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

[TRANSLATION]

Citation: *C. D. v Canada Employment Insurance Commission*, 2018 SST 1321

Tribunal File Number: GE-18-3270

BETWEEN:

C. D.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Yoan Marier

HEARD ON: December 11, 2018

DATE OF DECISION: December 21, 2018

Canada

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] After serving part of a prison sentence for committing various offences, the Appellant was released on parole on September 18, 2018. As a condition of release, the Appellant made a commitment to go to addiction therapy at Pavillon X (Pavillon) from September 18, 2018, to December 13, 2018. He made a claim for sickness benefits at the start of his therapy.

[3] However, the Canada Employment Insurance Commission (Commission) denied the Appellant benefits because it found that the Appellant was an inmate of a prison or similar institution.

[4] The Appellant challenges the Commission's decision. He argues that Pavillon X is not a prison or similar institution and that he is not an inmate there. Furthermore, he believes that he is ill and that he must undergo treatment for addiction.

ISSUE

[5] Is the Appellant disentitled from receiving sickness benefits during his therapy at Pavillon X? In other words:

a) Is the Appellant an inmate of a prison or similar institution under section 37 of the *Employment Insurance Act* (Act)?
b) If so, can the Appellant still receive benefits under the provisions of section 54 of the *Employment Insurance Regulations* (Regulations)?
c) Is the Appellant unable to work because of an illness? If so, would he otherwise be available for work?

ANALYSIS

Background

[6] Since December 20, 2017, the Appellant has served a prison sentence of 516 days of incarceration for committing various offences. On June 9, 2018, the parole board of Québec, Commission des libérations conditionnelles du Québec (CLCQ), granted him parole with accommodation at X, a halfway house.

[7] However, his parole was suspended on August 17, 2018, because the Appellant had developed a gambling addiction problem while he was at the halfway house. Since the halfway house was not in a position to address this addiction problem and provide the Appellant with help, the Appellant had to be sent to the penitentiary, where he was incarcerated for a month.

[8] On September 17, 2018, the CLCQ cancelled the Appellant's parole suspension. Under his conditions of release, it required him to stay at Pavillon X, an addiction treatment centre, for three months of closed therapy before being able to return to a halfway house (GD3-39 to 42). The Appellant believed that he was ill and filed a claim for sickness benefits on September 18, with a medical certificate to support his claim (GD3-19).

[9] When the Commission denied the Appellant benefits, it first cited the provisions of section 37 of the Act. It found that the Appellant was an inmate of a prison or similar institution and imposed a disentitlement effective August 20, 2018 (GD3-25). Still, on reconsideration, the Commission referred to the concept of availability in stating the following: [translation] "If it was not for your illness, you would be required to reside in a prison or similar institution" (GD3-46). However, in its submissions, the Commission argued that there was a [translation] "clerical error" and that the reconsideration letter should have simply stated the following: [translation] "Inmate of a prison or similar institution." (GD4-4).

[10] Even though this may be a case of a clerical error, the fact remains that the Commission was not wrong in addressing the Appellant's availability because the concepts of [translation] "availability" and [translation] "confinement in a prison or similar institution" are closely related (*Garland v Canada (Canada Employment and Immigration Commission)*, A-1132-84).

[11] Therefore, these two notions are relevant to the context of this file in determining whether the provisions of section 37 of the Act really apply to the Appellant while he stays at Pavillon and whether he can receive sickness benefits for that period.

[12] The Tribunal also notes that the Commission imposed a disentitlement on the Appellant effective August 20, 2018. This is odd since the claim for sickness benefits did not take effect until September 23, 2018 (GD4-1). In any event, there is no dispute that the Appellant was not entitled to receive benefits while he was incarcerated from August 17, 2017, to September 18, 2018, after his parole was suspended. Therefore, the Tribunal's decision deals exclusively with the claim for sickness benefits and the Appellant's entitlement to this type of benefit starting the week of September 23, 2018, when he was staying at Pavillon.

