Citation: *NV v Canada Employment Insurance Commission*, 2024 SST 802

Social Security Tribunal of Canada
Appeal Division

Decision

Appellant:	N. V.
Respondent:	Canada Employment Insurance Commission
Representative:	Jessica Earles

Decision under appeal:	General Division decision dated May 16, 2024 (GE-24-1548)

Tribunal member:	Elizabeth Usprich
Type of hearing:	Teleconference
Hearing date:	July 8, 2024
Hearing participants:	Appellant Respondent's representative
Decision date:	July 12, 2024
File number:	AD-24-372

Decision

[1] The appeal is dismissed.

[2] The parties agreed the General Division made important errors of fact. I have fixed the errors by giving the decision the General Division should have given. But the outcome is the same. The Claimant can't be paid Employment Insurance (EI) benefits for the time she was out of Canada.

Overview

[3] N. V. is the Claimant.

[4] The facts are not in dispute. The Claimant worked remotely for a Canadian company. She unexpectedly lost her job. She then left Canada for her residence in Florida. This trip was booked prior to her job loss.

[5] There is no dispute the Claimant was out of Canada from March 28, 2024 to May 10, 2024.[1] The Claimant argues she should be entitled to EI benefits because she is a remote worker and can look and interview for a job from anywhere. She also says she should come under the exception of being a Canadian with a residence that is contiguous to Canada.

[6] The Social Security Tribunal (Tribunal) General Division made factual errors in its decision. The parties agreed there were errors. The parties agreed the Appeal Division should give the decision the General Division should have given.

[7] I am dismissing the appeal. The Claimant doesn't fall under one of the exceptions for receiving benefits while out of Canada.

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[1] See GD5-4.

Preliminary matters

[8] The Claimant sent the Tribunal a document with her arguments. It hadn't been acknowledged before the hearing. During the hearing the Tribunal acknowledged the submission and sent a copy of the document to both parties. The matter was stood down to allow the Hearing Member and the Commission time to read the submission.

The parties agree the General Division made an important error of fact

[9] The parties agreed during a previously held case conference that there were obvious important errors of fact in the General Division's decision.[2] I agree the General Division's decision had important errors of fact.

[10] It was also decided during the case conference that a hearing would be held to hear arguments about the remedy. The date of the hearing was agreed upon by both parties.

I accept the error

[11] The Claimant says the decision from the General Division wasn't accurate or complete. She says the decision referenced someone else's case.[3]

[12] In its decision, the General Division wrote that the Claimant was on sickness benefits and left Canada for Belarus for a period in 2023.[4] But the written record shows the Claimant was applying for regular benefits, left Canada for Florida and it was in 2024. Both parties agreed these important facts were incorrect.

[13] I accept these important facts were incorrect. Because an error has been identified in the General Division decision it means I can intervene (step in).[5]

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[2] See the General Division decision at paragraphs 2 to 5 where the wrong timeframe of the Claimant being out of Canada is listed. Those paragraphs also reference the incorrect Country and state the Claimant was seeking sickness benefits which were incorrect.
[3] See AD1-4.
[4] See the General Division decision at paragraphs 2 to 5.
[5] Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) sets out the grounds of appeal.

Remedy

[14] There are two ways the Appeal Division can remedy (fix) a General Division decision. The case can be sent back to the General Division or the Appeal Division can give the decision that the General Division should have given.

[15] Both parties agreed the file is complete and that they have submitted all of their evidence. This means I can give the decision that the General Division should have given which includes whether the Claimant is entitled to benefits while she was out of Canada.[6]

The Claimant isn't entitled to EI benefits during the time she was out of Canada

[16] There is a general rule in the EI Act that says if you are out of Canada, you can't get EI benefits.[7] But there are exceptions to that rule.[8] Unfortunately, the Claimant doesn't fall under any of the exceptions for the reasons that follow.

[17] The Claimant unexpectedly lost her job in January 2024. But she had already booked a trip in December 2023, to spend some of the winter at her Florida residence.

[18] There is no dispute that the Claimant was available for work during this time. The Commission says the disentitlement to benefits wasn't due to availability.[9]

[19] There is no dispute the Claimant was out of Canada from March 28, 2024 to May 10, 2024.[10] The Claimant argues she should be entitled to EI benefits because she is a remote worker and can look and interview for a job from anywhere. She also says she should come under the exception that she has a residence that is contiguous to Canada.

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[6] Section 59(1) of the *Department of Employment and Social Development Act* allows me to fix the General Division's errors in this way.
[7] See section 37 of the *Employment Insurance Act*.
[8] See section 55 of the *Employment Insurance Regulations*.
[9] See AD5-1 where the Commission reiterated that availability of the Claimant was not an issue.
[10] See GD5-4.

