

[TRANSLATION]

Citation: *A. R. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 203

Date: Novembre 26, 2015

File number: GE-15-1902

GENERAL DIVISION – Employment Insurance Section

Between:

A. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision rendered by: Normand Morin, Member, General Division – Employment Insurance Section

Hearing held by teleconference on November 10, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

[1] The Appellant, A. R., was present at the telephone hearing (teleconference) on November 10, 2015. She was also represented by Kim Bouchard of Mouvement Action-Chômage de Montréal (MAC). L. R., the Appellant's husband, was also present at the hearing at which he testified regarding the care that the Appellant provided to him as a result of the health problems he had experienced. Emmanuelle Brault, a law clerk with MAC, was also present at the hearing.

INTRODUCTION

[2] On December 8, 2014, the Appellant made an initial claim for benefits (regular benefits) effective December 7, 2014. The Appellant stated that she had worked for the Employer, Groupe Jean Coutu, from March 31, 2008 to October 25, 2014 and had stopped work for that employer to care for a dependent person, in this case, her husband (Exhibits GD3-2 to GD3-13).

[3] On January 15, 2015, the Respondent, the Canada Employment Insurance Commission (the "Commission"), informed the Appellant that it could not pay her employment insurance benefits as of December 8, 2014 because she had not shown that she was available for work.

[4] On January 15, 2015, the Commission informed the Appellant that it could not pay her special employment insurance benefits (sickness benefits) as of December 7, 2014 because she had not provided medical evidence in support of her claim (Exhibit GD3-22).

[5] On March 24, 2015, the Commission informed that Appellant that it could not pay her special employment insurance benefits (sickness benefits) as of January 22, 2015 because she had not shown that she would have been available for work were it not for her illness (Exhibit GD3-27).

[6] On April 21, 2015, the Appellant, represented by Kim Bouchard of Mouvement Action-Chômage de Montréal, filed a Request for Reconsideration of an Employment Insurance Decision (Exhibits GD3-28 to GD3-30).

[7] On May 21, 2015, the Commission informed the Appellant that it was upholding the decision of January 15, 2015 (Exhibit GD3-36).

[8] On June 10, 2015, the Appellant, represented by Kim Bouchard, filed a Notice of Appeal to the Employment Insurance Section of the General Division of the Social Security Tribunal of Canada (the “Tribunal”) (Exhibits GD2-1 to GD2-6).

[9] This appeal was heard by the teleconference hearing method for the following reasons:

- a) The fact that the Appellant or other parties are represented;
- b) This method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit (Exhibits GD-1 to GD-4).

ISSUE

[10] The Tribunal must determine whether the disentitlement of the Appellant to employment insurance benefits (special benefits) is justified under paragraph 18(1)(b) of the *Employment Insurance Act* (the “Act”) because she was unable to work due to an illness and would otherwise have been available for work.

THE LAW

[11] The provisions applicable to availability for work are set out in section 18 of the Act.

[12] With respect to the “disentitlement to benefits”, paragraph 18(1)(v) of the Act states:

A claimant is not entitled to be paid benefits for a working day in a benefit period for which the claimant fails to prove that on that day the claimant was . . . (b) unable to work because of a prescribed illness, injury or quarantine, and that the claimant would otherwise be available for work

[13] Subsection 20(2) of the Act states:

(2) If a claimant is disentitled from receiving benefits for a working day in a week of unemployment that is not in their waiting period, an amount equal to 1/5 of their weekly rate of benefits for each such working day shall be deducted from the benefits payable for that week.

[14] Subsection 40(1) of the *Employment Insurance Regulations* (the “Regulations”) provides as follows:

(1) The information and evidence to be provided to the Commission by a claimant in order to prove inability to work because of illness, injury or quarantine under paragraph 18(1)(b) or subsection 152.03(1) of the Act, is a medical certificate completed by a medical doctor or other medical professional attesting to the claimant’s inability to work and stating the probable duration of the illness, injury or quarantine.

EVIDENCE

[15] The evidence in the file is as follows:

- a) A record of employment dated May 29, 2014 indicates that the Appellant worked as a “laboratory technician” for the Employer, Pharmacie Rania Mouchahoir (Groupe Jean Coutu), from May 31, 2014 to October 24, 2014 inclusive and that she stopped work for that employer after leaving voluntarily (Code E – Quit) (Exhibit GD3-14).
- b) On December 3, 2014, the Appellant explained that she had requested a period of leave without pay from her employer because she was often absent from work to care for her husband. She indicated that she expected to return to her employment. The Appellant indicated that she had requested leave without pay because she regularly missed days of work. She expected that her employer would be able to take her back when she was able to work again (Exhibit GD3-15).

