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

Citation : *S. T. v Canada Employment Insurance Commission*, 2019 SST 744

Tribunal File Number: GE-18-2187

BETWEEN:

S. T.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Charlotte McQuade

HEARD ON: July 8, 2019

DATE OF DECISION: July 16, 2019

Canada

DECISION

[1] The appeal is allowed in part. The medical notes provided are not valid so S. T. (who I will refer to as the "Appellant") is not entitled to the sickness benefits she received from April 21, 2013 to August 17, 2013. The appeal is dismissed on this issue.

[2] Although the Appellant provided false or misleading information by providing two invalid medical notes, the Appellant did not knowingly provide false or misleading information. As such, no penalty is warranted and the warning is removed. The appeal is allowed on this issue.

OVERVIEW

[3] The Appellant applied for sickness benefits on April 21, 2013. To prove her illness, she provided two medical notes, which appeared to have been signed by a medical doctor. The Appellant collected sickness benefits from April 21, 2013 to August 17, 2013. She then collected maternity and parental benefits from September 15, 2013 to June 21, 2014 at which time she started full time employment.

[4] The Canada Employment Insurance Commission (who I will refer to as the "Respondent") did an investigation and determined that the individual who referred to himself as "Dr." and had signed the Appellant's medical notes as an "M.D." was not actually a medical doctor. He was thought to be a practitioner of Chinese medicine. The Respondent determined that the medical notes the Appellant had provided were not valid to prove the Appellant's illness because they were not completed by a medical doctor or other medical professional as is required by the *Employment Insurance Regulations* (EI Regulations). The Respondent decided that the Appellant was not entitled to the sickness benefits she had received and asked her to pay that money back. The Respondent also determined that the Appellant had knowingly provided false or misleading information in providing the two invalid medical notes and issued a penalty in the form of a warning.

PRELIMINARY MATTERS

[5] The Appellant was provided with an interpreter for her hearing.

[6] The Appellant referred in her testimony to some email communication with an agency who helped her apply for EI sickness benefits. She wished to provide the emails in evidence but they were written in Chinese. As the email information was potentially relevant to the issues under appeal, I allowed the Appellant until July 11, 2019 to have this material translated and submitted to the Tribunal. The Appellant provided this documentation on July 11, 2019 and it was sent to the Respondent.

ISSUES

[7] Issue 1: Did the Appellant provide a valid medical certificate for her claim for sickness benefits?

[8] Issue 2: If not, does the Respondent have the authority to impose a penalty?

[9] Issue 3: If a penalty should be imposed, did the Respondent properly exercise its discretion in imposing a warning?

Issue 1: Did the Appellant provide a valid medical certificate for her claim for sickness benefits?

[10] No. The Appellant has not provided a valid medical certificate for her claim for sickness benefits. The medical notes were not valid as they were signed by a person referring to himself as "Dr." and "M.D." but he is not a medical doctor registered with the College of Physicians and Surgeons of Ontario.

[11] A claimant is not entitled to be paid benefits where the claimant fails to prove that they were unable to work because of illness or injury, and that the claimant would otherwise be available to work. [1]

[12] To prove inability to work because of illness or injury, the evidence required to be provided to the Respondent is a medical certificate completed by a medical doctor or other

[1] Paragraph 18(1)(b) of the *Employment Insurance Act* (Act)

medical professional attesting to the claimant's inability to work and stating the probable duration of the illness or injury. [2]

[13] The Appellant applied for sickness benefits on April 21, 2013, stating she stopped work on February 19, 2013 due to illness. She confirmed she completed the application without assistance. [3]

[14] In support of her application for sickness benefits, the Appellant supplied two medical notes written on prescription pad paper. The first note is dated February 24, 2013. It states that the Appellant "should be off work until July 5, 2013 due to medical reasons". At the top of the note is a name beside the notation "Dr." along with an address and phone number. A signature is noted at the bottom beside the notation "M.D." [4] The second note is dated July 6, 2013. It states that the Appellant "should be off work for two months due to medical reasons." At the top of the note is the same name as the prior note beside the notation "Dr." along with the same address and phone number. The signature noted is noted at the bottom beside the notation "M.D." [5]

[15] On August 25, 2013 the Appellant completed a maternity and parental benefits questionnaire noting her expected due date as November 19, 2013. [6]

[16] The Respondent paid the Appellant the maximum 15 weeks of sickness benefits from April 21, 2013 to August 17, 2013. The Appellant then collected maternity and parental benefits from September 15, 2013 to June 21, 2014.

[17] I find the two medical notes provided by the Appellant in support of her EI sickness benefits application relate to the period in which the Appellant collected sickness benefits.

