Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *P. L. v. Canada Employment Insurance Commission,* 2016 SSTGDEI 63

Tribunal File Number: GE-15-3969/GE-15-3971

BETWEEN:

P. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Charline Bourque

HEARD ON: April 5, 2016

DATE OF DECISION: May 6, 2016

Canada

REASONS AND DECISION

PERSONS IN ATTENDANCE

Mrs. P. L., claimant, attended the teleconference.

INTRODUCTION

[1] The Appellant established a claim for Employment Insurance ("EI") benefits beginning on July 20, 2014. On August 18, 2015, the *Canada Employment Insurance Commission* (the "Commission") notified the claimant that it was unable to pay EI benefits from July 21, 2014 to September 2, 2014 since the claimant was on vacation and therefore unavailable for work. Furthermore, the Commission was unable to pay EI benefits from July 21, 2014 to September 2, 2014 because the claimant stopped working by voluntarily taking leave from her job with Solutions Andala ("Andala") on July 2, 2014, without just cause (GE-15-3969/GD3-22). On November 17, 2015, the Commission advised the claimant that following her request for reconsideration, the decision regarding her availability for work was maintained. Furthermore, the Commission advised the claimant that the decision regarding the period of leave without just cause was also maintained (GE-15-3969/GD3-29).

[2] The Appellant also established a claim for EI benefits beginning on July 19, 2015. On August 18, 2015, the Commission notified the claimant that it was unable to pay her EI benefits from July 24, 2015 to September 7, 2015 since the claimant was on vacation and therefore unavailable for work. Furthermore, the Commission was unable to pay her EI benefits from July 24, 2015 to September 7, 2015 because the claimant stopped working by voluntarily taking leave from her job with Solutions Andala on July 24, 2014, without just cause (GE-15-3971/GD3-22). On November 17, 2015, the Commission advised the claimant that following her request for reconsideration, the decision regarding her availability for work modified. The start date of the disentitlement has been changed to July 25, 2015 which is the start date of the leave without pay, instead of July 24, 2015. Furthermore, the Commission advised the claimant that the decision regarding the period of leave without just cause was modified. The start date of the disentitlement has been changed to July 25, 2015, which is the start date of the leave without pay, instead of July 24, 2015 (GE-15-3971/GD3-26).

[3] On December 2nd, 2015, the Claimant appealed the decisions before the *Canada Social Security Tribunal* (the "Tribunal").

[4] On March 30, 2016, the Tribunal joined the appeals since they raised common questions of law or fact regarding the availability for work and regarding periods of leave without just cause. The Tribunal also believed that joining the appeals will cause no injustice to the parties.

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

a) The complexity of the issues under appeal.

b) The information in the file, including the need for additional information.

ISSUES

[6] The claimant is appealing a disentitlement imposed pursuant to section 32 of the *Employment Insurance Act* (the "Act") for having voluntarily taken a leave of absence without just cause from her employment for the EI claims that was established on July 20, 2014 and July 19, 2015.

[7] The claimant is also appealing a disentitlement imposed pursuant to sections 18 and 50 of the Act and section 9.001 of the *Employment Insurance Regulations* (the "Regulations") because she failed to prove her availability for work for the EI claims that was established on July 20, 2014 and July 19, 2015.

THE LAW

Availability

[8] Section 18 of the *Employment Insurance Act* (the "Act") states :

(1) 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

(a) capable of and available for work and unable to obtain suitable employment;

(b) unable to work because of a prescribed illness, injury or quarantine, and that the claimant would otherwise be available for work; or

(c) engaged in jury service.

(2) A claimant to whom benefits are payable under any of sections 23 to 23.2 is not disentitled under paragraph (1)(b) for failing to prove that he or she would have been available for work were it not for the illness, injury or quarantine.

[9] Subsection 50(8) of the Act:

For the purpose of proving that a claimant is available for work and unable to obtain suitable employment, the Commission may require the claimant to prove that the claimant is making reasonable and customary efforts to obtain suitable employment.

[10] Section 9.001 of the *Employment Insurance Regulations* (the "Regulations") indicates:

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) dergoing evaluations of competencies; and

(c) the claimant's efforts are directed toward obtaining suitable employment.