Is the Appellant disentitled from receiving sickness benefits during his therapy at Pavillon X?

[13] The Tribunal finds that the Appellant is not disentitled from receiving sickness benefits during the period in question for the following reasons.

<u>Is the Appellant an inmate of a prison or similar institution?</u>

[14] A claimant may not receive Employment Insurance benefits for any period during which they are an inmate of a prison or similar institution (section 37 of the Act).

[15] However, a claimant who is an inmate of a prison or similar institution and who has been granted parole, day parole, temporary absence, or a certificate of availability, for the purpose of seeking and accepting employment in the community, is not disentitled from receiving benefits by reason only of section 37 of the Act. (Section 54 of the *Employment Insurance Regulations* (Regulations)).

[16] First, it is worth noting that, while he was staying in a halfway house before being sent to Pavillon, the Appellant was entitled to regular benefits because he could go out and because there were no restrictions on seeking employment (GD3-44 and GD4-4). Therefore, everything suggests that, during that period, the Appellant was an inmate in an institution similar to a prison

under section 37 of the Act (the halfway house) but that he met the exception under section 54 of the Regulations because he had the opportunity of seeking and accepting employment.

[17] However, after being admitted to Pavillon X, the Appellant's situation changed. The Appellant's therapy at Pavillon X is a closed program that the Appellant agreed to participate in at the CLCQ's request to enable him to tackle an addiction. It seems as though the halfway houses that normally receive people on parole, such as X, are not able to provide this type of specialized care or to support people with such issues. This is precisely why the Appellant's parole was suspended after a few months in a halfway house; he had developed a gambling problem that the halfway house was not in a position to address (GD3-31).

[18] The new conditions that the Appellant was subject to under his parole were strict, and completing the addiction program at Pavillon X was an integral part of those conditions (GD3-34).

[19] The staff at Pavillon confirm that the Appellant is not an inmate and is not required to remain on the premises 24 hours a day, but state that he is in closed therapy. Therefore, he cannot go sleep at his place on weekday evenings. According to P. P., a witness and liaison officer for Pavillon, the Appellant may leave on weekends, Wednesdays, and Friday afternoons. The rest of the time, he must attend therapy at Pavillon. Furthermore, the Appellant himself confirms that he can indeed leave to run errands but that he must be at the building for his three therapy sessions each day and that he could not work full-time employment under these circumstances.

[20] In *Crupi v Canada (Canada Employment and Immigration Commission)*, A-451-85, the Federal Court of Appeal determined that a hospital was not a prison or similar institution. So, according to that decision, an ill person who has to stay in hospital for a given period following an order from the Court will be able to receive sickness benefits because the intention of Parliament is to allow claimants who are not available for work because of an illness to receive this type of benefit.

[21] Pavillon X is an organization that provides assistance and support to people with addictions, such as alcoholism and drug dependence. According to Mr. Poisson, the Pavillon

liaison officer, most people who come to Pavillon are there on their own initiative and do not have to comply with an order from the Court or the CLCQ. These people have generally been referred by hospitals, local community services centres (CLSCs), or community organizations. Only 20% of the people staying at Pavillon are offenders and subject to specific conditions. People staying at Pavillon are generally there voluntarily because they have to be motivated for their treatment to be successful (GD6-74 to 109).

[22] Therefore, even though Pavillon is clearly not a hospital, this organization still has a mandate to provide care for people with an illness (addiction). The Appellant has had an alcohol dependence that, according to the liaison officer, turned into a gambling addiction while he was in a halfway house. For this reason, he has been staying in that centre because he has to get specialized addiction treatment.

[23] Furthermore, the Pavillon liaison officer said once again that his centre was in no way a prison or detention facility, even if they sometimes had people subject to specific conditions imposed by a court or the CLCQ.

[24] In its arguments, the Commission submits that the test that must be used to establish whether an institution may be considered similar to a prison consists of determining whether the purpose of staying in such a place is for detention or punishment. In the Appellant's case, the Commission relies on the fact that the NPB required him to go to therapy, that he had no choice about going through the program, and that he would be unlawfully at large if he had to miss it. The Commission relies on these facts to find that the Appellant was actually in a prison or similar institution.