- c) On December 29, 2014, the Commission informed the Appellant that because of the health problems she was experiencing, it was preferable for her to request to change her claim for regular benefits to a claim for sickness benefits (special benefits). The Appellant indicated that a medical certificate dated October 22, 2014 recommended that she take sick leave for an indeterminate period (“sick leave for an indeterminate period”) (Exhibit GD3-16).
- d) A copy of a medical certificate (“Medical certificate for employment insurance sickness benefits”), completed by Dr. Bruno de Bortolli and dated October 22, 2014, states as follows: “The patient is the primary support for her husband . . . who has been assessed for multiple health problems following his nephrectomy in December 2012. He has frequent appointments which she attends with him (Exhibits GD3-17 and GD3-18).
- e) On December 31, 2014, the Commission indicated that it had verified whether the Appellant was qualified to receive “compassionate care benefits” (special benefits). The Appellant indicated that her husband was not likely to die within six months (Exhibit GD3-19).
- f) On January 15, 2015, the Appellant stated that she was sending the Commission a new medical certificate and that she wanted to change her regular benefits to sickness benefits (special benefits) (Exhibit GD3-20).
- g) On January 30, 2015, the Appellant sent the Commission a copy of a medical certificate (“Medical certificate for employment insurance benefits”) dated January 22, 2015 completed by Dr. Guillaume Galband Du Fort, a psychiatrist in the Department of Psychiatry at the Montreal General Hospital, that indicated that the Appellant was unable to work for medical reasons until March 30, 2015 (Exhibits GD3-23 and GD3-24).
- h) On May 19, 2015, the Employer reported that the Appellant was working 25 hours per week and that she was now working on call based on the Employer’s needs. The Employer indicated that the Appellant did not intend to resume her functions and that she had left the employment that she had had because of her family obligations. The

Employer provided the following clarifications: “It confirmed that the claimant has no intention of resuming her position. It confirmed that the claimant resigned because of family obligations” (Exhibit GD3-32).

[16] The following evidence was presented at the hearing:

- a) The Appellant reviewed her work history with her employer and the circumstances that may have affected her availability for work during her period of employment with that employer. She explained that she worked as a pharmacy technician beginning in March 2008. She stated that she had initially worked four days per week and then had reduced her work period to three days per week in 2013 after having surgery. She explained that, with the help of her sister, she had also cared for her mother beginning in December 2011 after the latter developed stomach cancer and until her mother’s death on October 27, 2012. She explained having made arrangements at that time with her employer concerning the help she was providing to her mother but had not taken a period of leave, specifying that she had never had problems with that. She stated that in November 2012, she learned that her husband had a cancerous tumour in his kidneys and that he had undergone surgery the next month. She indicated that she had continued to work during the period from 2012 to 2013 but did not have her “mind on work”. She explained that after she herself had surgery in March 2013, she took six weeks of leave. She indicated having also undergone another surgery about one month after the first one (April or May 2013). She explained having then developed problems sleeping and had discussed this with her physician. She stated that she remained at work with her employer and made arrangements with the Employer about work.
- b) She explained that before leaving her employment on October 25, 2014, she had discussed her sleep problems and her problem concentrating at work with her husband and then with her doctor on October 22, 2014. She explained that she was working and that she wanted to sleep all the time. She pointed out that her work required concentration and precision to be able to properly prepare clients’ prescriptions because a mistake could have serious consequences for them (Exhibits GD3-33 and GD3-34).

- c) L. R., the Appellant's husband, explained that the social worker he had met at the hospital had suggested that an employment insurance benefit claim be made because his wife (the Appellant) might qualify for benefits (Exhibit GD3-5).
- d) He stated that he was ill but independent and did not need the Appellant to care for him 24 hours per day.
- e) He indicated that his medical appointments lasted about one hour or an hour and a half each time, sometimes longer when it was a case of meeting with a physician.
- f) He indicated that his sister, who is retired, had also accompanied him to his medical appointments when his wife was unable to do so.

