

DECISION

[1] The Tribunal finds that the appeal has no reasonable chance of success. Therefore, the appeal is summarily dismissed.

INTRODUCTION

[2] The claimant filed an initial claim for sickness benefits effective January 6, 2013. The Employment Insurance Commission of Canada (the Commission) determined that the claimant could not receive sickness benefits effective May 5, 2013, as she had already received benefits for the maximum fifteen-week period set out in paragraph 12(3)(c) of the *Employment Insurance Act* (the Act).

[3] The claimant requested reconsideration of a decision by the Commission, dated May 6, 2013. On June 13, 2013, the Commission informed the claimant that it was maintaining the initial decision with regard to sickness benefits.

[4] The Tribunal notified the claimant of its intention to summarily dismiss her appeal for the reasons set out in the letter of intent dated September 25, 2013. The Tribunal invited the claimant to send her submissions in writing by October 24, 2013, if she felt her appeal had a reasonable chance of success and should not be summarily dismissed. The Tribunal received the claimant's written submissions on October 22, 2013.

ISSUE

[5] The Tribunal must determine whether the appeal filed by the Appellant should be summarily dismissed.

APPLICABLE LAW

[6] Subsection 53(1) of the *Department of Human Resources and Skills Development Act* provides that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

[7] Section 22 of the *Social Security Tribunal Regulations* states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.

[8] Paragraph 12(3)(c) of the Act states that the maximum number of weeks for which benefits may be paid in a benefit period because of a prescribed illness, injury or quarantine is fifteen.

EVIDENCE

[9] The claimant filed an initial claim for sickness benefits effective January 6, 2013 (GD3-2 to GD3-14).

[10] The Commission determined that the claimant could not receive sickness benefits effective May 5, 2013, as she had already received sickness benefits for the maximum fifteen-week period allowed under paragraph 12(3)(c) of the Act.

[11] The claimant requested reconsideration of the Commission's decision dated March 28, 2013 (GD3-28 to GD3-29). On June 13, 2013, the Commission informed the claimant that it was maintaining its initial decision following an in-depth analysis of the facts and circumstances at issue, of the legislation, and of all additional information provided (GD3-31).

[12] On July 11, 2013, the Tribunal received a Notice of Appeal from the claimant. She was appealing the Commission's decision not to extend her benefits beyond the fifteen weeks provided for under the Act (GD2-2 to GD2-4).

[13] The Tribunal then informed the claimant of its intention to summarily dismiss the case for the reasons set out in the letter of intent dated September 25, 2013. The

Tribunal invited the claimant to send her submissions in writing by October 24, 2013, if she felt her appeal had a reasonable chance of success and should not be summarily dismissed.

[14] The Tribunal received additional information from the claimant within the prescribed time period, namely, on October 22, 2013. She requested that the Commission extend her sickness benefits by two weeks. She explained that this delay was not her fault because she had to undergo surgery. Instead, the delay was related to the health care system. Moreover, she had returned to work before the end of her convalescence (GD5-1 to GD5-4).

PARTIES' SUBMISSIONS

[15] The Appellant submits that:

- (a) She had to undergo surgery on her spine. Despite the fact that she was on a priority waiting list, she had no choice but to wait for her surgery. This delay was beyond her control.
- (b) She received her last payment on May 4, 2013, but she did not return to work until May 23, 2013. She finds it unfair that she was penalized after having been employed for 20 years. In addition, she feels that she is entitled to be paid.
- (c) She is asking only for a two-week extension, which she does not consider excessive. She resumed working on May 23, 2013, even though she was supposed to be convalescing until June 10, 2013. She is of the view that this hasty return surely had an adverse effect on her overall healing.
- (d) She would like to know whether there are other types of benefits to which she may be entitled.

(e) She feels it would be reasonable to extend her benefit period by two weeks, given the fact that she has been working since the age of 16 and that she is entitled to benefits.

[16] The Respondent submits that:

- (a) The Act imposes a specific limit on the payment of sickness benefits. Under paragraph 12(3)(c) of the Act, that limit is fifteen weeks.
- (b) Having already received sickness benefits for the maximum period of fifteen weeks from January 20 to May 4, 2013, she can no longer receive sickness benefits during her benefit period.
- (c) Being in convalescence until May 20, 2013, she was unable to return to work and therefore could not establish her entitlement under paragraph 18(a) of the Act.
- (d) The claimant cannot establish her entitlement to sickness and regular benefits as long as she is unable to return to work.
- (e) The Commission cannot disregard the requirements of the Act, which does not provide for any discretionary decision-making in this type of situation.

ANALYSIS

[17] The Tribunal must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success pursuant to subsection 53(1) of the *Department of Human Resources and Skills Development Act*.

[18] The Tribunal forwarded a letter of intent, dated September 25, 2013, to the claimant informing her of its intention to summarily dismiss her appeal under section 22 of the *Social Security Tribunal Regulations*. It invited her to file her submissions and the Tribunal received her additional submissions on October 22, 2013.

[19] The claimant filed an initial claim for sickness benefits effective January 6, 2013.

[20] The facts indicate that the claimant received sickness benefits for fifteen weeks, namely, from January 20 to May 4, 2013. Pursuant to paragraph 12(3)(c) of the Act, the maximum number of weeks during which benefits may be paid in a benefit period because of a prescribed illness, injury or quarantine is fifteen.

[21] Although the Tribunal sympathizes with the claimant, who has paid into the employment insurance system for years and who is seeking an extension of her benefit period, the case law has clearly established that neither the Commission nor the Tribunal has the authority to exempt a claimant from the requirements of the Act. The Tribunal draws this conclusion relying on the Federal Court of Appeal, which established that the Act does not allow any discrepancy and provides no discretion with regard to the requirements and conditions under section 7 of the Act (*Canada (AG) v. Lévesque*, 2001 FCA 304).

[22] The Act clearly states the maximum number of weeks during which sickness benefits may be paid. The evidence shows that the claimant already received this maximum number.

[23] As a result of the facts established regarding the requirements of paragraph 12(3)(c) of the Act, the Tribunal concludes that this appeal has no reasonable chance of success and that it must be summarily dismissed.

CONCLUSION

[24] The appeal is summarily dismissed.

Joanne Blanchard
Member, General Division