



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. J. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 115

Tribunal File Number: GE-16-4754

BETWEEN:

J. J.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Eleni Palantzas

HEARD ON: July 11, 2017

DATE OF DECISION: July 19, 2017

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Claimant, J. J., did not attend the scheduled hearing. The Member waited 20 minutes past the scheduled start time. The Claimant had not called in on the day of the hearing so the Tribunal called and left the Claimant a message. He was asked to advise the Tribunal whether he intends to attend a hearing. The Claimant did not respond to the Tribunal. The Member waited several more days thereafter before rendering this decision.

The Notice of Hearing was sent to the Claimant on May 5, 2017 to the only address on file with both the Commission and the Tribunal. The Claimant has responded to correspondence sent to this address in the past. No mail was returned to the Tribunal.

The Canada Post proof of delivery indicates that the Claimant received the Notice of Hearing and docket on May 19, 2017. The signature appears to be the same as on his Notice of Appeal (GD20-3).

The Member, satisfied that the Appellant received the Notice of Hearing, proceeded in the Claimant's absence under the authority of section 12 of the *Social Security Tribunal Regulations* (SST Regulations).

OVERVIEW

[1] The Claimant made an initial claim for employment insurance sickness benefits because he was going to be off work from August 16, 2016 until August 26, 2016 and his employer did not have a sickness benefit plan. The Canada Employment Insurance Commission (Commission) initially advised the Claimant that sickness benefits were not payable to him because he had not provided medical documentation to support his claim.

[2] The Claimant requested that the Commission reconsider its decision and provided the required medical documentation. The Commission rescinded its decision regarding the Claimant's eligibility for sickness benefits however; he was advised that benefits were still not payable to him because he had to first serve the two week mandatory waiting period. Since he was claiming only 9 days of sickness benefits i.e. he returned to work prior to serving the two week waiting period, no benefits were paid to him.

[3] The Member agrees with the Commission that the Claimant must serve the two week waiting period from August 15, 2016 until August 29, 2016 according to section 13 of the Employment Insurance Act (EI Act). The Member considered whether the waiting period could be waived however; the Claimant did not meet the requirements of subsection 40(6) of the Regulations.

[4] The hearing was held by teleconference because the Claimant was going to be the only party in attendance and 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] The Member must decide whether the Claimant must serve the two week waiting period pursuant to section 13 of the EI Act even though he is only claiming 9 days of employment insurance sickness benefits.

[6] On January 3, 2017, the Tribunal spoke with the Claimant and confirmed his desire to pursue his appeal of the Commission's decision regarding the waiting period even though the decision regarding a disentitlement to sickness benefits had been rescinded at the reconsideration level.

EVIDENCE

[7] The Claimant applied for employment insurance sickness benefits claiming that he was unable to work and did not have a sickness benefit plan with his employer. His last day of work was August 15, 2016 and planned to return to work on August 29, 2016 (GD3-3 to GD3-17).

[8] The Commission advised the Claimant that sickness benefits were not payable to him because he did not provide medical documentation to support his incapacity (GD3-18).

[9] The Claimant requested that the Commission reconsider its decision and provided the required medical documentation to support his claim. He indicated that he was off work for 9 days and was not paid by his employer. The medical documentation indicated that the Claimant was unable to work from August 16, 2016 until August 26, 2016. The Claimant returned to work on August 29, 2016 (GD3-20 to GD3-25).

[10] The Commission advised the Claimant that it is rescinding its decision regarding the disentitlement to sickness benefits for not having provided proof of incapacity however; it maintained the decision that he must serve the mandatory two week waiting period during which no benefits are payable (GD3-28 to GD3-30)

SUBMISSIONS

[11] The Claimant submitted that he applied for employment insurance sickness benefits because he was sick and unable to work for 9 days from August 16, 2016 and August 26, 2016. He did not have sickness benefits or vacation time with his employer.

[12] The Commission submitted that although the Claimant provided the required medical documentation and he was approved for sickness benefits, they were not payable to him because he, like all other claimants, must serve a two week waiting period pursuant to section 13 of the EI Act. The Claimant was off work for 9 days so he had returned to work prior to serving the full two weeks waiting period.

ANALYSIS

[13] The relevant legislative provisions are reproduced in the Annex to this decision.

[14] The Claimant disputes the Commission's decision to apply section 13 of the EI Act to his case thus obliging him to serve the two week waiting period even though he was only claiming 9 days of sickness benefits. The Commission, on the other hand, submitted that although the Claimant was entitled to sickness benefits, they could not be paid to him until after he served the two week mandatory waiting period from August 16, 2016 until August 29, 2016. Since he returned to work before serving the said period, he was not paid any benefits.

[15] Section 13 of the EI Act stipulates that a claimant is not entitled to be paid benefits in a benefit period until, after the beginning of the benefit period and after the claimant has served a two week waiting period.

[16] The Federal Court of Appeal has confirmed that section 13 of the EI Act applies to all benefits, including special benefits, unless an exception is met under such subsections as 23(5) or 22(4) of the EI Act or section 40(6) of the Employment Insurance Regulations (Regulations) (Vasiliadis A-499-01).

[17] The Member finds that section 13 of the EI Act is clear and unconditional, so the Claimant must serve the prescribed two week waiting period regardless of how many days of sickness benefits he actually claimed. The Member understands that the Claimant feels that he should receive sickness benefits having contributed to the employment insurance system, but he, like every other claimant, must meet the requirements of the EI Act. It is not within the Tribunal's jurisdiction to change, amend, or otherwise apply the EI Act other than as prescribed.

[18] The Member considered whether the waiting period could be waived pursuant to subsection 40(6) of the Regulations since the Claimant qualified for sickness benefits. The Member notes that according to subsection 40(6) of the Regulations, the Commission may waive the waiting period in respect of the benefit period of a claimant if two conditions are met (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.

[19] In this case, the Claimant met the requirement of paragraph 40(6)(a) of the Regulations however; he did not meet the second requirement in paragraph 40(6)(b) of the Regulations. That is, the Claimant qualified to receive benefits because he had an interruption of earnings as described in subsection 14(2) of the Regulations i.e. because of illness however; after he stopped working, sick leave pay was not payable by the Claimant's employer. In fact, the reason that the Claimant is requesting that he not serve the waiting period is because the employer does not pay for a sick leave.

[20] The Member finds therefore, that the Commission correctly determined that the Claimant must serve a two week waiting period from August 16, 2016 until August 29, 2016 pursuant to section 13 of the EI Act.

CONCLUSION

[21] The appeal is dismissed.

Eleni Palantzas
Member, General Division - Employment Insurance Section

ANNEX

THE LAW

Section 13 of the EI Act stipulates that a claimant is not entitled to be paid benefits in a benefit period until, after the beginning of the benefit period, the claimant has served a two week waiting period that begins with a week of unemployment for which benefits would otherwise be payable.

Subsection 40(1) of the Regulations stipulates that 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.

Subsection 40(6) of the Regulations stipulates that 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.

Subsection 12 (1) of the SST Regulations stipulates that if a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received notice of the hearing.