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

[TRANSLATION]

Citation: *P. L. v Canada Employment Insurance Commission*, 2019 SST 802

Tribunal File Number: GE-19-2585

BETWEEN:

P. L.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Employment Insurance Section

DECISION BY: Josée Langlois

HEARD ON: August 7, 2019

DATE OF DECISION: August 7, 2019

DECISION

[1] The appeal is dismissed. I find that the Appellant has failed to show that, if not for her illness, she would have been available for work as of March 4, 2019, because she chose to work part-time.

OVERVIEW

[2] The Appellant was injured on February 18, 2019, while she was on a leave of absence authorized by her employer. She showed a medical certificate, dated March 13, 2019, which indicates that she was unable to work from February 18, 2019, to May 1, 2019. On June 10, 2019, the Canada Employment Insurance Commission (Commission) found that the Appellant was not available for work as of March 4, 2019. It stated that, since the Appellant worked part-time 18 hours a week, she would not have been available for work even if she had not been ill. I must determine whether the Appellant was available for work as of March 4, 2019.

ISSUE

[3] If not for her illness, would the Appellant have been available for work as of March 4, 2019?

ANALYSIS

[4] A claimant is not entitled to be paid benefits for each working day in a benefit period for which the claimant fails to prove that on that day the claimant was unable to work because of a prescribed illness, injury, or quarantine, and that the claimant would otherwise be available for work.[1]

[5] The Appellant provided a medical certificate indicating that she was unable to work from February 18, 2019, to May 7, 2019.

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[1] *Employment Insurance Act* (Act), s 18(1)(b).

[6] The facts concerning the Appellant's work-related incapacity are not disputed. The issue is whether she would have been available for work if she had not had that incapacity.

[7] The Commission argues that the Appellant was not available for work because, at her request, she worked part-time 18 hours a week and, for that reason, she was not available for full-time work.

[8] The Appellant testified that, when she was hired, she worked 35 hours a week for the employer. Then, given the tasks she had to do, her schedule was reduced to 28 hours a week and to 18 hours a week. She stated that she worked 18 hours a week for 14 years and that the employer reduced her hours at her request and not because she was in pre-retirement. The Appellant explained that 18 hours a week was sufficient to complete her weekly work tasks. For that reason, the employer never asked the Appellant to work more than 18 hours a week in 14 years, and those hours suited the Appellant.

[9] For that reason, I cannot find that the Appellant was available for work Monday to Friday, that is, each working day in her benefit period.[2] The Appellant's schedule was part-time, 18 hours a week, and she did not devote her availability to working full-time, Monday to Friday. On the contrary, the Appellant stated that her hours were reduced to 18 hours a week at her request, and she stated that that schedule was not only a choice but that it was what she wanted.

[10] Although she maintains that she is not in pre-retirement, the Appellant's work hours were reduced when she turned 65. Even so, I understand that the employer agreed to the hours the Appellant proposed because of the work to be done.

[11] A claimant is not entitled to be paid benefits for a working day in a benefit period for which the claimant fails to prove that on that day the claimant was unable to work because of a prescribed illness, injury, or quarantine, and that the claimant would otherwise be available for work.

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[2] *Employment Insurance Regulations* (Regulations), s 32.

[12] The Appellant opted for a part-time schedule of 18 hours a week, and that schedule was in effect for 14 years. Although I understand that she was completing the same tasks during her 18 hours of work a week as when she worked full-time, the fact remains that she has worked part-time for 14 years and that it was her choice. That schedule suited her, and the Appellant was interested in keeping it that way.

[13] The Appellant has failed to show that, if not for her illness, she would have been available for work because her hours had been part-time for 14 years at her request.

[14] I am of the view that the Appellant failed to show that, if not for her illness, she would have been available for work as of March 4, 2019.

CONCLUSION

[15] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section

HEARD ON:	August 7, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCE:	P. L., Appellant