[11] Section 9.002 of the Regulations states :

For the purposes of paragraphs 18(1)(a) and 27(1)(a) to (c) and subsection 50(8) of the Act, the criteria for determining what constitutes suitable employment are the following:

(a) the claimant's health and physical capabilities allow them to commute to the place of work and to perform the work;

(b) the hours of work are not incompatible with the claimant's family obligations or religious beliefs;

(c) the nature of the work is not contrary to the claimant's moral convictions or religious beliefs;

(d) the daily commuting time to or from the place of work is not greater than one hour or, if it is greater than one hour, it does not exceed the claimant's daily commuting time to or from their place of work during the qualifying period or is not uncommon given the place where the claimant resides, and commuting time is assessed by reference to the modes of commute commonly used in the place where the claimant resides;

(e) the employment is of a type referred to in section 9.003; and

(f) the offered earnings correspond to the scale set out in section 9.004 and the claimant, by accepting the employment, will not be put in a less favourable financial situation than the less favourable of

(i) the financial situation that the claimant is in while receiving benefits, and

(ii) that which the claimant was in during their qualifying period.

[12] Section 9.003 of the Regulations indicates :

(1) A type of employment is

(a) in respect of a claimant who was paid less than 36 weeks of regular benefits in the 260 weeks before the beginning of their benefit period and who, according to their income tax returns for which notices of assessment have been sent by the Canada Revenue Agency, paid at least 30% of the maximum annual employee's premium in 7 of the 10 years
before the beginning of their benefit period or, if their income tax return for the year before the beginning of their benefit period has not yet been filed or a notice of assessment for that year has not yet been sent by that Agency, in 7 of the 10 years before that year,

(i) during the first 18 weeks of the benefit period, the same occupation, and

(ii) after the 18th week of the benefit period, a similar occupation;

(b) in respect of a claimant who was paid more than 60 weeks of regular benefits in at least three benefit periods in the 260 weeks before the beginning of their benefit period,

(i) during the first six weeks of the benefit period, a similar occupation, and

(ii) after the sixth week of the benefit period, any occupation in which the claimant is qualified to work; and

(c) in respect of a claimant to whom neither paragraph (a) nor (b) applies,

(i) during the first six weeks of the benefit period, the same occupation,

(ii) after the sixth week and until the 18th week of the benefit period, a similar occupation, and

(iii) after the 18th week of the benefit period, any occupation in which the claimant is qualified to work.

(2) For the purposes of this section,

(a) “same occupation” means any occupation in which the claimant worked during their qualifying period;

(b) “similar occupation” means any occupation in which the claimant is qualified to work and which entails duties that are comparable to the ones that the claimant had during their qualifying period; and

(c) “occupation in which the claimant is qualified to work” includes an occupation in which the claimant could become qualified to work through on-the-job training.

(3) In the counting of weeks referred to in subsection (1) and section 9.004, account shall be taken only of the waiting period, of any week in respect of which regular benefits are paid to the claimant and of any week of disqualification referred to in subsection 28(1) of the Act.

[13] Section 9.004 of the Regulations indicates :

Offered earnings — evaluated by reference to earnings from the employment in which the claimant worked for the greatest number of hours during their qualifying period — are

(a) in respect of a claimant to whom paragraph 9.003(1)(a) applies,

(i) during the first 18 weeks of the benefit period, earnings equal to 90% or more of the reference earnings, and

(ii)after the 18th week of the benefit period, earnings equal to 80% or more of the reference earnings;

(b) in respect of a claimant to whom paragraph 9.003(1)(b) applies,

(i) during the first six weeks of the benefit period, earnings equal to 80% or more of the reference earnings, and

(ii)after the sixth week of the benefit period, earnings equal to 70% or more of the reference earnings; and

(c) in respect of a claimant to whom paragraph 9.003(1)(c) applies,

(i) during the first six weeks of the benefit period, earnings equal to 90% or more of the reference earnings,

(ii)after the sixth week and until the 18th week of the benefit period, earnings equal to 80% or more of the reference earnings, and

(iii) after the 18th week of the benefit period, earnings equal to 70% or more of the reference earnings.

