



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *D. L. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 17

Tribunal File Number: GE-16-2581

BETWEEN:

D. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Normand Morin

HEARING DATE: February 7, 2017

DATE OF DECISION: February 10, 2017

REASONS AND DECISION

PERSONS IN ATTENDANCE

[1] The hearing initially scheduled for January 11, 2017, was postponed.

[2] On January 9, 2017, the Appellant, D. L., asked the Social Security Tribunal of Canada (Tribunal) to adjourn the hearing scheduled for January 11, 2017, due to a change in attorneys representing him in the docket (Exhibit GD5-1). A new hearing date was scheduled for February 7, 2017.

[3] The Appellant was present at the telephone hearing (teleconference) held on February 7, 2017. The Appellant was represented by Valérie Vaillancourt and, at the start of the hearing, he specified that she was his new representative.

[4] The Respondent, the Employment Insurance Commission of Canada (Commission), was absent during the hearing.

INTRODUCTION

[5] On September 29, 2015, the Appellant submitted an initial claim for Employment Insurance benefits (regular benefits) starting on September 20, 2015. The Appellant stated that he had worked for the employer Le groupe JD C. from October 11, 2006, to September 18, 2015, inclusively, and that he had stopped working for that employer because of leave for illness, injury or surgery (Exhibits GD3-3 to GD3-12).

[6] On March 29, 2016, the Commission notified the Appellant that he had neglected to provide information, once. The Commission claimed to have learned that he did not have the medical certificate proving his inability to work for the period from September 21, 2015, to January 15, 2016 (Exhibits GD3-24 and GD3-25).

[7] On April 28, 2016, the Appellant, then represented by Olivier Langevin, from the firm of Beaudoin, Robert, a law firm, submitted a Request for Reconsideration of an Employment Insurance Decision (Exhibits GD3-27 to GD3-30).

[8] On June 2, 2016, the Commission notified the Appellant that it was upholding the decision made on March 29, 2016, concerning the payment of Employment Insurance special benefits (sickness benefits). The Commission explained that, pursuant to subsection 40(1) of the *Employment Insurance Regulations* (Regulations), the citizen (the Appellant) must, to prove inability to work because of illness, injury or quarantine under paragraph 18(1)(b) or subsection 152.03(1) of the *Employment Insurance Act* (Act), provide it with a medical certificate completed by a medical doctor or another medical professional attesting to the citizen's inability to work and stating the probable duration of the illness, injury or quarantine. The Commission notified the Appellant that his certificate did not confirm his inability during the entire period for which he had claimed to be sick and during which he had received Employment Insurance sickness benefits (Exhibits GD3-34 and GD3-35).

[9] On June 2, 2016, the Commission notified the Appellant's representative (Olivier Langevin) that it was going to forward him a copy of the reconsideration decision made regarding the Appellant (Exhibit GD3-36).

[10] On July 4, 2016, the Appellant, represented by Olivier Langevin, filed a Notice of Appeal with the Employment Insurance Section of the Tribunal's General Division (Exhibits GD2-1 to GD2-11).

[11] On January 10, 2017, the Appellant's representative, Olivier Langevin (firm of Bertrand, Desbiens, Langevin—legal firm) informed the Tribunal that the Appellant had withdrawn his mandate to represent him in this case (Exhibit GD7-1).

[12] This appeal was heard by teleconference for the following reasons:

- a) the information in the file, including the need for additional information
- b) the fact that the Appellant is represented or that other parties are represented
- c) the fact that this method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and as quickly as circumstances, fairness and natural justice permit

ISSUE

[13] The Tribunal must determine whether disentitling the Appellant from receiving Employment Insurance benefits is justified, pursuant to subsection 40(1) of the Regulations, on the premise that he did not provide the Commission with evidence substantiating his inability to work because of illness, injury or quarantine under paragraph 18(1)(b) or subsection 152.03(1) of the Act, consisting of a medical certificate completed by a medical doctor or another medical professional attesting to the Appellant's inability to work and stating the probable duration of the illness, injury or quarantine.

