



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Z. Z. v Canada Employment Insurance Commission*, 2019 SST 878

Tribunal File Number: GE-19-2733

BETWEEN:

Z. Z.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Lilian Klein

HEARD ON: August 12, 2019

DATE OF DECISION: August 30, 2019

DECISION

[1] I am dismissing the appeal. The Claimant cannot receive sickness benefits because he did not provide credible evidence that he was too sick to work. He must repay the 15 weeks of benefits that he received.

OVERVIEW

[2] The Claimant applied for sickness benefits and received 15 weeks of benefits between March 15, 2015, and January 30, 2016. He sent in three medical notes to prove he was too sick to work during these 15 weeks. The Commission decided that his notes were false as part of a wider investigation into fraudulent medical notes. On May 7, 2019, the Commission disentitled the Claimant from receiving sickness benefits because he did not prove he was sick. The disentanglement means that he has to repay all the sickness benefits he received.

[3] The Claimant appealed this decision, arguing that he had been too sick to work. He reported that a consultant completed his benefit application for him and helped him get the medical notes. He said he did not know the notes were fraudulent, and it is now too late for him to get medical certificates from his family doctor dating back to the weeks he got benefits.

PRELIMINARY MATTERS

[4] The Claimant did not attend the in-person hearing he requested. A hearing can go ahead without a claimant if he was given notice of the hearing.¹ I am satisfied that the Claimant was given notice since the Tribunal sent his Notice of Hearing to the email address he used to make his appeal. I also asked the Tribunal's Hearing Hotline agent to phone him during the hearing to remind him that I was waiting for him. He did not respond to explain why he did not show up.

[5] As a result, the hearing proceeded on the date that was scheduled, but without the Claimant.

¹ S 12 of the *Social Security Tribunal Regulations*.

ISSUE

[6] **Did the Claimant prove he met the conditions to receive sickness benefits?**

ANALYSIS

[7] You have to meet several conditions to qualify for sickness benefits. You have to have an interruption of earnings from your employment. You must also have at least 600 hours of insurable employment in your qualifying period.²

[8] The Commission may ask you to submit a medical certificate to prove you could not work because of illness, injury or quarantine.³ You cannot get sickness benefits unless you can prove you were unable to work for one of these reasons.⁴

[9] It is up to you to show that you meet all the qualifying conditions to receive sickness benefits.⁵

[10] The Commission may reconsider a benefit claim within 36 months after it paid you benefits if it later discovers that you should not have received them. It can extend this period to 72 months if you got these benefits because you made a false representation to support your benefit claim.⁶ You have to repay any benefits you were not entitled to receive.⁷

[11] The Commission agrees that the Claimant had an interruption of earnings from his employment and had enough insurable hours in the relevant qualifying period. However, it argues that he did not prove he was too sick to work by providing credible medical evidence.

[12] The Commission says that the Claimant received six weeks of sickness benefits from March 15, 2015, to April 25, 2014; six more weeks from August 23, 2015, to October 3, 2015;

² S 93(1) of the *Employment Insurance Regulations* (EI Regulations).

³ S 40(1) of EI Regulations.

⁴ S 18(1)(b) of the *Employment Insurance Act* (EI Act).

⁵ *Attorney General of Canada v Terrion*, 2013 FCA 97.

⁶ S 52(1) of the EI Act.

⁷ S 43(b) of the EI Act.

and three further weeks from January 10, 2016, to January 30, 2016. The Claimant does not dispute receiving these benefits.

[13] The Claimant reported that he contacted a woman named C. after he saw her agency advertised in a newspaper. He paid her \$280 in cash to help him apply for sickness benefits. He told her his family doctor was too busy to see him so she sent him to a walk-in clinic to get medical notes showing he was sick. He said he met a woman at the clinic who gave him the first note signed by Dr. Mark T. in exchange for \$50. C. got the other two notes for him. She also sent medical notes to his employer on his behalf.

[14] The Claimant submitted these three notes to support his sickness benefit claim. He told the Commission that he also got a note from his family doctor but could not find it.

[15] On August 1, 2019, he sent the Commission a note dated April 18, 2016, in which his family doctor diagnosed a rotator cuff shoulder injury and recommended that he avoid heavy lifting. The Claimant also sent in a note from his doctor dated April 16, 2016, prescribing acupuncture. These notes do not refer to the weeks when the Claimant received benefits between March 15, 2015, and January 30, 2016.

[16] The Commission provided extensive evidence of its investigation into the three notes the Claimant initially submitted to support his benefit claim. The Commission found that there was no Dr. Mark T. at the clinic address listed on the first two notes. The acupuncturist listed at the same address on the third note denied writing it. He said he does not use that type of template for patient notes. He did not authorize anyone to use his name for this purpose either. He said he had no knowledge of a Dr. Mark T. He reported working on his own at the clinic since 2012.

[17] Based on this investigation, the Commission found that the Claimant had submitted fraudulent medical notes. It imposed a disentitlement because you cannot use fraudulent documents to support your claim for sickness benefits.

[18] I accept the Commission's evidence and find that the notes the Claimant submitted to support his sickness benefit claim were fraudulent. He therefore failed to provide credible evidence that he was too sick to work.

[19] The Claimant argued that he did not know the notes were fraudulent because he did not pay attention to what the agency was doing. He wants the overpayment removed. He said the overpayment should not be his responsibility because the agency applied for benefits for him. He complained that it is now too late for him to get notes from his family doctor covering the weeks he got benefits.

[20] The Commission imposed a disentitlement on May 7, 2019. The Commission may reconsider your claim within 72 months of when you were paid benefits if you made a false or misleading representation to get them. You make a false representation when you submit fraudulent documents. I have already found that the Claimant submitted fraudulent medical notes.

CONCLUSION

[21] The Claimant is disentitled to the sickness benefits he received, and must repay them. This means that his appeal is dismissed.

Lilian Klein

Member, General Division - Employment Insurance Section

HEARD ON:	August 12, 2019
METHOD OF PROCEEDING:	In person
APPEARANCES:	Neither party attended the hearing.