PARTIES' ARGUMENTS

[17] The Appellant and her representative, Kim Bouchard, presented the following submissions and arguments:

- a) The Appellant explained that her husband had had surgery and had numerous medical appointments. She indicated that she regularly had to be absent from work to accompany him to his medical appointments. She explained that she discussed this situation with her employer and had decided to leave her employment. She also indicated that she had spoken with her doctor about her problems sleeping and had obtained a medical certificate (Exhibits GD3-3 to GD3-13, GD3-33 and GD3-34). The Appellant provided the following explanations: "My husband . . . had a kidney removed that was cancerous; he has appointments for examinations, appointments with doctors; I often had to be absent from work because I went with my husband to these appointments; I spoke to my employer and decided to resign; I also discussed my situation with my family doctor and told him that I was having trouble sleeping and that that was why I resigned; he completed a form that I was given by my husband's social worker (medical certificate)" (Exhibit GD3-5).

- b) She stated that she left her work because she was in “burn-out” and had made a claim for regular benefits in December 2014 because she did not know that she could make such a claim (Exhibits GD3-3 to GD3-13).
- a) She stated that she had preferred to leave her employment rather than to take a period of leave without pay as her employer had asked her to do because she did not know when she would be able to return to work. She explained that she is still having problems sleeping (Exhibit GD3-15).
- b) She explained that after she made her claim for regular benefits, a Commission officer told her to make a claim for sickness benefits (special benefits) and to provide a medical certificate to that effect (Exhibit GD3-18). She indicated that she then went to the Service Canada office and that the officer with whom she met told her that she had to submit a medical certificate about her state of health and so she obtained a new medical certificate from her doctor in January 2015 (Exhibit GD3-23 and GD3-24). She pointed out that each time she had requested information about the type of claim for benefits she should make, she had been told to make a claim for “compassionate care benefits” but that she answered that her situation did not correspond to that type of claim (Exhibits GD3-33 and GD3-34).
- c) She explained that even though her husband was at home following his surgery, he was able to care for himself (e.g., feed himself) and that she went with him to his medical appointments (e.g., medical examinations in the hospital). She explained that he did not have appointments every day. She indicated that she still took care of her husband and accompanied him to his medical appointments (Exhibits GD3-5 and GD3-26).

- d) She explained that she worked three or four days per week, from 8:30 a.m. to 5:00 p.m. and that she had not made arrangements to care for her husband prior to resigning. She stated that she had not asked for help from members of her family, tried to rearrange her work schedule or asked for leave or vacation time until other permanent arrangements could be made (GD3-5 and GD3-6).
- e) She stated that if she was not sick, she could have worked and made arrangements to care for her husband. She gave the following explanation: “. . . if it were not for her own illness, she would have been prepared, willing and able to return to work and make arrangements for care for her husband” (Exhibit GD3-25).
- f) She indicated that she expected to return to her employment once she was able to work again (Exhibit GD3-15).
- g) She stated that she had explained to a Commission officer, after filing her request for reconsideration, that she had stopped work for medical reasons but that she had worked for her employer on one or two occasions and from time to time to help out in February, March and April 2015. She pointed out that she had reported to the Commission the days on which she had worked. She stated that she was not, however, able to return to her work under her previous working conditions, namely, 25 hours per week, because of her health. She has also expressed the opinion that the reconsideration decision had already been made when she talked with a Commission officer on May 20, 2015 to provide her with additional information about her case (Exhibits GD3-33 and GD3-34).
- h) She stated that she had since resumed working on an occasional basis in September 2015 and then at a rate of two days per week in October 2015, and that she had begun working three days per week for this employer in the second week of November 2015 (Exhibits GD3-33 and GD3-34).