[18] The Respondent provided submissions advising that its Integrity officers conducted an investigation surrounding the practices of X. The investigation revealed the owner of that agency

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[2] Subsection 40(1) of the *Employment Insurance Regulations* (EI Regulations)
[3] GD3-9
[4] GD3-16
[5] GD3-17
[6] GD3-18

would apply for EI benefits on behalf of claimants and would send them to one of her "doctors" to obtain fraudulent medical notes. [7]

[19] The Respondent's Integrity officer determined, in the Appellant's situation, there was no record of the doctor who signed the Appellant's medical notes as "M.D." with the College of Physicians and Surgeons of Ontario. A picture from Google maps indicated the address on the prescription notepaper was a residential home and not a medical clinic or doctor's office. The Integrity officer visited the address and it was a two story semi-detached residential dwelling. There was no signage that indicated who lived there or that a doctor's office was located on the premises. The phone number on the medical note the Appellant provided was connected to a business called "X" located at X. The Respondent's Integrity officer determined that this business was not a doctor's office that employs medical doctors. The business practices Traditional Chinese Medicine. [8]

[20] On October 19, 2017, the Appellant was sent a letter asking her to contact the Respondent by November 7, 2018 to schedule an interview concerning the medical certificates she had submitted with her application as the Respondent had been unable to find any information to validate or authenticate the medical notes. [9] The Appellant did not contact the Respondent to set up an interview. The Respondent then determined that the Appellant was not entitled to sickness benefits because she had not furnished a valid medical certificate supporting her illness and inability to work.

[21] The Appellant explained in her Notice of Appeal how she obtained the medical notes. She was working in a restaurant doing physical labor, standing and working continuously for more than 8 hours each day. She related she was pregnant for 2 months and had a history of a back injury. She was struggling with constant pain in her back and legs. The Appellant went to her family doctor who told her to stay away from x-ray and chemicals for pain relief medications because of her pregnancy. He suggested she see a sports injury medical practitioner for further treatment and diagnosis, which was not covered by OHIP. The Appellant could not afford that

[7] GD4-2
[8] GD3-22 to GD3-27
[9] GD3-28 to GD3-29

treatment so did not follow up. The Chinese medicine doctor who wrote the notes for her EI application was the only doctor she could afford treatment with at that time.

[22] The Appellant advised further in her Notice of Appeal that she did not know that the Chinese medicine doctor was not qualified to provide medical notes. He suggested that she avoid heavy physical work, so that she would not affect her body and her baby. The Appellant explains that her English was very poor so she had to resort to an agency called C2S2 Consulting Inc. to help her apply for EI sickness benefits. She explained that the agency helped her to fill out and submit the EI forms and they checked her documents including the doctor's medical certificate. They did not tell her of any problems with her documents when they submitted the application. The Appellant related that because of her difficulty communicating in English, she also granted authorization to this agency to help her with all government office communications. As such, when she received the letters from Service Canada, she gave them to the agency who told her that the doctor's medical certificate may be a problem, but they would put the case in dispute. This is why she missed a lot of the opportunities of communicating with government offices by herself. The Appellant explained that she found out that this agency had been deceiving her for a long time when she recently received a letter from the Canada Revenue agency. She learned then that the agency had not filed an appeal as they had said they would.

[23] The Appellant testified that she came to Canada in February 2009. In 2013, she was working standing for 8 to 10 hours a day and had pain in her legs and lower back. After she became pregnant, she could not have x-rays or take pain medication so she went to see the Chinese medicine doctor to reduce the pain. She stated that a co-worker referred her to this doctor. The Appellant could not remember when she first saw the Chinese medicine doctor but though it might have been mid-April 2013. However, she was certain that it was after she became pregnant. She confirmed she gave birth in November 2013.

[24] The Appellant explained that she had a family doctor from 2010 but did not seek his help because she thought he might prescribe medication, which she did not want, as she was pregnant. Also, he was a western medicine doctor and she trusted the Chinese medicine doctor more. She told the Chinese medicine doctor about her working environment and he advised her to have a rest from work, as she was pregnant. He provided her the medical notes so she could take a break

from work. This doctor also provided massage and physiotherapy to reduce her pain and told her to elevate her legs. She saw the Chinese medicine doctor about 3 to 4 times and she paid him for treatment. The Appellant did not discuss whether she should stay off work with her family doctor.

[25] The Appellant testified that she heard about EI sickness benefits through a co-worker. She was alone at the time as her husband was in China. Because her English was not good she went to an agency called "X" for help. She testified that she found the agency through an advertisement online. The agency was located one floor up from the Chinese medicine doctor's office in an office building located at X. The Appellant confirmed this was not the address on the medical notes she provided. The Appellant denied that the Chinese medicine doctor referred her to the agency or that the agency referred her to the Chinese medicine doctor. She said that she had seen the doctor first because she was not feeling well.