EVIDENCE

[14] The evidence in the docket is as follows:

- a) A Record of Employment dated September 24, 2015, indicates that the Appellant had worked for the employer, Le groupe JD C., from October 11, 2006, to September 18, 2015, inclusively, and that he had stopped working for that employer as a result of an illness or injury (Code D—Illness or Injury) (Exhibit GD3-13).
- b) On October 15, 2015, the Appellant contacted the Commission to explain that he had made a mistake when he submitted his application for benefits. He claimed to have applied for regular benefits while he was on a leave of absence for medical reasons, but that he should have applied for sickness benefits (special benefits), (Exhibit GD3-14);
- c) On January 28, 2016, the Commission asked the Appellant to provide it with the original copy of the medical certificate confirming his inability to work during the period for which he had claimed to be sick and during which he had received Employment Insurance sickness benefits (special benefits). The Commission also asked the Appellant to forward it the duly completed form entitled: "Review form of Employment Insurance (EI) sickness benefits." The Commission clarified to the Appellant that, in his application for sickness benefits (special benefits), dated September 20, 2015, he had consented to obtain a medical certificate signed by his physician, or by his practicing physician, confirming his illness or his inability to

work over the course of each week that he had applied for and received Employment Insurance sickness benefits. The Commission clarified to the Appellant that, when he had submitted his application, it had informed him that he had to keep a medical certificate for six (6) years in case it would need to see it (Exhibits GD3-16 to GD3-18);

- d) On February 10, 2016, the Appellant explained to the Commission that he had spoken with one of its agents, in October 2015, and that that agent had said that, even if he was sick, he did not have to keep a medical certificate or obtain one. The Commission notified the Appellant that he had to provide it with the requested certificate by February 25, 2016, at the latest (Exhibits GD3-19 and GD3-20);
- e) On February 23, 2016, the Appellant indicated that he was going to forward to the Commission a document on the appointments he had had with his psychologist. The Appellant claimed to have consulted the call centre (Service Canada) to obtain a copy of the recordings of the conversations that he had had with the Commission agents, but that he was told that he could obtain only the paper copy of his file. He claimed to have added a note to his file, according to which, nowhere in those documents is it indicated that he had been informed that he had to obtain a medical document for the period during which he had been, for health-related reasons, unable to work (Exhibit GD3-22).
- f) On February 24, 2016, the Appellant sent to the Commission a copy of the letter dated February 5, 2016, signed by Paulina Gonzalez Orea, psychology intern, and Claudine Barrette (M.Ps.), supervising psychologist, resuming the psychological follow-up carried out on the Appellant. This document specifies that the Appellant had consultations on August 18, August 25, September 1 and September 8, 2015. This document gives the following specifications: “The symptoms of anxiety (with panic attacks) and depression have intensified, situation for which I recommended necessary steps for a leave of absence for health-related reasons and to better concentrate on getting better” (Exhibit GD3-23);

- g) In a document entitled “Details of the Notice of Debt (DH009)”, dated April 2, 2016, and reproduced on July 12, 2016, the total amount of the Appellant’s debt was established at \$6,734.00 (Exhibit GD3-26);
- h) On May 25, 2016, the Commission claimed to have explained to the Appellant and his representative the authority conferred upon it to carry out a reconsideration of a decision it has rendered. It explained that the Act enables it to retroactively amend a decision or a payment generating an overpayment. The Commission specified that it has a discretionary power enabling it to determine whether benefits were incorrectly paid, and to reclaim them if it decides that an individual received a sum of benefits for which he or she did not meet the conditions or for which he or she was not eligible (Exhibits GD3-31 to GD3-33).

[15] The evidence at the hearing is as follows:

- a) The Appellant reiterated the main elements in the docket with the aim of showing that he is eligible for Employment Insurance special benefits (sickness benefits), after having stopped work on September 18, 2015, for medical reasons (Exhibits GD3-3 to GD3-13).
- b) He specified that the Commission was claiming the amount that had been paid to him for the 15 weeks of sickness benefits that he had received (from September 21, 2015, to January 15, 2016), (Exhibits GD3-24 and GD3-25).