[25] The Tribunal recognizes that the notion of "prison or similar institution" may refer to other types of institutions that keep people in detention under certain conditions or for reasons similar to those of penitentiaries (*Garland* and *Crupi*, *supra*). However, it is also important to not stray too far from the wording of section 37, which makes explicit reference to the type of institution in which an appellant stays (which must be a prison or something similar) and not to the particular consequences that may arise if an appellant does not meet one of their conditions of release.

[26] What is more, and contrary to the Commission's submission, the Tribunal finds that the scope of the Appellant's therapy at Pavillon was not to punish him. Even though it is true that the conditions under which the Appellant went to therapy were similar to those of detention because he could leave the Pavillon only at predetermined times, this restriction on his release is a consequence of particular requirements of his therapy, which was held in a closed environment. In other words, even if the Appellant were still subject to a sentence, his mandatory confinement at Pavillon is related to treatment for his addiction and is not intended essentially to punish him.

[27] Therefore, the Tribunal finds that Pavillon X cannot be considered a prison or similar institution as defined by the Act. Given this finding, the Tribunal must decide the applicability of section 54 of the Regulations in this case.

Is the Appellant unable to work because of an illness? If so, would he otherwise be available for work?

[28] A claimant is disentitled from receiving Employment Insurance benefits for a working day in a benefit period if they fail to prove that:

a) they were capable of and available for work but unable to obtain suitable employment; or

b) they were unable to work because of a prescribed illness, injury or quarantine, and that they would otherwise be available for work. (Section 18 of the Act).

[29] First of all, the Tribunal is willing to recognize that addiction, whether it be to drugs, alcohol, or gambling is an illness. Therefore, a person who shows that they are unable to work because of such an illness should usually be able to receive sickness benefits under section 18(1)(b) of the Act.

[30] In this case, the Tribunal has no reason to doubt the Appellant's inability to work during the period in question. First, he filed a medical certificate supporting his inability to work between September 18, 2018, and December 14, 2018 (GD-19). Then, his version of the facts about the need to treat his addiction problems properly is credible, consistent, and supported by the evidence on file, particularly the NPB decision (GD3-33).

[31] In the Tribunal’s view, there is nothing that would prevent the Appellant from being available to look for and secure suitable employment if he were not ill. In this situation, the Appellant would clearly have continued staying in a halfway house to complete his community reintegration and would have continued to receive regular benefits.

[32] As an illustration, to take the example his representative mentioned, if the Appellant had been injured during his time in a halfway house and had to be hospitalized for medical care, he probably would have been entitled to sickness benefits during his time in hospital. For the Tribunal, the same logic applies to the Appellant’s situation at Pavillon because he had to be sent to a specialized centre for care to treat his addictions.

[33] In the Tribunal’s view, although it is true that the Appellant was not capable of or available to look for and take on employment during his time at Pavillon, this situation was due to the requirements of the mandatory therapy he had to have to treat his illness and not to specific conditions of his detention. Without this illness, the Appellant would have stayed in a halfway house and would have been available to look for and take on employment.

[34] The Tribunal finds that the Appellant has proven his inability to work because of illness during his time at Pavillon. He has also proven that, without this illness, he would have been available for work.

CONCLUSION

[35] The appeal is allowed. The Appellant is not disentitled from receiving sickness benefits during his time at Pavillon.

[36] It is worth clarifying that the Appellant's time at Pavillon is expected to end the week of December 10. At the end of his stay, the Appellant will go back to a halfway house to continue with his community reintegration and could therefore be entitled to receive regular benefits, subject to the statutory provisions surrounding benefit payments.

Yoan Marier
Member, General Division – Employment Insurance Section

HEARD ON:	December 11, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	C. D., Appellant Jean-Guy Ouellet (counsel), Representative for the Appellant P. P., witness and Pavillon X liaison officer