



[TRANSLATION]

Citation: *LG v Canada Employment Insurance Commission*, 2022 SST 169

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

**Decision**

**Appellant:** L. G.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (443352) dated December 7,  
2021 (issued by Service Canada)

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**Tribunal member:** Normand Morin  
**Type of hearing:** Teleconference  
**Hearing date:** February 8, 2022  
**Hearing participant:** Appellant  
**Decision date:** February 25, 2022  
**File number:** GE-22-169

## Decision

[1] The appeal is dismissed.

[2] I find that the disentitlement to Employment Insurance (EI) regular benefits imposed on the Appellant from September 20, 2021, for failing to prove that he was available for work is justified.<sup>1</sup>

[3] I find that the Canada Employment Insurance Commission (Commission) was justified in refusing to pay the Appellant EI special benefits (sickness benefits) from September 20, 2021, because he received the maximum number of weeks he was entitled to.<sup>2</sup>

## Overview

[4] In 2021, the Appellant worked as a security guard for the employer X (X).

[5] On June 7, 2021, he stopped working for this employer for medical reasons.

[6] On June 9, 2021, he applied for EI sickness benefits (special benefits).<sup>3</sup> A benefit period was established effective June 6, 2021.<sup>4</sup>

[7] The Appellant received sickness benefits (special benefits) for 15 weeks, from June 6, 2021, to September 18, 2021.<sup>5</sup>

[8] On September 21, 2021, he made a renewal claim for EI regular benefits.<sup>6</sup>

[9] On November 2, 2021, the Commission told him that it was not able to pay him EI benefits from September 20, 2021, because he had said that he was unable to work for medical reasons. It explained to him that, because of this, he did not meet the

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<sup>1</sup> See sections 12 and 18 of the *Employment Insurance Act* (Act) and section 9.001 of the *Employment Insurance Regulations* (Regulations).

<sup>2</sup> See section 12(3)(c) of the Act.

<sup>3</sup> See GD3-3 to GD3-15.

<sup>4</sup> See GD4-1.

<sup>5</sup> See GD4-1.

<sup>6</sup> See GD3-16 to GD3-29.

availability for work and job search requirements. The Commission told him that it considered him unavailable for work.<sup>7</sup>

[10] On December 7, 2021, after a request for reconsideration, the Commission told him that it was upholding the November 2, 2021, decision about his availability for work.<sup>8</sup>

[11] The Appellant argues that he is entitled to receive EI benefits—either regular benefits or sickness benefits (special benefits)—for a period of 50 weeks despite being unable to work for health reasons. He says that he is being penalized, since he is unable to get the benefits he wants. On January 13, 2022, the Appellant challenged the Commission’s reconsideration decision. That decision is now being appealed to the Tribunal.

## Issues

[12] I have to decide whether the disentitlement to EI regular benefits imposed on the Appellant from September 20, 2021, for failing to prove that he was available for work is justified.<sup>9</sup>

[13] I also have to decide whether the Commission was justified in refusing to pay the Appellant EI special benefits (sickness benefits) from September 20, 2021.<sup>10</sup>

## Analysis

### Availability for work

[14] Two sections of the *Employment Insurance Act* (Act) indicate that claimants have to show that they are available for work.<sup>11</sup> Both sections deal with availability, but they involve two different disentitlements.

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<sup>7</sup> See GD3-35.

<sup>8</sup> See GD3-50 and GD3-51.

<sup>9</sup> See sections 12 and 18 of the Act and section 9.001 of the Regulations.

<sup>10</sup> See section 12(3)(c) of the Act.

<sup>11</sup> See sections 18(1)(a) and 50(8) of the Act.

[15] First, a claimant is not entitled to receive benefits for a working day in a benefit period for which the claimant fails to prove that, on that day, the claimant was capable of and available for work and unable to find a suitable job.<sup>12</sup>

[16] Second, to prove availability for work, the Commission may require the claimant to prove that they are making reasonable and customary efforts to find a suitable job.<sup>13</sup>

[17] To decide whether a claimant is available for work, I have to consider the specific criteria set out in the Act for determining whether their efforts to find a suitable job are reasonable and customary.<sup>14</sup> According to these criteria, the efforts must be 1) sustained, 2) directed toward finding a suitable job, and 3) compatible with nine specific activities that can be used to help claimants get a suitable job.<sup>15</sup> These activities include assessing employment opportunities, registering for job search tools or with online job banks or employment agencies, contacting prospective employers, and submitting job applications.<sup>16</sup>

