



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. R. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 14

Tribunal File Number: GE-16-717

BETWEEN:

S. R.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Takis Pappas

HEARD ON: December 6, 2016

DATE OF DECISION: January 27, 2017

REASONS AND DECISION

PERSONS IN ATTENDANCE: H. R. (Appellant's husband)

INTRODUCTION

[1] The Appellant established a claim for employment insurance sickness benefits on May 17, 2015. On October 2, 2015, the claimant requested to switch her claim from sickness to regular benefits.

[2] The Respondent imposed a disentitlement on the Appellant from October 4, 2015 to November 2, 2015 according to section 18 and 50 of the *Employment Insurance Act* (the Act) and section 9.001 of the *Employment Insurance Regulations* (the Regulations) because she failed to prove her availability for work.

[3] On December 11, 2015, the Appellant requested a reconsideration of the Respondent's decision. The Respondent maintained its original decision and on February 23, 2016 the Appellant appealed to the General Division of the Social Security Tribunal.

[4] 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 may be a prevailing issue.
- c) 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.

ISSUE

[5] Whether a disentitlement should be imposed according to sections 18 and 50 of the Act and section 9.001 of the Regulations because she failed to prove her availability for work.

THE LAW

[6] Section 18 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:

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

[7] Subsection 50(8) of the Act adds:

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.

[8] Section 9.001 of the Regulations states:

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.

[9] Section 9.002 of the Regulations states:

For the purposes of paragraphs 18(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 it 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) (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.

[10] Section 9.003 of the Regulations states:

(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 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 period of 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) or (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.

[11] Section 9.004 of the Regulations states:

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.

EVIDENCE

[12] The Appellant established a claim for employment insurance sickness benefits on May 17, 2015. On October 2, 2015, the Appellant requested to switch her claim from sickness to regular benefits.

[13] Exhibits GD4-1 to GD4-2 contain the submission of the Appellant to the Respondent.

[14] The Respondent imposed a disentitlement on the Appellant from October 4, 2015 to November 2, 2015 according to section 18 and 50 of the Act and section 9.001 of the Regulations because she failed to prove her availability for work.

[15] In her request for reconsideration, the Appellant argued that she applied for work and was not successful; as a result, she registered for a course to improve her English skills (GD3-26 to GD3-27).

[16] At the hearing, the Appellant's husband provided detailed information regarding the Appellant's efforts to obtain employment from October 4, 2015 to November 2, 2015.

[17] The Appellant sent emails and made phone calls to her employer starting on October 4. She did not receive any replies. She applied for work at Apotex on October 4. She also applied at York University at the engineering department. She had contact with them numerous times via telephone and email. Contact name was Colin Moore assistant to the department head. She also attended at the Centre for Education in Brampton, where the coordinator assisted her to apply for a lab technician position and also helped her to obtain her life insurance license.

SUBMISSIONS

[18] The Appellant submitted that:

- a) She has been seeking fulltime or part-time work for the period in question.

[19] The Respondent submitted that:

- a) The Appellant has failed to demonstrate she was capable of and available for work while restricted to part-time work. As a result, a disentitlement is warranted in accordance with Section 18(a) of the Act from October 4, 2015 to November 2, 2015.

ANALYSIS

[20] 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.

[21] 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.

[22] The Respondent submitted that the Appellant has been unable to prove that her medical condition does not prevent her from seeking and accepting all available hours of work in the labour market and has failed to demonstrate she was capable of and available for work while restricted to her previous employer.

[23] In the case at bar, the Tribunal accepts and assigns considerable weight to the Appellant's evidence at the hearing. The Tribunal finds on the balance of probabilities that during the period of October 4, 2015 to November 2, 2015 the Appellant made significant

efforts to look for employment. Furthermore, this evidence suggests that the Appellant was willing or capable of accepting employment. This evidence is that the Appellant sent emails and made phone calls to her employer starting on October 4. She did not receive any replies. She applied for work at Apotex on October 4. She also applied at York University at the engineering department. She had contact with them numerous times via telephone and email. She also attended at the Centre for Education in Brampton, where the coordinator assisted her to apply for lab technician position and also helped her to obtain her life insurance license.

[24] Based on all of the above, the Tribunal finds that the Appellant demonstrated that she was capable of and available for work for the period of October 4, 2015 to November 2, 2015, therefore a disentitlement should not be imposed according to section 18(a) of the Act.

CONCLUSION

[25] The appeal is allowed.

Takis Pappas

Member, General Division - Employment Insurance Section