PARTIES’ ARGUMENTS

[16] The Appellant and his representatives made the following observations and submissions:

- a) The Appellant expressed his disagreement with the decision that had been made in his regard by the Commission and that had generated an overpayment. He argues that he was misinformed by the Service Canada staff (the Commission) when an employee had told him that he did not have to provide a medical certificate showing his inability to work. The Appellant claims to have been misled by the Commission regarding the evidence that he had to provide to show that he was, for medical

reasons, unable to work. He claims to have not had to reimburse the sum claimed by the Commission, because he had obtained sickness benefits; it is due to wrong information that had been provided to him by one of its agents. The Appellant emphasized that if he had not been misled by the Commission, he would not be in front of the Tribunal to argue his case (Exhibits GD2-4 and GD3-31 to GD3-33);

- b) He claims that when he submitted his application for benefits on September 29, 2015, he applied for regular benefits, when in fact he wanted to receive sickness benefits (special benefits). The Appellant claims to have made an error in requesting regular benefits, when in fact, for medical reasons, he had stopped working (Exhibits GD3-6, GD3-14 and GD3-31 to GD3-33).
- c) The Appellant claims not to have submitted medical evidence to the Commission because it had not asked him to provide such evidence during the period in which he had received sickness benefits (special benefits). He claims to have contacted the Commission, on two occasions, on October 15, 2015, and to have spoken to two different agents. The Appellant affirmed that the agent with whom he had spoken on his second call had told him that he did not need to provide a medical certificate if the duration of his inability to work, for medical reasons, was less than or equal to 15 weeks (Exhibit GD3-21). He argues that if he had known that he had to provide medical evidence showing his inability, due to medical reasons, to work, at the beginning of his benefit period, he would have ensured to obtain it and that he would have been happy to provide it. The Appellant specified that he would have been happy to provide such a document if such a request had been made of him. He emphasized that he would have had all the time necessary to follow up on such a request, because he was absent from work for health-related reasons (Exhibit GD3-23). The Appellant claims to have found it bizarre not to have had to provide medical evidence when he had stopped working because he should have taken sick leave. He claims to have contacted the Commission to be sure about his knock and that he had wanted to do so, and also to have done what it had asked of him. The Appellant specified that it was not by choice that he had found himself unemployed and that, if he had not been able to provide medical evidence, it was not because he

had done something wrong. He emphasized that there is no information in his docket that can show that he had been informed, as early as October 15, 2015, when he contacted the Commission, that he had to provide a medical certificate (Exhibits GD3-14, GD3-19, GD3-20, GD3-21 and GD3-31 to GD3-33).

- d) He explained that, after having seen a psychologist in August 2015 and September 2015, on four occasions, she suggested to him a leave of absence for health-related reasons because he was suffering from depression (Exhibit GD3-23). The Appellant claims not to have seen a physician because the psychologist had not told him to go see one, but rather to take the steps for a leave of absence for health-related reasons. He clarified that the psychologist he had seen did not have the power to write him a medical certificate for a leave of absence for health-related reasons. The Appellant affirmed that the latter had refused or had neglected to provide a medical note to that effect. He claims to have then spoken about his situation with his employer, C. L., his father, to the effect that he had to take a leave of absence for health-related reasons. The Appellant clarified that the employer had issued a Record of Employment specifying that he had stopped work for medical reasons (Code D—illness or injury). He claims to have done what was necessary to be eligible for sickness benefits (Exhibits GD2-4, GD3-19, GD3-20, GD3-23 and GD3-30 to GD3-33).
- e) The Appellant claims to have contacted the Commission on January 19, 2016, namely, after having received sickness benefits for a 15-week period, to inform it that he was fit for work as of January 17, 2016, and that he wanted to receive regular benefits (conversation of sickness benefits into regular benefits). He said the Commission had then asked him to provide evidence that he had been, for medical reasons, unable to work from September 21, 2015, to January 15, 2016 (Exhibit GD3-15). The Appellant clarified that the Commission then explained to him that it was not possible for the sickness benefits that he had received to be considered regular benefits. He said that about a week after talking to the Commission agent, on January 19, 2016, he received a request written on the Commission's behalf (letter dated January 28, 2016) so that he provide medical evidence showing that he

had been, for health-related reasons, unable to work (Exhibits GD3-16 to GD3-18). The Appellant claims to have not had an issue until he called back Service Canada and the person to whom he spoke told him that he had to have a medical certificate. He said that, next, a Commission agent explained to him that he had to provide medical evidence showing that he had been, for health-related reasons, unable to work and that the agent then specified to him that he had to retain such a document for a six-year period (Exhibits GD3-15 to GD3-21 and GD3-31 to GD3-33) (Exhibit GD3-21);