- i) The Appellant's representative explained that the Appellant had first obtained a medical certificate on October 22, 2014 indicating that she had to care for her husband because of his health problems (Exhibit GD3-18).
- j) She stated that a Commission officer then explained that there was a problem with the Appellant's entitlement to regular benefits because of her state of health and her availability for work; the officer asked her to submit a special benefits claim (sickness or "compassionate care" benefits) (Exhibit GD3-16).
- k) The representative pointed out that, based on the advice from a Commission officer, the Appellant submitted a medical certificate in order to receive sickness benefits (special benefits) because this was not a case where the Appellant could qualify to receive "compassionate care benefits" (Exhibits GD3-22 à GD3-24).
- l) She explained that a second medical certificate dated January 22, 2015 certified that the Appellant was unable to work from January 22, 2015 to March 30, 2015 (Exhibits GD3-23 and GD3-24) but the Commission had determined in a new decision dated March 24, 2015 that the Appellant was not available for work because she was caring for her husband (Exhibit GD3-27).
- m) The representative pointed out that, at no time, had the Commission asked the Appellant for clarifications on the type of care provided to her husband and on her availability for work. She argued that the Commission had concluded that the Appellant was unavailable for work because she was caring for her husband.
- n) She indicated that the Appellant had then filed a request for reconsideration of the decision dated March 24, 2015. She expressed the opinion that the reconsideration decision had been issued by a Commission officer even before that officer had heard her or had heard the Appellant and by asking the latter questions in a roundabout way (Exhibits GD3-30 to GD3-34).

- o) The representative argued that the Appellant had maintained contact with her employer, had always intended to stop working on a temporary basis and had always maintained that she would return to work for the said employer when she was able to do so. She argued that there was no termination of the Appellant's employment relationship with her employer because she was still available for that employer when it needed her on a sporadic basis. She pointed out that the Appellant had good relations with her employer, had only taken a period of leave and had returned to work for that employer. She argued that, for its part, the Commission had concluded that the Appellant would not return to work for her employer (Exhibits GD3-32 to GD3-34).
- p) She argued that the Appellant had always been able to work while caring for her husband, that she was in "burn out" and that, were it not for her illness, she would have been available for work. The representative claimed that the Appellant stopped work for medical reasons (lack of sleep and problems concentrating) and not to care for her husband. She argued that this situation should not have prevented the Appellant from receiving sickness benefits (special benefits). She pointed out that not all claimants are aware of the existence of sickness benefits (special benefits) (Exhibits GD3-32 and GD3-35).
- q) The representative provided the dates on which the Appellant had accompanied her husband to medical appointments during the period from December 2014 to March 2015 inclusive. Those dates are as follows: December 3, 9, 16 and 23, 2014, January 20 and 22, 2015, February 3, 17 and 18, 2015 and March 5, 9, 17, 18, 19, 23, 24 and 26, 2015 (Exhibit GD3-35).
- r) She argued that the Appellant would have been available for work were it not for her illness, except on the days mentioned when she accompanied her husband to his medical appointments because she was not available on those days for the entire day. She explained that the Appellant should be disentitled to benefits only on the days that she had indicated that she was not available for work (Exhibit GD3-35).

- s) She argued that the Appellant's husband did not need her 24 hours per day, that he was totally independent and that he did not require special care.
- t) She stated that the Appellant had claimed sickness benefits because she was burned out and at the end of her rope, that her health problems were known at the time that she had made her claim for benefits and that they were not personal obstacles that could have limited her availability (Exhibit GD3-32). She indicated that the Appellant had given the following explanation in her claim for benefits: "I also discussed my situation with my family doctor and told him that I was having trouble sleeping and that that was why I resigned . . ." (Exhibit GD3-5). She argued that it was the Appellant's ability to work that was at issue and not the personal obstacles that might have limited with her availability for work, factors that were not taken into consideration by the Commission at the time of the reconsideration (Exhibit GD3-35).
- u) The Appellant's representative provided the following explanations: ". . . Ms. Bouchard explained and insisted on the fact that the claimant was unable to work because she was ill and that her illness was due to a lack of sleep and to depression. She stated that the time that she gave to caring for her husband was not that significant and that his sister would have been able to drive to some appointments. She indicated that she has a medical note and that otherwise she would have been available. Indicated that the claimant had always cared for her husband even while working. Explained to the representative the answers that the claimant had just provided to me in this case (see the supplementary record of the case "SRC"). Explained that the claimant answered that she could not accept work for the regular hours that she has been working before and that this had been the case since the start of her claim (even though in March she reported that she could). In addition, that the claimant said that she could not work at present because of a lack of sleep. Ms. Bouchard is convinced that it is the lack of sleep and concentration that made her [the Appellant] unable to work and that it was not because of her husband that she had to leave her position and that this situation should not prevent her from receiving sickness benefits. She asked if I had asked her [the Appellant] how much time she spent per week caring for her husband. She stated that it was only a few hours here and there" (Exhibit GD3-35).

