



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *S. B. v Canada Employment Insurance Commission*, 2019 SST 1568

Tribunal File Number: GE-19-2707
GE-19-2705
GE-19-2708

BETWEEN:

S. B.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Manon Sauvé

HEARD ON: August 22, 2019

DATE OF DECISION: October 7, 2019

DECISION

[1] The appeal is allowed.

OVERVIEW

[2] S. B., the Appellant, has taught elementary school students at the Commission scolaire des X [X school board] for many years. She has stopped working a couple of times because of a medical condition. When she returned to work in 2013, she informed the school board that, in the interest of maintaining her health, she did not intend to accept the positions available at the beginning of the year.

[3] For 2013, 2014, 2015, 2016, 2017, and 2018, the Appellant accepted short-term teaching positions, and she did substitute teaching to increase her workload. When she was laid off at the end of those school years, she applied for Employment Insurance benefits. The Commission paid the Appellant benefits for those years.

[4] As part of an October 2018 investigation into the years from 2012 to 2018, the Commission gave a decision for each period. For 2013, the Commission refused to pay the Appellant benefits because she was not available for suitable employment. For 2014, 2015, 2016, 2017, and 2018, the Commission imposed a disqualification because she failed to accept suitable employment.

PRELIMINARY MATTERS

[5] At the hearing, I gave the Appellant four weeks to provide a medical document. I then gave an extra week. The Appellant did not provide any additional documents.

[6] However, the Appellant submitted a notice of appeal regarding six (6) Employment Insurance benefit periods. I combined all the files so that they were heard on the same day. Still, because of the issues raised, I gave one decision for the 2013, 2014, and 2015 periods and one decision for the 2016, 2017, and 2018 periods.

ISSUES

[7] The issues concern the benefit periods established on July 28, 2013; July 6, 2014; and June 28, 2015, for the files GE-19-2707, GE-19-2708, and GE-19-2705.

1. Was the Commission able to use the 72-month reconsideration period set out in the Act?
2. Was the Appellant available for suitable employment in the benefit period starting on July 28, 2013?
3. Did the Appellant fail to accept suitable employment in the benefit periods starting on July 6, 2014, and June 28, 2015?

ANALYSIS

1. Was the Commission able to use the 72-month reconsideration period set out in the *Employment Insurance Act* (Act)?

[8] Under section 52(1) of the Act, the Commission has 36 months to reconsider a claim for benefits that have been paid or would have been payable.

[9] Section 52(5) of the Act indicates that the Commission has 72 months to reconsider a claim for benefits if, in its opinion, a false statement or representation was made in connection with the claim.

[10] When the Commission exercises a separate power conferred on it by section 52(5) of the Act, it has a duty to tell the claimant precisely why, for the particular purposes of the exercise it is undertaking under that section, the statement seems false.¹

[11] I accept that, on October 18, 2018, the Commission started an investigation of the Appellant regarding her availability and possible failure to accept suitable employment offered by her employer.

¹ *Canada (Attorney General) v Langelier*, 2002 FCA 157; *Canada (Attorney General) v Dussault*, 2003 FCA 372.

[12] I note that the Commission failed to prove that it had informed the Appellant that it believed she had made a false or misleading statement and that it had 72 months for the 2013, 2014, and 2015 benefit periods. Moreover, the Commission did not submit an argument regarding this issue.

[13] In a recent decision, the Tribunal's Appeal Division found that the Commission must inform the claimant if it believes that they made a false statement, that it has 72 months to do this, and that I have to decide on the issue.² In addition, the Commission granted the appeal in that case because it had not told the claimant why it believed the appellant had made a false statement in claims for benefits beyond 36 months.

[14] In this context, I find that the Commission failed to follow the rules set out in section 52(5) of the Act for the benefit periods starting on July 28, 2013; July 6, 2014; and June 28, 2015. I find that the Commission did not file any evidence showing that it believed that the Appellant had made a false statement. Moreover, the Commission did not inform the Appellant that it believed that she had made a false statement.

[15] As a result, I do not have to decide whether the Appellant was available for suitable employment while she was making a gradual return to work in the 2013 benefit period. And I do not have to decide whether the Appellant failed to accept suitable employment in the 2014 and 2015 periods.

CONCLUSION

[16] I find that the Commission failed to prove that it could reassess the 2013, 2014, and 2015 benefit periods according to section 52(5) of the Act.

² *LD v Canada Employment Insurance Commission*, AD-19-202.

[17] The appeal is allowed.

Manon Sauvé
Member, General Division – Employment Insurance Section

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| HEARD ON: | August 22, 2019 |
| METHOD OF PROCEEDING: | In person |
| APPEARANCE: | S. B., Appellant |