- f) He explained that, after being informed by the Commission that he had to provide medical evidence substantiating his inability (due to medical reasons) to work, he talked to two physicians. The Appellant claims to have been unable to obtain a medical certificate from either of the physicians to whom he had spoken. He explained that it would have been necessary to consult them at the very beginning, namely, from the moment the Commission informed him that he had to have medical evidence of his inability, due to health-related reasons, to work in order for such a diagnosis to be established. The Appellant affirmed that he had not been able to obtain a doctor's recommendation several months after having started his leave of absence for health-related reasons because a follow-up would have had to be done showing that he was suffering from depression and that he needed specific treatment (ex. : medication). He claims that he had not done such a follow-up with a physician because he had been misled by the Commission. The Appellant explained that, since he had not done medical consultations at the outset with either of the two physicians whom he had spoken to, neither of them had wanted to sign a medical note certifying that he had been suffering from depression and that he had not been able to work. He emphasized that when the Commission informed him that he had to provide medical evidence, in January 2016, he was too late to fix it. The Appellant indicated that the only document that he had been able to obtain and to provide to the Commission was the document provided by the psychologist whom he had seen on four occasions, in August 2015 and September 2015 (Exhibits GD3-19, GD3-20 and GD3-23) ;

- g) The Appellant claims that, were it not for his absence from work due to illness, he would have been eligible for benefits and would have actually received Employment Insurance regular benefits, due to a lack of work at his employer. The Appellant claims to have received sickness benefits for a 15-week period, namely, until January 16, 2016, and to have then received regular benefits during a 22-week period, because he was then unfit to return to work. He emphasized that if he had not received regular benefits, all would have been fine (Exhibits GD2-4 and GD3-15);
- h) Olivier Langevin, representing the Appellant, claims that he was eligible for regular benefits, notwithstanding the fact that he had not provided a medical certificate. The representative argues that the Appellant did not have to provide medical evidence, because he did not have that information. He explained that it was the first time a claimant got sickness benefits following an error by an agent who had told him that he did not have to provide medical evidence. He asked that regular benefits—rather than sickness benefits—be paid to the Appellant, from September 20, 2015, to January 16, 2016. The representative argues that if it was impossible to pay out sickness benefits to the Appellant, on the premise that he had not proven his disability, he had to conclude that he was capable of working (Exhibits GD3-27 to GD3-33);
- i) Valérie Vaillancourt, the Appellant’s representative, argues that the latter had been misled by a Commission employee when he had said that the Appellant did not have to provide medical evidence that, for health-related reasons, he had stopped working. She argues that if the Commission had told the Appellant, from the outset, when he inquired about this case, on October 15, 2015, that he had to provide medical evidence, he would have taken the necessary steps to get it;
- j) She explained that the Appellant had shown that when he saw two physicians—after the period in which he had received sickness benefits—that neither of these physicians wanted to complete, retroactively, a medical certificate substantiating his inability to work during the period in question (Exhibit GD3-21);

- k) The Representative emphasized that, in the summary of the conversation held between the Appellant and a Commission agent, on February 19, 2016, it is stated that: [translation]: “In the docket, there is no information that he was allegedly advised to obtain a medical certificate and to keep it for 6 years.” (Exhibit GD3-21).
- l) She explained that when the Appellant had completed his application for benefits, he had made a mistake in requesting regular benefits. The representative argues that if the Appellant had requested sickness benefits (special benefits), it would have probably been mentioned to him that, in this application, he had to have a medical certificate. She emphasized that the Appellant had therefore been unable to benefit from specific information on an application for sickness benefits;
- m) The representative emphasized that on the Employment Insurance website, when an application for sickness benefits (special benefits) is submitted, the following information is given: “We will let you know if we need you to submit your medical certificate when you complete your online application.” She emphasized that even the information given on the Employment Insurance website is not clear on the need to provide a medical certificate to get sickness benefits;
- n) She argues that the Appellant, in addition to being misled by the Commission, had made a mistake in good faith and that, if he had been asked from the outset to provide a medical certificate, he would not have had to appear before the Tribunal to argue his case;
- o) The representative asked the Tribunal to overturn the decision given by the Commission and to grant the Appellant’s request.