[26] The Appellant testified that she gave the Chinese medicine doctor's notes to the agency. She explained that although the EI application says she did not have help in completing her application for benefits, the agency actually completed the application for her. She did not know how they filled it out because she did not read the application. Because of her problems with English, she just signed the form. She said that she trusted the agency to do things legally. The agency told her if anything happened, she could go back and talk with them. She did contact them again when she got correspondence from the government, which they said they would handle for her. The Appellant testified that she had some email communication between herself and the agency showing this, which she will submit to the Tribunal after translation. The Appellant submitted email documentation covering a period from September 7, 2018 to March 27, 2019. The emails confirm the Appellant's contact with this agency concerning government documentation received and that she made enquiries about the status of an appeal. [10]

[27] The Appellant testified that the Chinese Medicine doctor just told her he was a doctor. She did not therefore question the note. She trusted him. Otherwise, she would have gone to a different doctor to certify her illness. She does not understand why there is a problem with the notes she provided. She thought they were legal. I asked her about the signature saying "M.D."

[10] GD6

on the note. She was not aware of the difference between an M.D. and a Chinese medicine doctor. She explained that in China, a Western Medicine doctor and Chinese medicine doctor are the same.

[28] The Appellant related that as a newcomer she did not want to do anything against the law. She said that even when she sent her child back to China she told the government to stop her child tax benefit and paid back some money that was owing. Also, when she went back to work she told the Respondent to stop her EI benefits. She explained that when she Canada in April, 2014 and returned in June, 2014, contrary to what she put in her appeal form, she did not contact the Respondent to stop her maternity/parental benefits because she thought she did not have to. The friend who helped her fill out her appeal form must have misunderstood her about that.

[29] The Appellant testified that she did not attend the interview with the Respondent as requested in the Respondent's October 19, 2017 letter because she gave that letter to the agency. They told her they would submit all the necessary documents to the Respondent and she did not need to go to the interview. The Appellant testified that she also did not call the Respondent back after the May 31, 2018 telephone conversation, as she did not fully understand that conversation and gave all the information to the agency who she thought was handling things.

[30] The Appellant argues that she does not understand what the problem is with the medical notes that were provided. The doctor who wrote them was a practitioner of Chinese medicine whom she saw in a Clinic. He provided treatment for her in the form of massage and physiotherapy and he told her to stay off work. She thought he had the authority to provide the notes.

[31] The Respondent's position is that EI sickness benefits cannot be paid to the Appellant from April 21, 2013 because she did not furnish a valid medical certificate supporting her illness and inability to work. The medical certificates provided are from an individual who is not registered with the College of Physicians and Surgeons of Ontario. The person who signed the notes promotes traditional Chinese medicine and acupuncture. The Respondent argues it is unclear why this individual would have a prescription pad, indicate he is a Doctor and give medical advice when he clearly would know the parameters of his occupation. The Respondent

submits that while the Appellant might or might not have known he was not a medical doctor, the Appellant was paid benefits without a valid medical certificate. As the Appellant cannot provide a valid medical certificate, she is not eligible to the sickness benefits she was paid.

[32] The EI Regulations provide that the certificate attesting to inability to work due to illness must be provided by a medical doctor or "other medical professional". [11] Thus, the provision of such a certificate is not restricted to medical doctors only. There is no definition of "other medical professional" in the Act or Regulations. I find therefore that the definition of "other medical professional" could potentially include a Chinese Medicine practitioner.

[33] However, the individual who signed the Appellant's medical notes did not sign the notes as a practitioner of Chinese Medicine. Instead he referred to himself as Dr. before his name and signed the notes as "M.D.", notwithstanding he is not registered in Ontario as a medical doctor. The address on the notes was confirmed by the Respondent to be a residential address, not a doctor's office, or even the office of his Chinese medicine practice.

[34] Even if the individual who signed the Appellant's medical notes was an authorized practitioner of Chinese medicine, he did not reference that he was that type of practitioner or indicate his certification as a practitioner of Chinese medicine on the medical notes so the notes could be properly authenticated by the Respondent. Rather, this individual misrepresented his professional qualifications as that of a medical doctor. It is for that reason that the medical notes are not valid. Benefits were paid to the Appellant on the basis of these medical notes having been written by a medical doctor, which they were not.

[35] I find therefore, that the medical notes provided in support of the Appellant's application for sickness benefits are not valid. The individual who completed the medical notes has misrepresented his qualifications. No other medical certification forms have been provided attesting to the Appellant's illness from April 21, 2013 to August 17, 2013.

[11] Subsection 40(1) of the EI Regulations

[36] As the medical notes supplied are not valid and no other medical certification forms have been provided, the Appellant has failed to prove that she is unable to work due to illness or injury. She is therefore not entitled to sickness benefits from April 21, 2013 to August 17, 2013.

Issue 2: Does the Respondent have the authority to impose a penalty? ?

