



[TRANSLATION]

Citation: *CM v Canada Employment Insurance Commission*, 2022 SST 159

**Social Security Tribunal of Canada
General Division – Employment Insurance Section**

Decision

Appellant: C. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (443931) dated December 20, 2021 (issued by Service Canada)

Tribunal member: Josée Langlois

Type of hearing: Videoconference

Hearing date: February 23, 2022

Hearing participant: Appellant

Decision date: February 23, 2022

File number: GE-22-325

Decision

[1] The appeal is dismissed.

[2] I find that the Appellant isn't entitled to receive Employment Insurance (EI) benefits. If she hadn't been sick, the Appellant would not have been available for work from October 3, 2021.

Overview

[3] The Appellant applied for sickness benefits on September 22, 2021. She then said she was taking full-time training at the Université de Montréal.

[4] On October 28, 2021, the Commission found that the Appellant wasn't entitled to receive benefits from October 3, 2021, because she was taking training on her own initiative and hadn't proven that she would have been available for work if she hadn't been sick.

[5] The Appellant admits that, if she hadn't been sick, she would not have been available for work during the week because she is a full-time doctor of optometry student and attends her classes Monday to Friday. However, she argues that she needs financial support and no longer has access to student financial assistance.

[6] I have to determine whether, even though she was sick, the Appellant would otherwise have been available for work from October 3, 2021.

Issue

[7] Would the Appellant have been available for work from October 3, 2021, if she hadn't been sick?

Analysis

[8] 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.”¹

[9] The Commission established a benefit period from October 3, 2021. The undisputed facts on the record show that the Appellant was prescribed a [translation] “withdrawal from studies” by her doctor on July 5, 2021. Due to depression, the Appellant was unable to take her courses during the summer and fall 2021 sessions. The Appellant was prescribed a [translation] “gradual return to work” from January 22, 2022.²

Would the Appellant have been available for work from October 3, 2021, if she hadn’t been sick?

[10] The Appellant said she would have continued to study full-time in the optometry program at the Université de Montréal if she hadn’t been sick.

[11] I presume that the training the Appellant is taking makes her unavailable for work within the meaning of the *Employment Insurance Act*.

[12] This presumption of non-availability can be rebutted based on four principles relating specifically to return-to-studies cases.³

[13] These principles are⁴:

- the attendance requirements of the course
- the claimant’s willingness to give up their studies to accept employment
- whether the claimant has a history of being employed at irregular hours

¹ See section 18(1)(b) of the *Employment Insurance Act* (Act).

² See GD3-24 and GD3-25.

³ This principle is explained in the following decisions: *Landry*, A-719-91; *Lamonde*, 2006 FCA 44; *Gagnon*, 2005 FCA 321 (CanLII); *Floyd*, A-168-93.

⁴ This principle is explained in the following decisions: *Gagnon*, 2005 FCA 321 (CanLII).

- the existence of “**exceptional circumstances**” that would enable the claimant to work while taking their course

[14] The Appellant works part-time as a lifeguard on weekends while she is studying full-time for her PhD in optometry. She started this program in 2018, and it will end in 2024. She told the Commission that she spends approximately 35 hours per week on her studies and attends classes on a Monday to Friday schedule.

[15] She told the Commission that, if she hadn't been sick, she would not have been available for full-time work because she was studying full-time in a limited-enrolment program. She explained that she would be unable to work full-time while in school, and she also said that she would not drop out of school to accept a full-time job because her intention is to complete her program.⁵

[16] The Commission argues that the Appellant failed to rebut the presumption of non-availability while studying full-time because she would have continued to focus on her full-time studies and therefore restricted her availability for work, if she hadn't been sick.

[17] I agree with the Commission. A claimant must meet the eligibility criteria by showing her availability like any other claimant seeking sickness benefits.

[18] The Appellant hasn't rebutted the presumption of non-availability while in school, which means that I find that she wasn't available for work even though she was sick.

[19] At the hearing, the Appellant also argued that, while she was sick, she wasn't eligible for student financial assistance and still had to support herself. Added to this are other expenses, such as medication to treat her illness, acupuncture treatments, and sessions with the psychologist.

[20] The Appellant says that she isn't available for full-time work and isn't available for work Monday to Friday while she is attending her program, but otherwise she would

⁵ See GD3-19.

have worked weekends and could have supported herself. She also argues her good intentions because she had been gradually returning to work since January 2022 and, because she hadn't resumed her courses, she works a few hours during the week.

[21] A claimant isn't entitled to be paid benefits for a working day in a benefit period for which they fail to prove that on that day they were unable to work because of a prescribed illness, injury, or quarantine and that they would otherwise be available for work.⁶

[22] Even though I understand the Appellant's situation, if she hadn't been sick, she would not have been available for work, since she admits herself that her program of studies is demanding and that she normally devotes herself to it full-time from Monday to Friday.

[23] To answer her question, although the Appellant isn't entitled to receive EI benefits or, as she mentioned, student financial assistance, she could check the eligibility criteria for last-resort financial assistance by contacting Services Québec or Service Canada.

[24] The Appellant was unable to work due to illness, but if she hadn't been sick, she would not have been available for work. Even the Appellant agrees.

Conclusion

[25] Had it not been for her illness, the Appellant would not have been available for work from October 3, 2021.

[26] The appeal is dismissed.

Josée Langlois
Member, General Division – Employment Insurance Section

⁶ See section 18(1)(b) of the Act and section 32 of the *Employment Insurance Regulations*.