[17] The Commission makes the following submissions and arguments:

- a) It explained that subsection 40(1) of the Regulations stipulates that the claimant must provide it with information and evidence to prove his or her inability to work because of illness, injury or quarantine under paragraph 18(1)(b) or subsection 152.03(1) of the Act, consisting of a medical certificate completed by a medical

doctor or another medical professional attesting to the claimant's inability to work and stating the probable duration of the illness, injury or quarantine. (Exhibit GD4-4);

- b) The Commission indicated that the Appellant had claimed to be unfit to work from the beginning of his benefit claim, namely, as of September 20, 2015, and that he had made a mistake in completing his claim (Exhibits GD3-14 and GD4-4);
- c) It clarified that an individual who claims sickness benefits because he or she claims to be, for health-related reasons, unable to work must provide it with, if it so requests, medical evidence to this effect. The Commission indicated that the type of benefits is determined according to what the claimant is requesting and, in the case of sickness benefits, the claimant is responsible for providing medical evidence covering the entire period in question, if it so requests. (GD4-4)
- d) The Commission indicated that, in October 2015, the Appellant had spoken with an agent who had told him that he neither had to keep his medical certificate nor get one. It specified that the Appellant had had four sessions with the psychologist. Their last session had occurred on September 8, 2015 (Exhibits GD3-23), namely, before he stopped working due to illness. The Commission emphasized that the psychologist had recommended a leave of absence for health-related reasons (Exhibit GD4-4);
- e) It has argued that, although the Appellant had been misinformed by one of its agents, it cannot subvert the Act and the Regulations (Exhibit GD4-5);
- f) The Commission indicated that the medical certificate dated February 5, 2016, specifies that the Appellant had had four sessions with a psychologist, namely, on August 18, August 25, September 1 and September 8, 2015. It specified that the Appellant had to discontinue his appointments, due to financial constraints, and that he could not continue with his psychology follow-up (Exhibits GD3-23 and GD4-5);

- g) It specified that, at the time of his absence due to health-related reasons, the Appellant had discontinued his appointments with the psychologist (Exhibit GD4-5);
- h) The Commission argues that, since the medical evidence does not show that the Appellant was, for health-related reasons, unable to work during the period from September 20, 2015, to January 15, 2016, it cannot pay him regular benefits, because he maintains that he was unable to work (Exhibit GD4-5).

ANALYSIS

[18] The relevant legislative provisions are reproduced in an appendix to this decision.

[19] In case of “illness,” the provisions on the information and the evidence that a claimant must provide to the Commission in order to prove inability to work because of illness, injury or quarantine are mentioned in subsection 40(1) of the Regulations.

[20] Subsection 40(1) of the Regulations gives the following specifications:

[...] 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 another medical professional attesting to the citizen’s inability to work and stating the probable duration of the illness, injury or quarantine.

[21] In *Knee (2011 FCA 301)*, the Court held as follows:

However, tempting as it may be in such cases (and this may well be one), adjudicators are permitted neither to re-write legislation nor to interpret it in a manner that is contrary to its plain meaning.

[22] In the present case, the Appellant received Employment Insurance special benefits (sickness benefits) for a maximum of 15 weeks, namely, for the period from September 21, 2015, to January 15, 2016, inclusively (Exhibits GD3-24 and GD3-25).

[23] The Tribunal finds that the Appellant cannot be eligible for Employment Insurance special benefits (sickness benefits) because he has not submitted medical evidence required by the Commission pursuant to subsection 40(1) of the Regulations.

[24] The Appellant argues that he had been, for medical reasons, unable to work from the beginning of his benefit period, namely, September 20, 2015, until January 16, 2016, inclusively (Exhibits GD3-31 and GD3-32).

[25] After having paid him sickness benefits for the period from September 21, 2015, to January 15, 2016, the Commission asked him, in a letter dated January 28, 2016, to provide it with medical evidence certifying that he had been, for health-related reasons, unable to work during the period in question.

[26] On February 24, 2016, in response to this request, the Appellant sent to the Commission a document (“summary of psychological follow-up”), dated February 5, 2016, indicating that he had seen a psychologist on four occasions in August 2015 and September 2015. The document gives the following specifications:

The symptoms of anxiety (with panic attacks) and depression have intensified, a situation for which I have recommended the necessary steps for an absence for health-related reasons and thereby be able to concentrate on recovering (Exhibit GD3-23).

[27] The Appellant argues that it was the only document that he could provide to the Commission. He specified that he had been unable to obtain a recommendation from a physician indicating that he had been, for health-related reasons, unable to work over the course of the period in question. The Appellant explained that none of the physicians he had seen had wanted to provide him with such a document, after the period in which he had been, for health-related reasons, unable to work without having done, at the outset, a medical follow-up with him.

