

Docket: 2024-2302(CPP)

BETWEEN:

TEBECK ELIJAH,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on May 8, 2025, at Edmonton, Alberta

Before: The Honourable Justice David E. Spiro

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Yetunde Elizabeth Akinyinka

JUDGMENT

The appeal of the Respondent's decision, notice of which is dated September 20, 2024, that the Appellant was not in "pensionable employment" from June 26, 2023 to March 28, 2024, within the meaning of paragraph 6(1)(a) of the *Canada Pension Plan*, is allowed without costs. The Respondent's decision is varied to reflect that the Appellant was in "pensionable employment" from June 26, 2023 to March 28, 2024.

Signed this 25th day of June 2025.

"David E. Spiro"

Spiro J.

Docket: 2024-2303(EI)

BETWEEN:

TEBECK BLESS ELIJAH,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

Appeal heard on May 8, 2025, at Edmonton, Alberta

Before: The Honourable Justice David E. Spiro

Appearances:

For the Appellant: The Appellant himself

Counsel for the Respondent: Yetunde Elizabeth Akinyinka

JUDGMENT

The appeal of the Respondent’s decision, notice of which is dated September 20, 2024, that the Appellant was not in “insurable employment” from June 26, 2023 to March 28, 2024, within the meaning of paragraph 5(1)(a) of the *Employment Insurance Act*, is allowed without costs. The Respondent’s decision is varied to reflect that the Appellant was in “insurable employment” from June 26, 2023 to March 28, 2024.

Signed this 25th day of June 2025.

“David E. Spiro”

Spiro J.

Citation: 2025 TCC 90
Date: 20250625
Docket: 2024-2302(CPP)

BETWEEN:

TEBECK ELIJAH,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent;

Docket: 2024-2303(EI)

AND BETWEEN:

TEBECK BLESS ELIJAH,

Appellant,

and

THE MINISTER OF NATIONAL REVENUE,

Respondent.

REASONS FOR JUDGMENT

Spiro J.

[1] The issue in these appeals is whether the Appellant was in “pensionable employment” and “insurable employment” from June 26, 2023 to March 28, 2024, within the meaning of paragraph 6(1)(a) of the *Canada Pension Plan* (the “CPP”) and paragraph 5(1)(a) of the *Employment Insurance Act* (the “EI Act”), respectively.

[2] The Appellant, Mr. Elijah, is 25-year-old who lives in Edmonton, Alberta with his wife and child. I found his evidence to be entirely credible and reliable. He was the only witness to testify at trial.

The Facts

[3] On December 15, 2020, Mr. Elijah arrived in Canada. On December 29, 2021 the Refugee Protection Division of the Immigration and Refugee Board determined that Mr. Elijah was a Convention refugee under section 96 of the *Immigration and Refugee Protection Act* as he had a well-founded fear of persecution in Cameroon.¹

[4] Mr. Elijah retained counsel, Mr. Alfred Ndumu, to act for him on his refugee claim. As noted above, that engagement was successful.

[5] He had also retained Mr. Ndumu to prepare his application for a work permit. That engagement was successful as well. His work permit was valid from June 25, 2021 to June 25, 2023.²

[6] In September 2022, Mr. Elijah secured full-time employment with Freudenberg Oil and Gas Canada Inc. (“Freudenberg”) as a press operator at a salary of \$19.50 per hour.³ Mr. Elijah worked at Freudenberg for the first three months of 2024 until March 28, 2024, when he went on parental leave. He wanted to be at home to help his wife in the final stages of her pregnancy and following the baby’s arrival. After his parental leave concluded, he went back to work at Freudenberg.

[7] About a month before his work permit was set to expire, Mr. Elijah instructed Mr. Ndumu to renew it.⁴ He assumed, in good faith, that the renewal would be completed in a timely manner. In his own words, he believed that Mr. Ndumu was “able to get this done”.⁵ After receiving his instructions, Mr. Ndumu requested additional information from Mr. Elijah. Mr. Elijah emailed that additional information to Mr. Ndumu immediately.⁶ He then followed up with Mr. Ndumu.⁷

[8] Before going on parental leave starting March 28, 2024, Mr. Elijah heard nothing from Mr. Ndumu, Freudenberg, or the government of Canada suggesting

¹ Exhibit A-5.

² Exhibit A-8.

³ Exhibit A-10. Before then, he worked at Freudenberg on a temporary basis through an employment agency. Before that, he worked as a security guard for a year or so.

⁴ Transcript, page 8, lines 2-8.

⁵ Transcript, page 8, line 10.

⁶ Transcript, page 8, line 12 to page 9, line 28 (Exhibit A-1).