Period of leave

[14] Subsection 29 (c) of the Act states : For the purposes of sections 30 to 33,

(c) just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances, including any of the following:

(i) sexual or other harassment,

(ii) obligation to accompany a spouse or common-law partner or dependent child to another residence,

(iii) discrimination on a prohibited ground of discrimination within the meaning of the Canadian Human Rights Act;

(iv) working conditions that constitute a danger to health or safety,

(v) obligation to care for a child or a member of the immediate family,

(vi) reasonable assurance of another employment in the immediate future,

(vii) significant modification of terms and conditions respecting wages or salary,

(viii) excessive overtime work or refusal to pay for overtime work,

(ix) gnificant changes in work duties,

(x) antagonism with a supervisor if the claimant is not primarily responsible for the antagonism,

(xi) practices of an employer that are contrary to law,

(xii) discrimination with regard to employment because of membership in an association, organization or union of workers,

(xiii) undue pressure by an employer on the claimant to leave their employment, and

(xiv) any other reasonable circumstances that are prescribed.

[15] Subsection 30 (1) of the Act states:

A claimant is disqualified from receiving any benefits if the claimant lost any employment because of their misconduct or voluntarily left any employment without just cause, unless

(a) the claimant has, since losing or leaving the employment, been employed in insurable employment for the number of hours required by section 7 or 7.1 to qualify to receive benefits; or

(b) the claimant is disentitled under sections 31 to 33 in relation to the employment.

[16] Subsections 32 (1) and 32 (2) of the Act state:

A claimant who voluntarily takes a period of leave from their employment without just cause is not entitled to receive benefits if, before or after the beginning of the period of leave,

(a) the period of leave was authorized by the employer; and

(b) the claimant and the employer agreed as to the day on which the claimant would resume employment.

(2) The disentitlement lasts until the claimant

(a) resumes the employment;

(b) loses or voluntarily leaves the employment; or

(c) after the beginning of the period of leave, accumulates with another employer the number of hours of insurable employment required by section 7 or 7.1 to qualify to receive benefits.

EVIDENCE

Unless differently specified, the file GE-15-3969 has been used as reference.

[17] The evidence on files indicates :

a) On August 10, 2015, the employer Solutions Andala indicates that the claimant was granted a leave of absence without pay and will be back after Labor Day. The situation is the same as the previous years (GD3-18).

b) On August 11, 2015, the claimant indicates that she works 18 hours per week for Solutions Andala during the year along with her job at the school which is between 20 and 25 hours per week. After school finishes, she takes her vacations from Solutions Andala and she remains only on call for emergencies. She asks her employer not to work during the summer because she needs to rest since it is very tiring to do both jobs during the year. She is not looking for work this year because the other years before when she would give her name to employers they would tell her she was wasting their time because she was going back to the school to work in September and to Solutions Andala. She was told by the girl that works in X at the Service Canada Office to furnish an ROE with reason K so that is what she asked her employer to do. She wrote on the claim for benefits that she had a lack of work because last year it is the girl at the Service Canada office that told her to do that. It's not her fault if she was misinformed. She should not be penalized for that. Her boss doesn't have a lack of work in the summer. She could continue doing the 18 hours per week. He has to hire students during

the summer. If she were to tell her boss that she wants to work, he would still give her the 18 hours per week. She doesn't do more than 18 hours per week (GD3-19).

c) On August 12, 2015, the employer Solutions Andala indicates the claimant asked for a leave of absence from July 2, 2014 to September 2, 2014 and for July 25th, 2015 to

d) September 7, 2015. He does not ask for what reason but knows that she is burned out because of her 2 jobs. She needs to rest. She works 3.75 hours per day x 5 days per week = 18.75 hours per week usually. When she takes a leave of absence it gives more work to his student employees (GD3-21).

[18] The evidence provided by the testimony of the claimant at the hearing indicates :

a) She was not aware that she was not allowed to apply for EI benefits because she was taking the summer off her second employment.

b) She has 2 employers. One is in a school so every summer she doesn't have any work so automatically she is allowed for EI.

c) 3 summers ago, she went to the EI to fill to form and have help since she found it confusing to have 2 employments. She indicates that she specify to the agent that she was taking the time off for her second employment. She was informed to fill it out a certain way and ask for an ROE for her second employer. She went back to know what the employer would have to write on the ROE and was informed that he should put "k - at the request of the employee".

d) She's been doing this for like 3 years but all of a sudden she is contacted by the Commission asking why she requested EI benefits if she is on leave. She told the agent that she was not getting it from her employer from which she is on leave but rather from the school.