[28] The Appellant argues that if the Commission had asked him for such a document at the right time, namely, when he had submitted his application for benefits or shortly after he had submitted it, he could have provided it. However, according to the Appellant, the Commission had initially indicated to him, on October 15, 2015, that he did not have to. The Appellant claimed that he had been misled by the Commission.

[29] The Commission did not dispute the fact that it was possible that the Appellant had received inadequate information from one of its agents.

[30] In its arguments, the Commission also said that: “Although the claimant was misinformed by the Commission agent, the Commission cannot subvert the Act and the Regulations [...]” (Exhibit GD4-5)

[31] The Tribunal is of the opinion that this situation cannot ensure that the Appellant is disentitled from the requirement provided for in the Act regarding proof that he must provide to the Commission if the latter so requests and, even if this request was made of him *a posteriori*, namely, after the period in which he had received special benefits (sickness benefits).

[32] In its arguments, the Commission also indicated that when he had submitted his application for benefits, the Appellant had requested regular benefits and that if he had asked for sickness benefits, he would have had all the information (Exhibit GD4-2).

[33] Despite the affirmations that he made in this regard, the Tribunal cannot draw the conclusion that the Appellant could have obtained medical evidence from a physician, in certifying his inability, due to health-related reasons, to work.

[34] The Appellant argues that, were it not for his absence for health-related reasons, he would have been eligible for benefits and he would have received regular Employment Insurance benefits, due to a lack of work at the employer (Exhibit GD2-4).

[35] The Tribunal cannot accept this fact in the Appellant’s favour. The Record of Employment issued on February 24, 2015, does indicate that the Appellant stopped working on September 18, 2015, due to illness or injury (Exhibit GD3-13). This document does not specify an end of employment due to a lack of work.

[36] The Appellant reported on several occasions to have, for medical reasons, stopped working (Exhibits GD3-6, GD3-14 and GD3-31 to GD3-33). In his application for benefits, the Appellant reported to have stopped working due to “sick leave, injury or surgery” (Exhibit GD3-6).

[37] Despite the situation described by the Appellant, he has not demonstrated that he was entitled to receive sickness benefits (special benefits) over the course of the period in question.

[38] In this case, medical evidence is required by the Commission, and the Appellant cannot provide it.

Liability to repay

[39] The Appellant also argues that he did not have to reimburse the sum that he is being asked to repay by the Commission as an overpayment, because he got erroneous information from one of its agents (Exhibits GD2-4 and GD3-31 to GD3-33).

[40] Despite the explanations given by the Appellant to this effect, benefits were overpaid to him. The situation described by the Appellant cannot have exempted him from his obligation to reimburse the amount of the overpayment that he is being asked to repay for benefits to which he is not entitled.

[41] Sections 43 and 44 of the Act stipulate provisions according to which the overpayment of Employment Insurance benefits must be repaid.

[42] The Tribunal points out that section 43 of the Act stipulates that the overpayment of Employment Insurance benefits must be repaid. That section clearly states:

A claimant is liable to repay an amount paid by the Commission to the claimant as benefits

(a) for any period for which the claimant is disqualified; or

(b) to which the claimant is not entitled.

[43] With regards to the obligation to the “liability to return overpayment,” section 44 of the Act specifies that:

A person who has received or obtained a benefit payment to which the person is disentitled, or a benefit payment in excess of the amount to which the person is entitled, shall without delay return the amount, the excess amount or the special warrant for payment of the amount, as the case may be.

[44] Despite our sympathy for the Appellant and the reasons he mentioned, the Tribunal is bound by very clear statutory provisions from which it cannot deviate, even for excellent reasons (*Knee*, 2011 FCA 301).

[45] The Tribunal finds that disentitling the Appellant from receiving Employment Insurance benefits for not providing the Commission with evidence certifying his inability to work because of illness, injury or quarantine under paragraph 18(1)(b) or subsection 152.03(1) of the Act, consisting of a medical certificate completed by a medical doctor or another medical professional attesting to the Appellant's inability to work and stating the probable duration of the illness, injury or quarantine, is justified under subsection 40(1) of the Regulations.

[46] The appeal is without merit on the issue in this case.

CONCLUSION

[47] The appeal is dismissed.

Normand Morin
Member, General Division—Employment Insurance Section

ANNEX

THE LAW

Employment Insurance Act

18 (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.