- v) She argued that, under section 18 of the Act, a person's availability for work is based on "a working day in a benefit period" and that if a claimant is disentitled "from receiving benefits for a working day . . . an amount equal to 1/5 of their weekly rate of benefits for each such working day shall be deducted from the benefits payable for that week", as stipulated in section 20 of the Act.
- w) She argued that the Appellant met the three criteria to show her availability for work (***Faucher, A-56-96; Bois, A-31-00 – 2001 FCA 175***).
- x) The representative argued that the decision in the Appellant's case was unfounded in fact and in law (Exhibits GD2-1 to GD2-6 and GD3-28 to GD3-30).

[18] The Commission presented the following submissions and arguments:

- a) It explained that to be entitled to employment insurance sickness benefits (special benefits), a claimant must show that they are unable to work and that they would have been available for work were it not for their illness. It pointed out that sickness benefits are intended for persons who are prevented from working solely because of their incapacity (Exhibit GD4-4).
- b) It argued that, in this case, the Appellant did not show that she would have been available for work were it not for her illness (Exhibit GD4-4).
- c) It stated that the Appellant had initially indicated that she left her employment on October 24, 2014 to care for her sick husband and that she had provided a medical note indicating that she had to accompany him to his treatments and medical appointments. The Commission concluded that the Appellant's voluntary leaving was justified because she had just cause. However, it determined that the Appellant was considered disentitled to benefits because of her non-availability from the start of her claim for benefits (Exhibit GD4-4).

- d) It explained that on January 22, 2015, the Appellant provided a medical note indicating that she was unable to work until March 30, 2015 because of illness. The Commission stated that the Appellant had added that, were it not for her illness, she would be available and capable of returning to work and making arrangements for her husband. The Commission pointed out that, although the Appellant was in a period of illness, she was still the person who cared for her husband, drove him to the hospital and to the doctor's office (Exhibit GD4-4).
- e) The Commission argued that the Employer had confirmed that the Appellant was working occasionally but that she would not return to her employment. The Commission stated that the Appellant had indicated from the start of her claim for benefits until telephone contact was made with her on May 20, 2015 that she would not agree to work her normal hours (Exhibit GD4-4).
- f) The Commission stated that, while it was very sympathetic to the Appellant's case, it was required to resolve all claims for sickness benefits by verifying whether the illness was the only reason preventing the person from being able to work. The Commission explained that if it is shown that there are reasons other than illness making the person unavailable for work, then the Commission unfortunately has no choice but to disentitle the person from receiving sickness benefits (special benefits) (Exhibit GD4-4).
- g) It argued that, having regard for all of the information collected, the Appellant had failed to show that she would have worked or would have been available for work. It stated that if the Appellant was not sick herself, she was still on "leave" from her employment to care for her husband and she would not return to work (Exhibit GD4-4).

h) It indicated that there was a clerical error in the notice of decision sent to the Appellant on January 15, 2015 because it stated in the document that the disentitlement commenced on December 7, 2014 rather than on December 8, 2014. The Commission pointed out that this error was not prejudicial to the Appellant (Exhibits GD2-2 and GD3-22).

ANALYSIS

[19] The Federal Court of Appeal (the “Court”) confirmed the principle that sickness benefits are only payable to a claimant when the claimant’s own illness makes them unable to work during a period when they were available for work (*Canada (AG) v. X, A-479- 94*).

[20] In *Faucher (A-56-96)*, the Court established that the following three factors should be considered to determine whether a claimant proved that they were available for work:

There being no precise definition in the Act, this Court has held on many occasions that availability must be determined by analyzing three factors "the desire to return to the labour market as soon as a suitable job is offered, the expression of that desire through efforts to find a suitable job, and not setting personal conditions that might unduly limit the chances of returning to the labour market" and that the three factors must be considered in reaching a conclusion.

[21] In this case, the Tribunal considers that as of January 22, 2015, the date on which the Appellant became unable to work for medical reasons, the Appellant would have been available for work were it not for her illness.

[22] The Tribunal considers that only the factor related to availability for work were it not for illness is at issue here and that the issue of the Appellant’s entitlement to employment insurance benefits (special benefits) is not at issue in this case.

[23] The evidence in the file first indicates that the Appellant voluntarily left her employment on October 24, 2014 and that the Commission determined that her voluntary leaving was justified for the purpose of the Act (Exhibit GD4-4).

