Citation: *DG v Canada Employment Insurance Commission*, 2025 SST 482

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	D. G.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (702372) dated February 17, 2025 (issued by Service Canada)

Tribunal member:	Paula Turtle
Type of hearing:	Teleconference
Hearing date:	April 10, 2025
Hearing participants:	Appellant Appellant's husband
Decision date:	April 14, 2025
File number:	GE-25-791

Decision

[1] The appeal is dismissed.

Overview

[2] The Appellant worked for a charitable organization. She stopped working and travelled to India on January 28, 2024, to start in vitro fertilization (IVF).

[3] The IVF was successful. The Appellant stayed in India after her baby was born in December 2024. Then, she came back to Canada with the baby on January 22, 2025.

[4] The Appellant claimed sickness benefits effective August 25, 2024. The Commission has denied the Appellant's entitlement to sickness benefits. The Commission says the Appellant isn't entitled to benefits because she was outside of Canada. And she hasn't proven that she fell within the exception that allows a claimant to get sickness benefits even though they are outside Canada. The Commission also says that her medical certificate was unacceptable.

[5] The Commission also denied the Appellant's benefits because she didn't have enough hours to qualify for benefits. But the Commission conceded this issue in its submissions to the Tribunal. That means that the Commission has changed its position. It now agrees that the Appellant had enough hours to qualify. So, I don't need to decide this issue.

[6] The Appellant says she is entitled to claim sickness benefits, even though she was outside of Canada. She asks me to approve her claim for sickness benefits.

Issue

[7] Is the Appellant entitled to sickness benefits, even though she was outside of Canada?

Analysis

[8] The law is clear. If you are outside Canada, you aren't entitled to receive EI benefits[1] unless you can show that you fall under one of the exceptions in the regulations.[2]

[9] One of the exceptions says that you can get benefits even though you are outside Canada. But you have to show that you had to leave Canada for medical treatment that isn't readily or immediately available in Canada.[3]

[10] The Appellant is relying on the medical treatment exception. So, she has to prove that she travelled to India for medical treatment that isn't readily or immediately available in Canada.

[11] If she meets the medical treatment exception, the Appellant must also show that, but for her illness, she would have been available for work.

Issue 1: Does the Appellant meet the medical treatment exception?

[12] No, the Appellant hasn't met the exception. She hasn't shown that IVF wasn't readily or immediately available in Canada.

[13] When I decide whether IVF treatment was immediately or readily available in Canada, I have to consider the current realities of the Canadian medical system. So, I will consider all the circumstances of the Appellant's situation, including what the Appellant did to seek earlier treatment in Canada, and whether the Appellant's doctor recommended that she leave the country for treatment.

[14] Sometimes a medical treatment isn't available right away. You might have to wait. But that doesn't mean that it isn't readily or immediately available in Canada.

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[1] See section 37(b) of the Employment Insurance Act.
[2] Section 55 of the Regulations to the EI Act describes situations where you can get benefits even though you aren't in Canada.
[3] See section 55(1)(a) of the Regulations.

[15] The Appellant and her husband argued that IVF treatment wasn't readily and immediately available in Canada.

[16] The Appellant and her husband say that she went to India for two reasons: because it would take too long to get IVF in Canada, and because the Appellant's mother was in India and she could take care of the Appellant while she went through the treatment. They told me the following:

- The Appellant had an unfortunate history of miscarriages.

- The Appellant and her husband consulted with a gynecologist and a fertility specialist in their city in Canada. They first saw the gynecologist in 2020. Then they saw a fertility specialist in June 2023. The fertility specialist recommended IVF.

- The fertility specialist explained the IVF process. She accepted the Appellant as a patient. She told the Appellant that it would be 12 to 15 months before the IVF process could start. The Appellant was 33 years old.

- The Appellant and her husband didn't ask the fertility specialist about the effect of the wait. They didn't ask if they could start IVF sooner. The fertility specialist didn't say that the wait would affect the success of the IVF process.

- The Appellant and her husband were concerned that if they waited 12 to 15 months to start IVF in Canada, it wouldn't succeed.

- They decided that the Appellant would go to India and start the IVF process. She went to India in September 2023. A fertility doctor accepted the Appellant as a patient. The fertility treatment started right away. She returned to Canada in the fall of 2023. Then she went back to India on January 28, 2024, to continue the IVF process. She stayed in India until January 22, 2025.

- The IVF process is difficult and painful. The Appellant had her mother's support and assistance in India during the process.

[17] There is a medical report and an EI medical certificate in the file.[4] The report says that the Appellant became pregnant in mid March 2024. And her due date was September 16, 2024. The form says the Appellant has a high-risk pregnancy. The report says she needs complete bed rest and is unable to work during her pregnancy.