Liability for overpayments

43 A claimant is liable to repay an amount paid by the Commission to the claimant as benefits

- (a) for any period for which the claimant is disqualified; or
- (b) to which the claimant is not entitled.

Liability to return overpayment

44 A person who has received or obtained a benefit payment to which the person is disentitled, or a benefit payment in excess of the amount to which the person is entitled, shall without delay return the amount, the excess amount or the special warrant for payment of the amount, as the case may be.

Benefits

Illness, injury or quarantine

152.03 (1) Subject to this Part, a self-employed person who ceases to work as a self-employed person because of a prescribed illness, injury or quarantine and who would be otherwise working, is entitled to receive benefits while unable to work as a self-employed person for that reason.

Exception

(1.1) A self-employed person to whom benefits are payable under any of sections 152.05 to 152.061 is entitled to benefits under subsection (1) even though the person did not cease to work as a self-employed person because of a prescribed illness, injury or quarantine and would not be working even without the illness, injury or quarantine.

Limitation

(2) If benefits are payable to a self-employed person as a result of illness, injury or quarantine and any allowances, money or other benefits are payable to the person for that illness, injury or quarantine under a provincial law, the benefits payable to the person under this Part shall be reduced or eliminated as prescribed.

Deduction

(3) If benefits are payable under this section to a self-employed person who receives earnings for a period in a week of unemployment during which the person is incapable of working as a self-employed person because of illness, injury or quarantine, subsection 152.18(2) does not apply and, subject to subsection 152.18(3), all those earnings shall be deducted from the benefits payable for that week.

Disentitlement

(4) A self-employed person, other than one referred to in subsection (1.1), is not entitled to benefits under subsection (1) if, were it not for the prescribed illness, injury or quarantine, the self-employed person would be deemed, in accordance with the regulations, to be not working.

2009, c. 33, s. 16;
2012, c. 27, s. 21;
2014, c. 20, s. 248.

Employment Insurance Regulations

40 (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.

(1.1) Despite subsection (1), if either of the following circumstances occur in respect of a quarantine, a claimant need only provide the Commission with a declaration that a period of quarantine was

- (a)** imposed on the claimant by a public health official for the health and safety of the public at large; or
- (b)** recommended by such an official for the health and safety of the public at large and the claimant was asked by their employer, a medical doctor, a nurse or another similar person in authority to place themselves under quarantine.

(2) Notwithstanding that a certificate is provided by a claimant pursuant to subsection (1), the Commission may require a claimant to undergo a medical examination at such time and place as it may reasonably direct for the purpose of determining the nature of the illness, injury or quarantine, the physical or mental condition of the claimant, the probable duration of the inability to work and any other circumstances relating to that inability.

(3) A medical examination referred to in subsection (2) shall be made at the expense of the Commission and a claimant who undergoes such an examination shall be reimbursed for their reasonable travel and other expenses.

(4) For the purposes of paragraphs 8(2)(a) and 18(1)(b) and subsections 28(7) and 152.03(1) of the Act, illness, injury or quarantine is any illness, injury or quarantine that renders a claimant incapable of performing the duties of their regular or usual employment or of other suitable employment.

(5) A pregnancy that is terminated within the first 19 weeks is an illness for the purposes of paragraph 18(1)(b) and subsection 152.03(1) of the Act.

(6) The Commission may waive the waiting period in respect of the benefit period of a claimant if

(a) the claimant qualifies to receive benefits in that benefit period by reason of an interruption of earnings as described in subsection 14(2) or section 14.01; and

(b) after the claimant ceased to work, allowances, payments or other moneys are payable to the claimant by the claimant's employer or former employer as sick leave pay.

(7) The Commission may waive the waiting period in respect of the benefit period of a claimant if

(a) the claimant qualifies to receive benefits in that benefit period by reason of an interruption of earnings as described in subsection 14(2) or section 14.01; and

(b) the quarantine arises from circumstances set out in paragraph (1.1)(a) or (b).

(8) Subsections (1.1) and (7) apply to a claimant for any benefit period

(a) that begins on or after the day on which this subsection comes into force; or

(b) that has not ended before the day on which this subsection comes into force, but only for weeks of benefits commencing with the week during which this subsection comes into force.

(9) Subsections (1.1), (7) and (8) shall cease to have effect six months after the day on which this subsection comes into force.

SOR/2003-131, s. 1;
SOR/2010-10, s. 20;
SOR/2013-102, s. 20.