



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. L. v. Canada Employment Insurance Commission*, 2015 SSTGDEI 226

Date: December 23, 2015

File number: GE-15-2554

GENERAL DIVISION - Employment Insurance Section

Between:

L. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

Decision by: John Noonan, Member, General Division – Employment Insurance Section

Heard by Teleconference on November 16, 2015

REASONS AND DECISION

PERSONS IN ATTENDANCE

L. L., Appellant

INTRODUCTION

[1] A claim for employment insurance benefits was established by the Appellant effective October 27, 2013. The Canada Employment Insurance Commission (Commission) denied this claim for benefits finding that the Appellant was unavailable for work while caring for her parents. (GD3-17) The Appellant requested and received a reconsideration of this decision on June 5, 2015 (GD3-19-22). The Commission, as stated in its letter dated July 6, 2015, maintained its original decision. (GD3-31) The Appellant then appealed to the SST.

[2] The hearing was held by Teleconference for the following reasons:

- a) The complexity of the issue(s) under appeal.
- b) The fact that the credibility is not anticipated to be a prevailing issue.
- c) The fact that the appellant will be the only party in attendance.
- d) The information in the file, including the need for additional information.
- e) The form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.
- f) Will be held jointly with GE15-2555

ISSUE

[3] Whether the Appellant failed to prove her availability for work pursuant to subsection 18(a) of the Employment Insurance Act (EI Act).

THE LAW

[4] According to subsection 18(a) of the EI Act “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 capable of and available for work and unable to obtain suitable employment”

[5] 9.001 For the purposes of subsection 50(8) of the Act, the criteria for determining whether the efforts that the claimant is making to obtain suitable employment constitute reasonable and customary efforts are the following:

- a) the claimant’s efforts are sustained;
- b) the claimant’s efforts consist of
 - (i) assessing employment opportunities,
 - (ii) preparing a resumé or cover letter,
 - (iii) registering for job search tools or with electronic job banks or employment agencies,
 - (iv) attending job search workshops or job fairs,
 - (v) networking,
 - (vi) contacting prospective employers,
 - (vii) submitting job applications,
 - (viii) attending interviews, and
 - (ix) undergoing evaluations of competencies; and
- c) the claimant’s efforts are directed toward obtaining suitable employment.

EVIDENCE

[6] The Appellant was employed until October 24, 2013.

[7] The Appellant stated that the situation with her parents is “ongoing and progressive”. After exploring all options regarding their care, it was determined that the Appellant’s parents needed extra support during the day from a family member. This left little choice for the Appellant but to take a leave of absence (GD3-27-30).

[8] According to the evidence in the docket, the Appellant took a leave of absence to care for her elderly parents when her father, the primary caregiver for her mother was diagnosed with Alzheimer’s Disease in July 2013.

[9] Terms of this leave are outlined at GD2-21-22.

[10] Positions are not held after one month if there is a leave of absence with this employer, TD Bank.

[11] An indefinite disentitlement was imposed by the Commission as of October 27, 2013 pursuant to Subsection 18(a) of the Act having determined that the claimant had not proven that she was available for work as her family responsibilities prevented her from accepting employment. (GD3-17-18)

[12] Appellant made a request for reconsideration wherein she argued that that during her period of leave, the Appellant considered herself an employee of TD Bank where she had been employed for the last 10 years. Under TD Bank policy, the Appellant was unable to earn income from other sources during her period of leave. Consequently, the Appellant applied to many internal positions while on leave and was subsequently terminated on 19 December 2014 (GD3- 19 -26).

[13] The situation with her parents had begun to stabilize 4 or 5 weeks into her leave.

[14] The Appellant was not in receipt of EI benefits nor had she applied for such therefore no direction was given as to requirements of job search / availability. Hearing

[15] The Appellant was barred from accepting employment outside TD while on leave.

[16] The Appellant continued to pay for her benefits as well as her CCP and EI premiums while on leave.

[17] The Appellant began seeking employment on December 13, 2013.

SUBMISSIONS

[18] The Appellant submitted that she should be eligible for benefits because:

- a) She had no choice but to apply for and take a leave to care for her parents when she did but when the situation stabilized, she immediately sought work.
- b) She sought employment as of December 13, 2013.
- c) She did apply for work during the period in question internally with TD when this was the only option and in the wider area when allowed under the terms of her leave.

[19] The Respondent submitted that the Appellant is not eligible to receive benefits during the period of disentitlement because:

- a) The Appellant has not supported her claim of her availability for work because she has not shown evidence of an active and comprehensive job search.
- b) The Appellant's obligation to care for her parents unreasonably restricted her availability.
- c) The Commission asserts that the need to care for her parents proves the non- availability.

ANALYSIS

[20] In order to be found available for work, a claimant shall: 1. Have a desire to return to the labour market as soon as suitable employment is offered, 2. Express that desire through efforts to find a suitable employment and 3. Not set personal conditions that might unduly

limit their chances of returning to the labour market. All three factors shall be considered in making a decision. (Faucher A-56-96 & Faucher A-57-96)

[21] In this case the Appellant was given a leave of absence to care for her ailing parents.

[22] The Appellant indicated that she was initially seeking leave for one month but this stretched to 12 months.

[23] The Appellant has shown that, although it took three weeks longer than originally expected, she was able to make suitable arrangements for her parents care as she would no longer be required to travel with the bank. That job was no longer available to her after one month of the leave was used.

[24] Her job search began December 13, 2013 when she began submitting applications for positions.

[25] At the reconsideration level, the Appellant stated that she made many contacts with former co-workers as well as formal applications for positions within the TD Bank which constitute reasonable and customary efforts to obtain employment as outlined in Subsection 50(8) of the Act.

[26] I find that the Appellant continued to be an employee of TD while on leave based on GD2-21-22.

[27] The Commission allowed the antedate of her claim (GE15-2555).

[28] The Commission determined, at the reconsideration level, that the Appellant had just cause for leaving her employment.(GD3-31).

[29] The Appellant could not be expected to know and thereby adhere to the rules governing availability when, on October 27, 2013, the date her claim has been antedated to, she had not applied for benefits.

[30] The Appellant, while living up to her contract with TD Bank regarding her leave of absence, applied for any and all jobs within the organization in addition to seeking out other possible positions through her extensive network of co-workers.

[31] Upon her employment with TD being terminated on December 19, 2014, she immediately expanded her job search to include employers other than TD Bank.

[32] I find that the Appellant, in this case, has shown a sincere desire and willingness to work as soon as possible evidenced by her continued efforts to seek out and apply for such. Although she was not successful in her search, that does not infer that a search was not carried out. The personal conditions set out as impediments to her availability ceased to be factors when she achieved suitable care arrangements for her parents and began applying for jobs on December 13, 2013.

CONCLUSION

[33] The Member finds that, having given due consideration to all of the circumstances, the Appellant had done what a reasonable person would be expected to do given the circumstances therefore I find that she was available for work as of December 13, 2013 and entitled to benefits as that date as per section 18 of the Act.

John Noonan
Member, General Division - Employment Insurance Section