[24] The Appellant provided medical evidence dated October 22, 2014 that she was required to care for her husband and that she had to accompany him to his medical appointments (Exhibits GD3-17 and GD3-18). The Commission, however, determined that the Appellant was disentitled to employment insurance benefits because of her non-availability for work from the start of her claim for benefits, namely, December 7, 2014, the date on which that claim was established (Exhibits GD3-3 to GD3-13).

[25] In its arguments, the Commission also explained that the Appellant had not [translation] “provided a medical certificate showing her inability to work” (Exhibit GD4-2).

[26] The Appellant then submitted new evidence showing that she had been unable to work for medical reasons from January 22, 2015 to March 30, 2015 (Exhibits GD3-23 and GD3-24).

[27] The Commission indicated in its arguments that the Appellant had provided a medical certificate on January 30, 2015 in which the doctor had certified that the Appellant was unable to work until March 30, 2015 (Exhibits GD3-23, GD3-24 and GD4-2).

[28] The Commission explained that it had upheld the decision whereby the Appellant was not entitled to benefits because she [translation] “did not meet the second factor for obtaining this type of benefits” (Exhibits GD3-36 and GD4-3).

[29] In the decision that was initially made in this regard, dated March 24, 2015, the Commission had told the Appellant that it could not pay her special employment insurance benefits (sickness benefits) as of January 22, 2015 because she had not shown that she would have been available for work were it not for her illness (Exhibit GD3-27).

[30] At the hearing, the Appellant specified that she had stopped work for medical reasons and not to care for her husband following his surgery in December 2012.

[31] The Appellant explained that she did not have to care for her husband on a daily basis, but that she had accompanied him to medical appointments on specific days during the period from December 2014 to March 2015, specifically, on the following days: December 3, 9, 16 and 23, 2014, January 20 and 22, 2015, February 3, 17 and 18, 2015 and March 5, 9, 17, 18, 19, 23, 24 and 26, 2015.

[32] The Appellant's testimony also showed that, following her husband's surgery and subsequent period of convalescence afterwards, the Appellant was able to continue working for her employer. She explained that her state of health then gradually deteriorated (e.g., problems sleeping) and that she had mentioned this when she made her claim for benefits in December 2014.

[33] The Appellant did not leave her work until December 2014, more than two years after her husband's surgery. The Tribunal considers that this situation supports the fact that the Appellant was able to work while caring for her husband by accompanying him to his medical appointments.

[34] During the hearing, the Appellant's husband explained that, even though he had been ill, he remained independent and his state of health did not require the Appellant to care for him 24 hours per day. Following his surgery in December 2012, he explained that his wife had accompanied him to his medical appointments and that when she was unable to do so, his sister went with him.

[35] The Tribunal is of the opinion that as of January 22, 2015, the date on which her inability to work for medical reasons was established, the Appellant showed that she would have been available for work if she were not ill, except on the days on which she accompanied her husband to his medical appointments.

[36] Other than those days, the Tribunal considers that, had the Appellant not been sick, she would have been able to show her “desire to return to the labour market” as soon as a suitable job was offered to her, and to show or express that desire “through efforts to find a suitable job” (*Faucher, A-56-96*).

[37] In addition to the fact that the Appellant did not have to provide care to her husband on a daily basis, she explained that she expected to return to work for her employer as soon as her health enabled her to do so.

[38] She also stated at the hearing that even though she was unable to return to work under the previous working conditions, namely, 25 hours per week, because of her state of health, she had worked for her employer sporadically based on the Employer’s needs, notably in February, March and April 2015.

[39] She indicated that she has since returned to work on an occasional basis in September 2015, then two days per week in October 2015, and finally three days per week for the Employer as of the second week of November 2015.

[40] With the exception of the days on which she accompanied her husband to his medical appointments, the Tribunal considers that the Appellant did not set “personal conditions” that unduly limited her chances of returning to the labour market (*Faucher, A-56-96*).

[41] Accordingly, the Commission’s decision to disentitle the Appellant from receiving benefits is not justified in the circumstances because the Appellant showed that, were it not for her illness, she would have been available for work as of January 22, 2015, under paragraph 18(1)(b) of the Act, except on the days on which she accompanied her husband to his medical appointments (*Faucher, A-56-96; Canada (AG) v. X, A-479-94*).

[42] The appeal on the issue has merit in part.

CONCLUSION

[43] The appeal is allowed in part.

Normand Morin
Member, General Division – Employment Insurance Section