e) Next thing she knows she gets the bill without understanding why. Then, she was contacted by the Commission and the agent explained to her that because she requested time off from Andala, she is not eligible for EI benefits from the school either. She indicates that nobody ever mentioned that although she went to the office. She would

never have applied for the EI if she had known about it. She didn't she was doing anything wrong and is not to please since the information they gave her was not the proper one.

f) She takes leave for the last 3 summer, at her request. She has 3 weeks vacations which she declared on her reports and is not available during those 3 weeks. Otherwise, she is still available to go in if her employer (Andala) calls her in. So the agent told her to fill out that she was available since she could go in if she was called.

g) Normally her vacations period are around the 3 weeks period beginning of July.

h) She could continue working for her employer (Andala) during the summer. She indicates that the first year she was looking for another employment. The second year she was considered as on a burnout although she didn't go get the paper from a doctor. Because if she was to go get the paper from the doctor, the EI would have to pay her so she just though she would keep it as it is. So she looked less because she was hoping to find a job that less physical. Since she was depressed.

i) She did not consult a doctor and didn't try to get a certificate for that period.

j) She returns to work after Labor Day.

k) She disagree about the decision because she was misinformed and mislead by the Commission especially since she goes in office in order to be sure everything is correct since she finds it confusing with two employers.

l) She was working about 18 hours a week for Solutions Andala. She was not called back by her employer last summer but she was called once or twice during the summer before but she thought she wasn't asking for EI benefits from Solutions Andala. So she knew she was not able to get EI from Solutions Andala since she asked for the leave but thought she was getting it from the school.

SUBMISSIONS

[19] The Appellant submitted that :

a) The claimant doesn't believe that she should be held accountable for mistakes made by their representatives.

b) She indicates that she has 2 jobs and is uncertain about how to file. She always went to the X EI Office to get help from their representatives.

c) She indicates that she was misguided as to how to file. She states that on November 17, 2015, someone from EI called her and that she was informed that not only was she filing for EI incorrectly but she should never have been allowed to file or received EI benefits since she was ineligible for EI.

[20] The Respondent submitted that :

Period of leave

a) Section 32 (1) of the Act stipulates that a claimant who, without just cause, voluntarily takes a period of leave from their employment authorised by their employer for a mutually agreed-upon period of time, is not entitled to receive employment insurance benefits. Section 32(2) provides that the disentitlement lasts until that claimant resumes the employment; loses or quits the employment or; subsequent to commencing the period of leave, accumulates in other employment the number of insurable hours required to establish a new claim.

b) With respect to the issue of just cause, the test to be applied, having regard to all the circumstances, is whether, on the balance of probabilities, the claimant had a reasonable alternative to taking leave when she did.

c) In this case, the claimant decided to take a leave in the purpose to rest. She did not invoke any specific health problem. The Commission understands claimant wanted a break from work, but taking such a leave to rest is a personal decision which falls short to demonstrate just cause. Indeed the Employment Insurance regular benefits are not intended to such purpose.

d) The claimant repeatedly use the same argument that she should not have to reimburse the resulting overpayment because an Agent from Service Canada's office mislead her in her initial application, which caused her to mistakenly report stopping to work due to a shortage of work. It is not possible to prove what information exactly did the Commission provided to claimant. Nevertheless, even if claimant could prove it, that sole fact wouldn't change the decision. Errors made by Commission personnel certainly cannot give a person a right to benefits that the legislation wouldn't otherwise provide (*Granger*, A-684-85; *Romero*, A-815-96).
e) The claimant also points out she is claiming the benefits related to the other job she had for Soup Er Lunch. But no claimant can choose to have their last job not taken into account when establishing a claim. Actually, any claimant have to report all employers that they had in the last year to allow the Commission to verify all reasons for separation and determine if benefits can be paid. If the last reason for separation is contentious, as it is the case now, it may effectively jeopardize the benefits payable.
f) The Commission concluded that the claimant did not demonstrate just cause for voluntarily taking a leave of absence from her employment because she failed to exhaust all reasonable alternatives prior to taking leave. Considering all of the evidence, a reasonable alternative to taking leave would have been to see a doctor to verify if her need to rest was a symptom of a medical condition that might require a sick leave.
g) Therefore, the Commission submits that the claimant is subject to a disentitlement under subsection 32(1) of the Act until she meets one of the provisions of subsection 32(2) of the Act.

