



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *B. M. v Canada Employment Insurance Commission*, 2019 SST 958

Tribunal File Number: GE-19-2438

BETWEEN:

**B. M.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: John Gillis

HEARD ON: July 17, 2019

DATE OF DECISION: July 30, 2019

## **DECISION**

[1] I dismiss B. M.'s appeal. The Claimant, B. M., was not entitled to be paid benefits because she did not prove that she was available for work.

## **OVERVIEW**

[2] The Claimant started a course while continuing to work in the evenings. She experienced an increase of migraine headaches and her doctor recommended that she stop working. The Claimant applied for employment insurance sickness benefits. Her application for benefits stated that she only went to school 10 to 14 hours each week. The Canada Employment Insurance Commission granted her sickness benefits. The Commission later learned that the Claimant was actually attending school full-time. The Commission reconsidered the Claimant's application for benefits and requested a repayment. The Claimant appeals the Commission's decision.

## **ISSUES**

[3] Was the Claimant available for work while on sickness benefits and attending a course?

## **ANALYSIS**

[4] To be entitled to receive employment insurance sickness benefits, claimants have to prove two things.<sup>1</sup> First, claimants must prove that they are unable to work because of a prescribed illness, injury, or quarantine. Second, claimants must prove that they would otherwise be available for work. The claimant's sickness must be what is keeping them from working. It is a claimant's responsibility to prove that they are entitled to benefits.<sup>2</sup>

[5] The legislation does not define availability. A claimant can establish her availability by proving her desire to return to the labour market as soon as an employer offers her a suitable job, through demonstrating efforts to find a suitable job, and by not setting personal conditions that might limit her chances of returning to the labour market.<sup>3</sup> Availability requires a willingness to

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<sup>1</sup> Section 18(1)(b) of the *Employment Insurance Act*.

<sup>2</sup> Section 49(1) of the *Employment Insurance Act*.

<sup>3</sup> *Faucher v Canada (Attorney General)*, A-56-96.

re-enter the labour force under normal conditions without unduly limiting one's chances of obtaining employment.<sup>4</sup>

[6] If a claimant is attending a full-time course of instruction then there is a presumption that they are not available.<sup>5</sup> The claimant can overcome (rebut) this presumption if they prove exceptional circumstances.<sup>6</sup> An example of exceptional circumstances is if the claimant had a history of working while studying full-time.<sup>7</sup>

[7] Despite the Commission already paying benefits to the Claimant, they are entitled to reconsider the Claimant's application for benefits. The Claimant submits that it is unfair for the Commission to reconsider an application for benefits once the Commission has paid those benefits. The legislation permits the Commission to reconsider a claim for benefits within 3 years after the benefits are paid.<sup>8</sup> The Commission paid the Claimant benefits in October of 2018. The Commission later learned that the Claimant decided to take a full-time course while she was being paid benefits. The Commission reconsidered the Claimant's claim for benefits in April of 2019. I find that the Commission was entitled to reconsider the Claimant's claim for benefits.

**Issue 1: Was the Claimant available for work while on sickness benefits and attending a course?**

[8] No.

[9] The Claimant has not proven that she was available for work between October 22, 2018 and March 22, 2019. The Commission does not dispute that the Claimant was unable to do her job because of her illness. As such, the issue that I must consider is if the Claimant was otherwise available for work. The Commission alleges that the Claimant was not available for work because of her personal decision to attend school on a full-time basis. It was the Claimant's responsibility to prove that she was available for work.

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<sup>4</sup> *Canada (Attorney General) v Whiffen*, A-1472-92.

<sup>5</sup> *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.

<sup>6</sup> *Landry v. Canada (Attorney General)*, A-719-91.

<sup>7</sup> *Canada (Attorney General) v Rideout*, 2004 FCA 304.

<sup>8</sup> Section 52(1) of the *Employment Insurance Act*.

[10] The Claimant and the Commission agree that:

- The Claimant stopped working on September 28, 2018 due to illness;
- The Claimant submitted medical documentation dated October 22, 2018 stating that she could not work;
- The Claimant's application for employment insurance sickness benefits stated that she was taking a course or training program for 10 to 14 hours a week; and
- The Claimant received employment insurance sickness benefits between October 22, 2018 and March 22, 2019.

[11] The Claimant admits that her course was actually a full-time course. She testified that her course was from 8:30 a.m. to 4:00 p.m., Monday to Friday. The Claimant said that she could not change her course hours and her attendance was necessary. Based on the Claimant's testimony, I find that she was attending a full-time course of study between October 22, 2018 and March 22, 2019.

[12] The Claimant did not look for work. She testified that her doctor recommended that she stop work because of her migraine headaches. She did notice a reduction in the frequency of her migraine headaches after she stopped working. The Claimant admitted to the Commission that she had not been seeking employment. The Claimant testified that she did not apply for other jobs because she was happy to have fewer migraine headaches. The Claimant did continue her full-time course. The Claimant did say that if she had decided to work then her availability for work would have been restricted to evenings and weekends because of her full-time course.

[13] The Claimant's priority was to complete her course. The Claimant had applied for admission to the community college course in December of 2017. The college did not accept her into the course until August of 2018. The course began in September of 2018 and ended in June of 2019. She asked her employer to move her hours of work to accommodate her full-time course. The Claimant testified that she found it too much to go to school, work, as well as study. She would not abandon her school because she had paid for the course and her textbooks. She admitted to the Commission that her course was her priority.

[14] The Claimant had unsuccessfully tried to work while attending school. The Claimant testified that she worked in September of 2018 while attending school full-time. Her migraine headaches increased in frequency and she was not able to continue working and studying. The Claimant testified that she had previously tried to work a night shift but could not sleep during the day.

[15] The Claimant's evidence does not establish the exceptional circumstances required. It is the Claimant's responsibility to prove exceptional circumstances so that she can overcome the strong presumption that she was unavailable for work while attending school full-time. The Claimant's evidence does not show that she had a long-term history of working while studying full-time. Nor does her evidence demonstrate a willingness to abandon her course of study if an employer offered her suitable employment. I find that the Claimant has not rebutted the presumption that she was unavailable for work.

[16] Based on the Claimant's admissions to the Commission and her testimony, I find that the Claimant did not have a desire to return to the workforce. Her first priority was finishing her course. I also find that the Claimant did not make efforts to find work. She did not look for work because she found that going to school and working caused her increased migraine headaches. As her priority was completing her course, she did not look for work. Finally, I find that the Claimant's decision to remain in school full-time set a personal condition that unduly limited her chances of returning to the labour market. While the Claimant's personal decision to seek additional education is commendable, the purpose of employment insurance is not to fund self-improvement. I find that the Claimant was not available for work.

[17] As the Claimant was not available for work, I find that the Claimant is disentitled from employment insurance benefits between October 22, 2018 and March 22, 2019.

**CONCLUSION**

[18] I dismiss the Claimant's appeal. I find that the Claimant has failed to prove she was available for work between October 22, 2018 and March 22, 2019.

John Gillis

Member, General Division - Employment Insurance Section

HEARD ON:	July 17, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	B. M., Appellant