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In case no. 2329-21, the **Swedish Social Insurance Agency** (Appellant) v. **AA** (Respondent), the Supreme Administrative Court delivered the following judgment on 13 April 2022.

SUPREME ADMINISTRATIVE COURT RULING

The Supreme Administrative Court rejects the appeal.

BACKGROUND

1. The Swedish social insurance system is divided into different insurance areas, of which one is work-based insurance. Benefits within this part of the insurance are based on work in Sweden. One of these benefits is temporary parental benefit which is provided in conjunction with the care of a sick child.
2. AA was employed in November 2017 as a programme administrator at a research unit at Stockholm University. The following year, she moved with her family to South Africa when her husband was stationed there by his employer. Commencing in September 2018, she performed her work remotely from South Africa with the approval of the university.
3. AA applied for temporary parental benefit for two days in November 2019. The Swedish Social Insurance Agency rejected the application stating that she was not covered by the work-based insurance in Sweden since she worked in South Africa.
4. AA appealed the decision of the Swedish Social Insurance Agency to the Administrative Court in Stockholm and stated the following. She is accompanying her spouse who is employed by the Ministry of Foreign Affairs as a diplomat. Accordingly, she is not covered by the social insurance system in South Africa but, rather, continues to be registered in the population register in Sweden and is

covered by the residence-based insurance here. She works digitally remotely from South Africa but retains a permanent residence in Sweden in which she resides regularly. Her salary is taxed in Sweden and her employer has paid employer's contributions on her salary.

5. The administrative court overturned the decision of the Swedish Social Insurance Agency. According to the court, nothing had come to light other than that AA had performed her work duties in the same manner as though she worked from home in Sweden. With regard to this and what was otherwise shown by the investigation, the court found that the work that she performed remotely from South Africa had such a strong connection to Sweden that it was to be regarded as work in Sweden. Accordingly, she was covered by Swedish social insurance protection for work-based benefits. The case was remanded to the Swedish Social Insurance Agency for calculation of her income forming the basis of the sickness allowance and an assessment of whether the other conditions for the entitlement to temporary parental benefit were met.
6. The Swedish Social Insurance Agency appealed the judgment to the Administrative Court of Appeal in Stockholm which made the same assessment as the administrative court and rejected the appeal.

CLAIMS, ETC.

7. The *Swedish Social Insurance Agency* claims that the judgments of the lower courts are to be overturned and that the Agency's decision is to be affirmed.
8. AA is of the opinion that the appeal is to be rejected.

REASONS FOR THE RULING

The question in the case

9. The question in the case is whether a person who works remotely from another country is covered by the Swedish work-based social insurance.

Legislation, etc.

10. Chapter 4, section 2 of the Social Insurance Code states that social insurance is divided into three insurance areas. One of these pertains to benefits based on work in Sweden (work-based benefits).
11. Chapter 6, section 2, first paragraph states that, in the application of the provisions in the Code, *work in Sweden* means, unless otherwise stated, gainful employment in operations in Sweden.
12. Pursuant to Chapter 6, section 6, a person who works in Sweden is covered by temporary parental benefit.

The Court's assessment

13. In order for a person to be covered by the work-based part of the social insurance, it is required that such person works in Sweden. An employee is regarded as working in Sweden if he or she engages in gainful employment in operations here in the sense referred to in Chapter 6, section 2, first paragraph of the Social Insurance Code.
14. The Supreme Administrative Court initially notes that the assessment of whether a particular job may be deemed to be gainful employment in operations in Sweden is to be determined on the basis of the connection the work itself has to Sweden. The connection which the person who performs the work may otherwise have to Sweden, such as whether the relevant person resides or on some other basis is

registered in the population register here or has access to a residence in Sweden is thus irrelevant to this assessment (*cf.* Government Bill 1998/99:119, p. 103). Even the fact that the person pays taxes in Sweden is irrelevant since the obligation to pay tax is established according to other criteria.

15. However, there is a connection between belonging to the work-based social insurance and the employer's obligation to pay employer's contributions in such a way that the regulation in the Social Contributions Act (2000:980) regarding when the obligation arises corresponds to the regulation in the Social Insurance Code regarding when the employee is insured on the basis of work in Sweden. Whether the employer has actually paid employer contributions on the salaries to the employee, however, is in itself irrelevant as to whether the employee is covered by the work-based insurance.
16. As regards the question of which connection the work itself must have to Sweden, the Swedish Social Insurance Agency is of the opinion that the person who carries out the work must, as a general rule, be physically present in Sweden in order for it to be regarded as work in operations here. According to the Agency, it is therefore only during shorter periods of work from abroad that the work has such a strong connection to Sweden that the person is to continue to be covered by the Swedish work-based social insurance. In the event that remote work from abroad is carried out over an extended period of time, it can no longer be regarded as work in Sweden in the opinion of the Agency.
17. The fact that the work-based insurance is firstly intended to provide protection in conjunction with gainful employment which is purely physically carried out in Sweden is supported by the preparatory works (Government Bill 1998/99:119, p. 103). However, the following is stated therein (*ibid.*, Government Bill, p. 105). The labour market is characterised by increased mobility with changing work conditions. The development of various types of computer support has made it possible for employees to work remotely to an increasing extent. The government is of the opinion that it is not possible to devise in this context criteria for when

work in such cases is to be deemed performed in Sweden. It is for the judicial authorities to establish through case law the detailed circumstances under which full-time or part-time work carried out remotely is to be deemed to constitute work in Sweden.

18. The preparatory works thus open the possibility that work which is carried out remotely from abroad may also create an entitlement to work-based benefits in Sweden, but leave it to jurisprudence to determine the detailed conditions thereof.
19. In the view of the Supreme Administrative Court, the question of whether work may be deemed to be gainful employment in operations in Sweden must be answered on the basis of the circumstances in each individual case. Where the work is purely physically carried out is consequently a circumstance which should be considered, but other circumstances such as the character of the work, the employer's operations in Sweden and where the employee is employed should also be considered in the assessment (*cf.* Swedish Government Official Reports 2017:5, p. 495). This means that the employee's physical presence in Sweden should not be afforded such decisive importance as believed by the Swedish Social Insurance Agency. The fact that a person works remotely from abroad over an extended period of time accordingly does not exclude that, depending on the circumstances in general, it may be a question of work in operations here.
20. As regards the current case, it may be stated that AA is employed to work in her employer's business in Sweden. Nothing has come to light other than that the character of her work duties on behalf of the Swedish operation is that she can perform them remotely from South Africa. Accordingly, notwithstanding that it is not physically performed in Sweden, the work may be regarded as gainful employment in operations in Sweden within the meaning of Chapter 6, section 2, first paragraph of the Social Insurance Code. Accordingly, AA is covered by the Swedish work-based social insurance.
21. The Swedish Social Insurance Agency's appeal is accordingly rejected.

Justices Jäderblom, Ståhl, Anderson, Jönsson and Medin have participated in the ruling.

Judge Referee: Maria Rydell.