Availability for work

h) For the purpose of proving availability under paragraph 18(1)(a) of the Act, subsection 50(8) of the Act states that the Commission may require the claimant to prove that she is making reasonable and customary efforts to obtain suitable employment.
i) Section 9.001 of the Regulations lists specific criteria for determining whether the efforts that the claimant is making to obtain suitable employment constitute reasonable and customary efforts. Those criteria include whether the claimant's efforts are: 1)

sustained, 2) directed toward obtaining suitable employment and 3) consistent with nine specified activities that can be used to assist claimants to obtain suitable employment.

j) Availability is a question of fact, which should normally be disposed of on the basis of an assessment of the evidence. It is determined by analyzing three factors:
   1. the desire to return to the labour market as soon as a suitable job is offered;
   2. the expression of that desire through efforts to find a suitable job; and
   3. not setting personal conditions that might unduly limit the chances of returning to the labour market.

k) In current case, the Commission underlines that employer Solutions Andala inc. did had work to offer to the claimant, but she choose herself not to work. By requesting a leave of absence from that employer, claimant clearly demonstrates she is not immediately available for work.

l) The claimant argues that through the past years, she gave her name to potential employers during the summertime. But she also told them that she will be returning to her usual employers in September. They answered her that she was wasting their time. The claimant did not provide any further detail on the employer's names, the dates when she conducted those employment researches, nor the positions she applied on during the summertime. In addition, if her true intent was to work during the summer, she shouldn't have request a leave of absence from Solutions Andala Inc at first place, or at least, she should have then try to reinstate into her position. These considerations therefore make the claimant's assertions not credible. The Commission reminds that all claimants requesting regular benefits must be capable of and available for work and unable to obtain suitable employment.

m) In addition, claimant made the very clear statement that for her 2015 unemployment period, she was not looking for work. She explained she did not look for work because in the past years, when she gave her name to potential employers, they answered her she was wasting their time as she was going back to the same employers in September. During their lay off, seasonal workers, including those working in education related fields, must consider other suitable employment opportunities and different employers. Given to the situation she put herself in, claimant does not demonstrate she was capable

of work, available for work and unable to obtain suitable employment as requested per the Employment Insurance Act: 18. (1) a) (GE-15-3971).

ANALYSIS

[21] The claimant indicates that she was misinformed and misled by the Commission although she sought information and went to the Office to make her claim for EI benefits and informed the Commission of her situation.

[22] The claimant confirmed that she took a leave of absence from her employer for the summer of 2014 and 2015. She indicates that in 2014, she was burned out but did not seek for a medical certificate. She believed that she could receive EI benefits from her employment at the school (Soup Er Lunch) although she knew she could not receive benefits from her employment at Solutions Andala since she was requesting a leave of absence. She believed that the EI benefits received were only based on her employment with the school.

Period of leave

[23] Subsection 29 (c) of the Act states : For the purposes of sections 30 to 33,

(c) just cause for voluntarily leaving an employment or taking leave from an employment exists if the claimant had no reasonable alternative to leaving or taking leave, having regard to all the circumstances

[24] Subsections 32 (1) and 32 (2) of the Act state:

A claimant who voluntarily takes a period of leave from their employment without just cause is not entitled to receive benefits if, before or after the beginning of the period of leave,

(a) the period of leave was authorized by the employer; and

(b) the claimant and the employer agreed as to the day on which the claimant would resume employment.

[25] In order to have just cause the claimant must demonstrate, on the balance of probabilities, and considering all circumstances, that she had no reasonable alternative to take leave.

[26] The Claimant indicates that she requested a leave of absence from her employer which was authorized by the employer from July 2, 2014 to September 2, 2014 and from July 25, 2015 to September 7, 2015. The employer indicates that he does not ask for a reason but knew the Claimant was burned out because of her 2 jobs and needed to rest (GD3-21).

[27] The Tribunal takes into consideration that the claimant may have had a reasonable alternative to take leave in 2014 by consulting a doctor if she was of a burned out. However, the claimant confirmed that she did not consult a doctor nor did she provide a medical certificate. The Tribunal is of the opinion, although the claimant did know she needed to rest, she could not put a diagnostic on her own condition. The Tribunal believes that a reasonable alternative for the claimant would have been to consult a doctor.

[28] The Tribunal is also of the opinion that it was not of the claimant's role to determine that receiving EI benefits as regular benefits or sickness benefits constitute, at the end, receiving benefits from the EI. The Law and Regulations have differentiated the type of benefits for specific reasons that cannot be ignored.