⁷ Transcript, page 30, lines 6-19.

that, as of June 25, 2023, he had been working in Canada illegally. On the contrary, the government of Canada emailed Mr. Elijah on June 30, 2023 – five days *after* his work permit expired – assuring him that he was entitled to study in Canada without a study permit “as a result of being an eligible work permit holder”.⁸

[9] Unfortunately, Mr. Ndumu did not apply for the renewal of the work permit as and when instructed. Mr. Elijah discovered this only after the Respondent denied his application for parental benefits by letter dated April 30, 2024.⁹ Mr. Elijah testified that the letter “came as a surprise.”¹⁰ It was then that he first learned his counsel “didn’t do nothing.”¹¹

[10] After a great deal of effort by Mr. Elijah, which included driving to Calgary to see Mr. Ndumu in person, Mr. Elijah’s work permit was renewed. It is valid for the period from June 13, 2024 to June 30, 2026.¹²

The Decisions Under Appeal

[11] The Respondent formed the opinion that whilst Mr. Elijah was working at Freudenberg from June 26, 2023 to March 28, 2024, he was not in “insurable employment” for purposes of the EI Act or “pensionable employment” for purposes of the CPP as there could be no contract of service without a valid work permit. The Respondent issued rulings to that effect which were confirmed by the decisions under appeal.

The *Still* Safe Harbour

[12] In *Still v M.N.R.*, 1997 CanLII 6379 (FCA), [1998] 1 FC 549, the Federal Court of Appeal crafted a safe harbour for precisely this type of circumstance.

[13] The safe harbour of *Still* is this: When a worker lacks a work permit, and requires one to work in Canada, but they believe in good faith they are working in Canada lawfully, their employment is not excluded from “insurable employment” within the meaning of paragraph 5(1)(a) of the EI Act (and “pensionable

⁸ The Minister admitted this fact at paragraph 2(j) of each Reply.

⁹ Exhibit A-7.

¹⁰ Transcript, page 20, line 1.

¹¹ Transcript, page 20, lines 16-20.

¹² Exhibit A-9 and page 22, lines 8-19 of the transcript.

employment” within the meaning of paragraph 6(1)(a) of the CPP), for that reason alone.

[14] Based on his uncontradicted evidence, I find that Mr. Elijah believed in good faith that he was working in Canada lawfully. In particular:

- He instructed counsel, who had a record of success, to apply in a timely manner for the renewal of his work permit. He then followed up with counsel.
- Before taking parental leave starting March 28, 2024, he heard nothing from his counsel, his employer, or the government of Canada to suggest that, as of June 25, 2023, he had been working in Canada illegally.
- On the contrary, he received an email from the government of Canada *five days after the expiration of his work permit* assuring him that he was entitled to study in Canada without a study permit “as a result of being an eligible work permit holder”.

[15] In *Still*, the Federal Court of Appeal offered two examples illustrating the absence of good faith. In the first case, *Polat v M.N.R.*, 1998 CanLII 559 (TCC):

... the claimant had applied for a work permit but commenced work prior to its issuance because he felt it was taking too long for the immigration officials to process his application.¹³

[16] The Court went on to note that:

... the reported facts lead one to conclude that he knew he was acting illegally. There is no indication of good faith on the part of the claimant in *Polat* as in the case before us.¹⁴

[Emphasis added]

[17] The second example provided by the Court is also “illustrative of a lack of good faith on the part of the claimant.”¹⁵ In that case, the claimant continued to

¹³ *Still*, para 59.

¹⁴ *Ibid.*

¹⁵ *Ibid.*, para 60.

work for her husband *even after* her application for a renewed work permit had been denied.¹⁶

[18] None of those circumstances is present here.

Conclusion

[19] In argument, Respondent's counsel conceded that Mr. Elijah "showed good faith by wanting to renew the work permit before it expired."¹⁷ That is certainly true, but there is more to it than that as described in paragraph 14 above.

[20] Mr. Elijah has succeeded in proving, on a balance of probabilities, that he believed in good faith he was working in Canada lawfully from June 26, 2023 to March 28, 2024. As this is precisely the type of circumstance contemplated by the Federal Court of Appeal in *Still*, Mr. Elijah's appeals will be allowed and the Respondent's decisions varied to reflect that Mr. Elijah was in "pensionable employment" for purposes of the CPP and "insurable employment" for purposes of the EI Act from June 26, 2023 to March 28, 2024.

Signed this 25th day of June 2025.

"David E. Spiro"

Spiro J.

¹⁶ The case referred to is *Allendes v Canada (Minister of National Revenue)*, [1995] T.C.J. No. 161 (QL).

¹⁷ Transcript, page 39, lines 25-28.

CITATION: 2025 TCC 90

COURT FILE NO.: 2024-2302(CPP)
2024-2303(EI)

STYLES OF CAUSE: TEBECK ELIJAH AND M.N.R.
TEBECK BLESS ELIJAH AND M.N.R.

PLACE OF HEARING: Edmonton, Alberta

DATE OF HEARING: May 8, 2025

REASONS FOR JUDGMENT BY: The Honourable Justice David E. Spiro

DATE OF JUDGMENT: June 25, 2025

APPEARANCES:

For the Appellant: The Appellant himself
Counsel for the Respondent: Yetunde Elizabeth Akinyinka

COUNSEL OF RECORD:

For the Appellant:

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Firm: n/a

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