[18] Both are signed by a doctor. In both cases, under the doctor's signature is a stamp with the doctor's printed name and registration number. The report is written on hospital letterhead. The letterhead indicates that the facility specializes in fertility.

[19] I am sympathetic to the Appellant's situation. She had a difficult obstetric history. She wanted to have a child. She was concerned that her fertility would be affected as she got older. So, she didn't want to wait the 12 to 15 months she was told it would take to start treatment in Canada.

[20] I can take notice of the fact that a woman's fertility declines as they get older. But the Appellant's fertility doctor in Canada didn't suggest that the 12-to-15-month wait to start IVF in Canada would affect the success of her treatment. And the Appellant didn't ask if her treatments could start earlier.

[21] The report and the certificate don't say that the Appellant needed to start her IVF treatments in India on an urgent basis.

[22] The Appellant told me at the hearing that she went to India for treatment because she was concerned that the delay would affect her fertility. But she raised her concern about delay for the first time at the hearing.

[23] The notes in the file show that the Appellant told Service Canada that she went to India because her mother was there and would be able to take care of her. And because IVF is less expensive in India than it is in Canada.[5] The Appellant and her

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[4] See GD3-20 and 21.
[5] The Appellant didn't raise the cost of IVF as an issue at the hearing. She and her husband said she went to India because her mother was there and because she could get the IVF treatment faster.

husband agreed that they didn't say anything about getting IVF faster in India before the hearing. They said they forgot. And they didn't realize they should say that.

[24] The Appellant's husband says the hospital that treated the Appellant was accredited to provide IVF treatment. He offered to get proof. I told him it wasn't necessary. I had no reason to dispute his understanding.

[25] A claimant may need medical treatment urgently, and they can't get it quickly enough in Canada. If the evidence shows that medical treatment is needed quickly and it is available outside of Canada before it's available in Canada, then the claimant may meet the requirements for the exception to the rule that you don't get benefits because you are outside Canada.

[26] The Appellant wanted to access IVF as quickly as possible. But the information on the file doesn't say speedy access to IVF was medically necessary in her case. Or that waiting to access IVF in Canada would have affected the success of the procedure.

[27] There is no evidence showing that the Appellant needed to have the procedure earlier than it was available in Canada. So, I don't find that she needed to start IVF before the 12 to 15 months it would take in Canada. And this means that I can't find that IVF treatments weren't readily or immediately available to the Appellant in Canada.

[28] I understand why the Appellant wanted to have the procedure quickly. But it was her choice to leave the country. It wasn't medically necessary.

[29] My conclusion that it was a preference and not a medical necessity is supported by the fact that the Appellant and her husband first talk about the need to have IVF sooner than 12 to 15 months before the hearing. The reasons they gave to Service Canada about why the Appellant left the country while her claim was being processed is more credible than what was said at the hearing.[6] They said she left Canada because IVF was cheaper in India. And because her mother was there. And neither of these

[6] Often, information that is given earlier is more reliable. That's because it is closer in time to the event in question.

factors is relevant to the question of whether the procedure wasn't readily or immediately available in Canada.

[30] So, I find that the Appellant hasn't shown that she falls within the exception that enables her to get benefits while she was outside Canada. That means that she can't be paid sickness benefits for the time she was outside Canada.[7]

Issue 2: Was the Appellant's medical certificate unacceptable?

[31] The Commission argues that the medical report and medical certificate aren't acceptable because they weren't signed by a Canadian or an American doctor.

[32] I disagree with the Commission. The law doesn't say that medical information has to come from a Canadian or American doctor.

[33] The report and the medical certificate provided by the Appellant are acceptable.

[34] The law says that if you are unable to work because you are ill, and you are otherwise available to work, then you may be entitled to sickness benefits.[8] There is a regulation that explains how you can show that you aren't able to work because you are ill. And it says that you have to provide a medical certificate from a doctor or another medical professional that says you can't work, and for how long.[9] It doesn't say that the doctor has to be a Canadian or American doctor.

[35] The Commission argues that because the medical report and the certificate were signed by a "foreign doctor", they are unacceptable. The Commission doesn't explain what it means when it says the documents were signed by a "foreign doctor". But whatever the Commission means, its concerns are irrelevant and inappropriate. The Commission isn't entitled to reject a medical report or certificate because the person who signed the report currently practices medicine outside of Canada or the United States.

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[7] The Appellant left Canada on January 28, 2024. And she came back on January 22, 2025.
[8] See section 18(1)(b) of the Act.
[9] See section 40(1) of the Regulations.

[36] Even though I have found that the Commission isn't entitled to reject the medical report or the certificate because of the (presumed) identity of the doctor, it doesn't change the outcome of my decision. That's because I have found that the Appellant hasn't shown that the medical treatment the Appellant received isn't readily or immediately available in Canada.

Conclusion

[37] The appeal is dismissed.

Paula Turtle
Member, General Division – Employment Insurance Section