[29] The Tribunal understands the difficult situation in which the claimant may have been, that she needed rest and was burned out but since the claimant did not seek a professional advice on this matter and was not able to provide a medical certificate, it cannot be determined that she should have been receiving sickness benefits for her period of leave.

[30] The claimant did not raise other issue regarding her employment at Solutions Andala. She understood that she was receiving EI benefits for her employment at the school and knew she was not eligible for EI benefits for her employment at Solutions Andala.

[31] In *Racine,* the Court indicates:

> "This section is apparently intended to assist claimants such as the respondent who voluntarily take a period of leave with authorization from their employer, provided that there is an agreement with respect to the date the person would resume employment.

> These claimants are not precluded from receiving benefits; they are simply declared to be disentitled until such time as the applicable requirement of subsection 28.2(2) is met" (*Canada (AG) v. Racine* (1997), 219 N.R. 394).

[32] Therefore, the Tribunal believes that the claimant sought a leave of absence at her own request and that, on the balance of probabilities and taking into consideration all the circumstances, she did not prove that there were no reasonable alternative for leaving her employment for Solutions Andala.

[33] The Tribunal believes that a disentitlement should be imposed from from July 21, 2014 to September 2, 2014 and from July 24, 2015 to September 7, 2015.

Availability for work

[34] Section 18 of the Act states :

> (1) 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
>
> (a) capable of and available for work and unable to obtain suitable employment;

[35] Availability is a question of fact, which should normally be disposed of on the basis of an assessment of the evidence. It is 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 (*Faucher v. Commission (AG)* #A-56-96, A-57-96).

[36] Regarding the desire to return to the labour market as soon as a suitable job is offered the claimant indicated that she needed to rest. She could have continued working for her employer Andala during the summer. The claimant indicates that she was available for her employer that could call her in if needed. There was an agreement between them that if she was needed she would go in.

[37] Regarding the second criteria relating to the efforts to find a suitable job, the claimant indicated that she looked for another job. She was hoping to find something less physical. For the

second summer, she indicates that she gave her name to potential employers during the summertime. She was told that she was wasting their time since she was to return to her previous employer in September. For the summer of 2015, the claimant indicates that she was not looking for a job since she was told that she was wasting the employers' time.

[38] As the Commission indicates, the Tribunal believes that if the claimant's true intent was to work during the summer, she shouldn't have request a leave of absence from Andala since she could have continue occupying her position.

[39] Finally, for the third criteria, as the claimant must not be setting personal conditions that might limit her chances of returning to the labour market, the claimant has indicated that she needed to rest since she was burned out.

[40] Based on the evidence provided, the Tribunal is of the opinion that the claimant did not prove her availability for work as she limited her availability by requesting a leave from her employer and limiting her researches for another employment.

[41] For these reasons, the Tribunal finds that the claimant has not proven that she was available for work and is not entitled to receive benefits under section 18 (1) a) of the EI Act.

[42] The Tribunal takes into consideration that the claimant feels that she has been misinformed and misled by the Commission and therefore should not have to repay the requested amount.

[43] The Tribunal also considers that the claimant went to the Office to present her claim and inquire about her situation, was informed of the necessity of obtaining a Record of Employment from Solutions Andala and what needed to be written on it. The claimant takes into consideration that the claimant felt misled and misinformed regarding her situation and that her understanding of the EI was incorrect as she felt she was receiving EI benefits from the employment at school and not requesting benefits from the employment for Solutions Andala.

[44] As stated by the Court in *Granger* and *Duffenais*:

> "It is beyond question that the Commission and its representatives have no power to amend the law, and that therefore the interpretations which they may give of that law do

> not themselves have the force of law. It is equally certain that any commitment which the Commission or its representatives may give, whether in good or bad faith, to act in a way other than that prescribed by the law would be absolutely void and contrary to public order." (*Canada (AG) v. Duffenais*, FCA #A-551-92; *Granger v. Commission (CEIC)* (1989) 19959).

[45] The Tribunal understands the difficulties that the situation may have caused to the claimant, however, it is not of his role to provide benefits against the Law, although she felt misled and misinformed by the Commission.

CONCLUSION

[46] The appeal is dismissed.

Charline Bourque
Member, General Division - Employment Insurance Section