[37] No. Although the Appellant provided false or misleading information in the form of two invalid medical notes, she did not do so knowingly. Because she did not provide the false or misleading information knowingly, the Respondent does not have authority to impose a penalty in the form of a warning.

[38] The Commission can impose a penalty on a claimant if the Commission becomes aware of facts that establish the claimant made a representation or provided information that the claimant knew was false or misleading. [12] The Commission may issue a warning instead of setting a monetary amount for a penalty. [13]

[39] The initial onus is on the Commission to prove that a claimant knowingly made a false or misleading statement or representation. The onus then shifts to the claimant who must provide a reasonable explanation to show that the statement or representation was not knowingly made. [14]

[40] The Appellant provided two medical notes in support of her application for benefits both signed by the same person, with the title "Dr." in front of his name and "M.D." after his signature. A search of the College of Physicians and Surgeons of Ontario by the Respondent revealed the person who signed these certificates is not a licensed medical doctor. I find the Respondent has satisfied its initial onus to prove that the Appellant made knowingly two false representations in providing these medical notes. The notes falsely indicate they were completed by a medical doctor.

[41] The Respondent takes the position the Appellant acted knowingly in providing the invalid medical notes. The Respondent points out that the Appellant's family doctor did not recommend her to stay off work. Instead, the family doctor advised her to see a sports injury medical

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[12] Paragraphs 38(1)(a) and 38(1)(b) of the Act
[13] Section 41.1 of the Act
[14] *Canada (A.G.) v. Gates)*, [1995] 3 F.C. 17 (C.A)

practitioner. The Respondent also points out that the Appellant indicated in her Notice of Appeal that she was two months pregnant when she went to see the doctor who signed the notes. However, the first note is dated February 25, 2013 and her expected due date was November 19, 2013. As such, on February 25, 2013, she would have been just pregnant, and possibility not even aware.

[42] The Respondent also submits that the Appellant says she took the medical notes to the agency. However, it would appear through the Commission's broader investigation into the agency that the agency would have sent her to obtain the medical note and not the other way around. The Respondent also submits that the Appellant had the opportunity to contact the investigator during the investigation, when she received the decision letters and again during the Administrative Review however, she did not.

[43] While there was some inconsistencies between the Appellant's testimony and the information in her Notice of Appeal and some issues with dates, overall I found the Appellant's testimony to be credible. She was direct and answered questions openly and without reservation.

[44] The Appellant wrote in her Notice of Appeal that she first went to the Chinese medicine doctor when she was two months' pregnant. She testified that she saw the Chinese medicine doctor after she was pregnant but was unsure of the date, thinking it might have been in April. However, I find it more likely the Appellant saw the doctor in February, prior to her awareness of her pregnancy, given the fact she gave birth in November. In that regard, she went off work due to illness on February 19, 2013 and the first medical note was dated February 24, 2013. I attach no significance to the different dates she has provided regarding when she first saw the doctor and whether or not she was pregnant at the time, given the length of time that has passed since these events occurred.

[45] The Respondent points out that the overall investigation suggests that the agency sent the Appellant to see the Chinese medicine doctor rather than the other way around. The Appellant says she saw the doctor first. I accept her testimony in that regard. It is consistent with the first medical note being completed on February 19, 2013 and the EI application for sickness benefits not being completed by the agency for the Appellant until after that on April 21, 2013.

[46] I find that the Appellant did not knowingly provide false or misleading information by submitting the two invalid medical reports. The Appellant testified that she did not know that the Chinese medicine doctor who signed her medical notes was not qualified to do so. The Appellant attended the Chinese Medicine practitioner's clinic and he provided her with treatment in form of massage and physiotherapy. Because of her limited English skills, she relied on the agency to complete the EI application for her. She provided the agency with the doctor's notes and the agency did not alert her to a concern. The Appellant did not read the application for benefits, only signing it, due to her language problems. She placed her trust in the doctor to prepare the notes and placed her trust in the agency to advise her and file the application for her. I accept that the Appellant did not know the medical notes being provided to her were invalid. I also accept the Appellant's testimony that she did not respond to the Respondent's requests for information regarding the medical notes as she thought the agency was handling those matters for her. The Appellant has provided a reasonable explanation to show she did not knowingly provide false or misleading information.

[47] A penalty can only be imposed if a claimant knowingly provided false or misleading information. As I have found the Appellant did not knowingly provide false or misleading information, the penalty in the form of the warning is to be removed.

CONCLUSION

[48] The appeal is allowed in part. The Appellant is not entitled to sickness benefits from April 21, 2013 to August 17, 2013, as she has not proven her illness by providing a valid medical certificate for this period. The warning imposed by the Respondent is removed, as the Appellant did not knowingly provide false or misleading information.

Charlotte McQuade

Member, General Division - Employment Insurance Section

HEARD ON:	July 8, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	S. T., Appellant