The exceptions under section 55 of the Regulations don't apply

– Section 55(1)(e) and 55(1)(f) don't apply[11]

[20] The Claimant argues that because she is a remote worker she should be able to look for work from anywhere. She says she doesn't have to be in Canada to do so. I don't disagree with her. Yet, in order to be paid EI benefits the general rule is that you must be in Canada to receive them.

[21] Section 55(1) says a claimant is not disentitled from receiving benefits for the reason that the claimant is outside Canada and then different exceptions are listed. This means the reason the person is outside Canada is important.

[22] The Claimant has maintained it was a pattern that she would travel to her second home in Florida to escape Canada's cold weather in the winter.[12] Unexpectedly, she lost her job. She argues it made sense to continue with her trip because she would have lost money otherwise because the ticket was non-refundable.[13]

[23] The Claimant argues she looked for work while she was in Florida. She noted that the jobs were primarily Canadian jobs.[14] But she reiterated that because she is a remote worker it doesn't matter where she is to look, or interview, for a job.

[24] But the Claimant's primary purpose for her trip to Florida wasn't to look for a job or attend interviews in Florida.[15] The Claimant's position is that, during winter months, she travelled to her home in Florida to work remotely for her Canadian employer. She booked this trip prior to being let go by her employer.[16] She says she would go to Florida to escape the cold Canadian weather.[17] So, her main reason for leaving Canada was to get out of the cold weather.

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[11] These sections provide exceptions to a claimant that was attending a *bona fide* job interview or was conducting a *bona fide* job search.
[12] See AD6-1.
[13] See GD3-31.
[14] The Claimant also said she looked for jobs in the United States but not specifically in Florida.
[15] See *Canada (Attorney General) v Gibson*, 2012 FCA 166.
[16] See GD5-2.
[17] See AD6-1.

[25] I accept the Claimant was looking for work, on the internet, while she was in Florida. But that isn't the legal test for the exception. The exception is whether her trip was for the primary purpose of searching for work or attending interviews in that country. That wasn't the case.

[26] I appreciate the Claimant's position that the laws, as written, do not take into account the ability to search, apply and interview for jobs on a more global basis. But I don't find I have the authority to expand the exceptions as they are written. These are prescribed exceptions that Parliament turned their minds to.[18]

– The Claimant isn't entitled to an exception under section 55(6) of the Regulations

[27] Section 55(6) of the Regulations says:

> (6) Subject to subsection (7), a claimant who is not a self-employed person and who resides outside Canada, other than a major attachment claimant referred to in subsection (5), is not disentitled from receiving benefits for the sole reason of their residence outside Canada if
>
> (a) the claimant resides temporarily or permanently in a state of the United States that is contiguous to Canada and
>
> (i) is available for work in Canada, and
>
> (ii) is able to report personally at an office of the Commission in Canada and does so when requested by the Commission; or
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> (b) the claimant is qualified to receive benefits under Article VI of the Agreement between Canada and the United States respecting Unemployment Insurance, signed on March 6 and 12, 1942, and resides temporarily or permanently in one of the following places in respect of which the Commission has not, pursuant to section 16 of the Employment and Immigration Department and Commission Act, suspended the application of that Agreement, namely,

[18] See *Fiorino v Canada (Employment Social Security Commission)*, 2022 FC 1705 at paragraph 23 where it reviews the applicant's argument, in that case, that the Tribunal should take a liberal interpretation of the legislation. But the Federal Court decided, at paragraphs 30 and 31, that the exceptions are listed in section 55 and that there is nothing that currently supports reading additional exceptions into the legislation.

(i) the District of Columbia,

(ii) Puerto Rico,

(iii) the Virgin Islands, or

(iv) any state of the United States.

[28] The Claimant argues she resides in a state of the United States that is contiguous to Canada.

[29] The Merriam-Webster dictionary defines “contiguous” as “being in actual contact; touching along a boundary or at a point”.[19] While Florida is part of the United States 48 contiguous states, it is not a state that is contiguous with Canada. That is because Florida does not share a common border with Canada. The Federal Court of Appeal has upheld that Florida is not contiguous within the meaning of section 55(6).[20]

[30] This means the Claimant doesn’t fall under the exception in section 55(6). Since the Claimant doesn’t fall under any of the exceptions under section 55 of the Regulations, it means that she is not entitled to any EI benefits for the time she was out of Canada.

Conclusion

[31] The appeal is dismissed. The General Division made errors of fact. I have fixed the errors by giving the decision that the General Division should have given. But the outcome is the same. The Claimant can’t be paid EI benefits for the time she was outside of Canada.

Elizabeth Usprich
Member, Appeal Division

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[19] See https://www.merriam-webster.com/dictionary/contiguous.
[20] *Canada (Attorney General) v Bendahan*, 2012 FCA 237 at paragraph 4.