore ask the Commission to promptly send the Appellant an updated notice of debt to reflect the amount that she now owes.

[65] I understand that it may not be easy for the Appellant to repay the money she now owes. But I don't have the power to erase the overpayment, unfortunately. The law doesn't allow me to do this, even if find the circumstances are unfair. The overpayment remains the Appellant's responsibility to repay.<sup>27</sup>

[66] In this situation, one option that would typically be available to the Appellant is to ask the Commission to write off the debt because of undue hardship.<sup>28</sup> But the Commission has already said it won't write off the Appellant's debt.<sup>29</sup> If the Appellant disagrees with the Commission's decision to not write off her debt, she can appeal to

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<sup>26</sup> GD3-70.

<sup>27</sup> Sections 43 and 44 of the EI Act say that an appellant bears the responsibility for an overpayment.

<sup>28</sup> Section 56 of the EI Regulations gives the Commission broad powers to write off an overpayment when it would cause undue hardship were a person to repay it.

<sup>29</sup> GD4-3.

the Federal Court, which has the jurisdiction to hear an appeal relating to a write-off issue.<sup>30</sup>

[67] Alternatively, the Appellant can contact the Canada Revenue Agency's Debt Management Call Centre at 1-866-864-5823 about a repayment schedule or other debt relief measure.<sup>31</sup>

## Conclusion

[68] The appeal is allowed in part.

[69] The Appellant was outside of Canada from January 20, 2021 to February 5, 2021. She was entitled to benefits from January 20, 2021 to January 26, 2021, but not for the rest of that period.

[70] The Appellant was also outside of Canada from March 29, 2021 to June 4, 2021. And she wasn't entitled to benefits during that period.

[71] The Appellant has been overpaid benefits and must pay back the money she owes. But the overpayment has been reduced.

Bret Edwards  
Member, General Division – Employment Insurance Section

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<sup>30</sup> See *Steel v Canada (Attorney General)*, 2011 FCA 153, and *Bernatchez v Canada (Attorney General)*, 2013 FC 111.

<sup>31</sup> That's the phone number found on the Notice of Debt that was sent to the Appellant.