



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation : *C. C. v Canada Employment Insurance Commission*, 2019 SST 257

Tribunal File Number: GE-18-3851

BETWEEN :

C. C.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY : Yoan Marier

HEARD ON : February 18, 2019

DATE OF DECISION : February 26, 2019

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] After suffering from a shoulder injury, the Appellant filed a claim for sickness benefits. A benefit period was established on November 24, 2014, and the Appellant received benefits until March 2015.

[3] On October 11, 2018, the Canada Employment Insurance Commission (Commission) re-examined the Appellant's claim and determined that he was not entitled to be paid sickness benefits because he failed to provide a medical certificate proving his inability to work.

[4] The Appellant now disputes the Commission's decision. He submits that the Commission has not demonstrated that he made false or misleading statements that would allow for a re-examination of his claim more than 36 months after benefits were paid or payable.

ISSUE

[5] Could the Commission re-examine the Appellant's claim for benefits more than 36 months after benefits were paid or payable?

ANALYSIS

[6] The main issue in this file concerns a disentitlement from sickness benefits. However, at the hearing, the Appellant's representative raised the issue of the delay in re-examining the Appellant's claim, since the re-examination of the claim was completed after the 36-month time limit normally imposed by the Act.

[7] Although this issue is not directly addressed in the Commission's reconsideration decision (GD3-22), the Tribunal finds that it has jurisdiction to make a decision regarding the re-examination of the claim, since both the original decision and the reconsideration decision are the direct result of the Commission's initiative to re-examine the claim more than 36 months after benefits were paid or payable. In other words, if the Commission had not decided to re-

examine Appellant's claim on the basis of the particular provisions of subsection 52 (5) of the *Employment Insurance Act*, the present case would simply not exist. Consequently, the Tribunal will deal with this issue first, since a decision in favour of the Appellant would render the other issue moot.

Could the Commission re-examine the Appellant's claim for benefits more than 36 months after benefits were paid or payable?

[8] No, the Tribunal finds that the Commission could not re-examine the Appellant's claim for the following reasons.

[9] The Commission may, within 36 months after the day on which benefits have been paid or become payable, re-examine any claim in respect of such benefits. However, the Commission has 72 months to re-examine a claim for benefits where it believes that a false or misleading statement or representation has been made in relation to that claim. (Subsections 52(1) and 52(5) of the Act)

[10] The Commission does not have to prove that a false or misleading statement was made knowingly or that it was sanctioned by a penalty in order to invoke subsection 52(5). The mere existence or presence of a false or misleading statement is sufficient, to the degree that the Commission is reasonably satisfied of this fact, to carry out a reconsideration of the claim within 72 months (*Canada (Attorney General) v. Dussault* 2003 FCA 372).

[11] In order to justify its decision to re-examine the Appellant's claim more than 36 months after benefits were paid or payable, the Commission states that the Appellant made a false or misleading statement when he failed to provide a medical note as requested (GD3-15).

[12] In the Tribunal's view, the fact that the Appellant was unable to provide the documents required by the Commission does not demonstrate that he made false or misleading statements regarding his medical issues or the fact that he could not work during the weeks when he claimed sickness benefits. In other words, the fact that there is no medical certificate demonstrating an inability to work during a certain period of time does not necessarily mean that there is no inability to work.

[13] At the hearing, the Appellant gave a credible and detailed testimony and provided the Tribunal with useful information regarding his medical issues during the weeks when he was collecting sickness benefits. The Appellant also provided medical documents establishing that he consulted with a doctor, a physiotherapist and an ergotherapist multiple times during the months of November and December 2014 (GD8-3 to 5).

[14] Furthermore, the Appellant presented a medical certificate prepared by his doctor confirming that he was unable to work between November 25, 2014, and January 5, 2015 (GD3-18). The Commission refused to accept this document because it was “flawed”: the date of onset of the inability to work is written as November 25, 2015, when it should have been November 25, 2014. In the Tribunal’s view, it is obvious that this was a clerical mistake made by the Appellant’s doctor: the document was signed on December 12, 2014, it was printed on the same day, and the end date of the inability to work is written as January 5, 2015. The Tribunal accepts this medical certificate as a proof of the Appellant’s inability to work and finds that the Commission should have accepted that document, since aside from a small clerical mistake, that document met the requirements of section 40 of the Regulations (at least for the first few weeks of sickness benefits).

[15] The Appellant also presented multiple other documents prepared by his doctor in preparation for a worker’s compensation claim to the CSST. Three of those documents mention an “*arrêt de travail*” (GD8-10,11,13).

[16] In the Tribunal’s view, it is clear that the Appellant was telling the truth when he declared that he was unable to work during the weeks he claimed sickness benefits.

[17] The burden of proof that rests with the Commission when it wants to go back more than three years to claim reimbursement from a claimant is not a negligible burden as the consequences experienced by a claimant can be considerable. (*Langelier v. Attorney General of Canada*, A-140-01)

[18] The evidence presented by the Commission does not demonstrate that the appellant made false or misleading statements about his state of health or his inability to work. On the contrary, the evidence tends to demonstrate that the Appellant was telling the truth the whole time. The

only thing that can be blamed on the Appellant is the fact that he did not provide a medical certificate covering the entire period of his sickness benefits, which in itself does not demonstrate false or misleading statements.

[19] Since the Commission has not presented any other evidence to support the alleged false or misleading statements, the Tribunal is unable to establish that the Commission was reasonably satisfied of the existence of false or misleading statements in relation to the Appellant's claim for benefits when that claim was re-examined.

[20] If the Commission wished to re-examine the Appellant's claim, it was free to do so within the 36-months period normally permitted by the Act, unless it could demonstrate that false or misleading statements were made, which was not the case here.

[21] The Tribunal finds that the Commission has not demonstrated that the Appellant made false or misleading statements. Consequently, the Commission could not rely on subsection 52(5) of the Act to re-examine the appellant's claims more than 36 months after benefits were paid or payable.

[22] Since it was determined that the Commission could not re-examine the Appellant's claim, it is not necessary for the Tribunal to consider the other arguments raised by the Appellant's representative during the hearing.

CONCLUSION

[23] The appeal is allowed.

Yoan Marier
Membre, Division générale - Section de l'assurance-emploi

HEARD ON:	February 18, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES	Mr. C. C., Appellant Me Richard-Alexandre Laniel, Appellant's representative