



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. S. v Canada Employment Insurance Commission*, 2018 SST 1371

Tribunal File Number: GE-18-3317

BETWEEN:

R. S.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Bernadette Syverin

HEARD ON: December 13, 2018

DATE OF DECISION: December 23, 2018

DECISION

[1] The appeal is dismissed. The Appellant failed to prove his entitlement to sickness benefits.

OVERVIEW

[2] The Appellant filed a claim for sickness benefits and the Canada Employment Insurance Commission (Commission) established a benefit period and 15 weeks of sickness benefits were paid. The Commission later determined that the Appellant was disentitled from receiving sickness benefits because he had not provided the requested medical evidence to attest that he was unable to work for medical reasons. This decision generated an overpayment of benefits.

PRELIMINARY MATTERS

[3] The Tribunal advised the parties of a scheduled hearing to take place on December 13, 2018, and according to Canada Post's delivery receipt, the Appellant received the Notice of Hearing on November 22, 2018. Yet, on December 13, 2018, the Appellant did not attend the hearing. Therefore, the Tribunal proceeded with the hearing in the absence of the Appellant pursuant to subsection 12 (1) of the *Social Security Tribunal Regulations* which allows the Tribunal to proceed once it is satisfied that all parties received the Notice of Hearing.

ISSUE

[4] Is the Appellant entitled to sickness benefits?

ANALYSIS

[5] A claimant is eligible to receive sickness benefits if he suffered from an illness that rendered him incapable of performing the duties of his regular or usual employment or of other suitable employment (section 40 (4) of the *Employment Insurance Regulations* (Regulations)). The onus is on the Appellant to prove his inability to work (*Muir* (A-284-94)). In order to prove his inability to work, the Appellant has to provide a medical note completed by a medical doctor or other medical professional, attesting to his inability to work and probable duration of his illness, injury or quarantine, as required (subsection 40 (1) Regulations).

Is the Appellant entitled to sickness benefits?

[6] The Tribunal finds that the Appellant is not entitled to sickness benefits for the following reasons.

[7] The evidence on file indicates that the Appellant stopped working in August 2017 due to illness (GD6-3). The Commission submits that the Appellant was not entitled to sickness benefits because the medical certificates submitted in support of the claim do not meet the requirements set out in subsection 40 (1) of the Regulations.

[8] The Tribunal agrees with the Commission that the medical certificate issued by Doctor Brunet (GD3-21) on August 9, 2017, does not meet the requirements set out in subsection 40 (1) of the Regulations, as while there is mention of a lower back injury, there is no mention of the Appellant's inability to work or the probable duration of his illness.

[9] The Appellant also submitted medical certificates issued by Doctor Cardamore (G2-9) and by a physiotherapist (GD3-22 to GD3-32) indicating that the Appellant was restricted in terms of the amount of time that he could remain standing or sitting, and in terms of the number of kilograms he could lift. However, the Tribunal notes that according to those medical certificates, the Appellant could have continued to work regular full-time hours. Therefore, in accordance with subsection 40 (4), the Tribunal finds that the Appellant's medical certificates do not certify that his illness or injury rendered him incapable of performing the duties of another suitable position.

[10] Based on the foregoing, the Tribunal concludes that the Appellant has failed to prove that he was incapable of working during the period in which he had received sickness benefits. Therefore, the Appellant is not entitled to receive sickness benefits.

CONCLUSION

[11] The appeal is dismissed.

Bernadette Syverin
Member, General Division - Employment Insurance Section

HEARD ON:	December 13, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	None