[18] The criteria for determining what constitutes suitable employment are the following: 1) the claimant's health and physical capabilities allow them to commute to the place of work and to perform the work, 2) the hours of work are not incompatible with the claimant's family obligations or religious beliefs, and 3) the nature of the work is not contrary to the claimant's moral convictions or religious beliefs.<sup>17</sup>

[19] The notion of "availability" is not defined in the Act. Federal Court of Appeal (Court) decisions have set out criteria for determining a person's availability for work and whether they are entitled to EI benefits.<sup>18</sup> These three criteria are:

- wanting to go back to work as soon as a suitable job is available

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<sup>12</sup> See section 18(1)(a) of the Act.

<sup>13</sup> See section 50(8) of the Act.

<sup>14</sup> See section 9.001 of the Regulations.

<sup>15</sup> See section 9.001 of the Regulations.

<sup>16</sup> See section 9.001 of the Regulations.

<sup>17</sup> See section 9.002(1) of the Regulations.

<sup>18</sup> The Federal Court of Appeal (Court) established or reiterated this principle in the following decisions: *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

- expressing that desire through efforts to find a suitable job
- not setting personal conditions that might unduly limit the chances of going back to work<sup>19</sup>

[20] In this case, the Appellant does not meet the above criteria from September 20, 2021, to establish his entitlement to EI regular benefits by showing his availability for work.

[21] The evidence the Appellant provided to the Commission and the Tribunal shows that he was unable to work from June 7, 2021, to March 2022.<sup>20</sup>

[22] The Appellant's testimony and statements indicate the following:

- a) He received sickness benefits for 15 weeks, from June 6, 2021, to September 18, 2021.
- b) He remained unable to work after receiving sickness benefits for that period.<sup>21</sup>
- c) He argues that he would be working if he could. He stresses that it is not that he does not want to work; rather, he really cannot work. The Appellant says that, otherwise, he would be ready to go to work.

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<sup>19</sup> The Court established or reiterated this principle in the following decisions: *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

<sup>20</sup> See the documents entitled [translation] "Attestation form" completed by Dr. Gilles Langevin from the Clinique médicale des Promenades [Promenades medical clinic] (Québec) on the following dates: June 8, 2021, August 2, 2021, August 30, 2021, and September 8, 2021. These documents indicate that the Appellant was unable to work for medical reasons from June 7, 2021, to August 13, 2021 (GD2-10 and GD3-38), from August 2, 2021, to September 17, 2021 (GD2-11 and GD3-39), from August 30, 2021, to October 15, 2021 (GD2-12 and GD3-40), and from September 8, 2021, to March 2022 (GD2-13, GD3-30, and GD3-41). See also the medical documents recommending psychiatric (May 3, 2021) and orthopedic (August 9, 2021) consultations to the Appellant—GD3-31, GD3-32, GD3-42, and GD3-43. See also the two prescriptions that were given to the Appellant, one on October 16, 2021, and the other on October 26, 2021—GD3-44.

<sup>21</sup> See GD3-34, GD3-48, and GD3-49.

- d) He is awaiting surgery for his medical condition, but it was postponed because of COVID-19.<sup>22</sup> He says that he will not be able to have this surgery until March 2022.<sup>23</sup>
- e) He disagrees with the Commission's decision not to pay him EI regular benefits after he received sickness benefits for 15 weeks.<sup>24</sup> He argues that he is entitled to receive benefits for a period of 50 weeks.<sup>25</sup> He explains that the Government of Canada website also indicates that claimants are entitled to be paid benefits at 55% of their earnings.
- f) He questions why he is not entitled to continue receiving sickness benefits, given that he is unable to work for health reasons.<sup>26</sup> He says that he cannot understand why someone who is injured can get sickness benefits for only up to 15 weeks.<sup>27</sup> He argues that he cannot be penalized because he is sick.
- g) He says that the Act is flawed in that it lacks provisions that can better help people who are unable to work for health reasons.
- h) He indicates that he is not protected by a sickness indemnity plan with his employer.<sup>28</sup> He does not have personal or individual insurance that provides such protection either.

[23] In this case, the Appellant has not made any arguments to show his availability for work within the meaning of the Act.

[24] His arguments are mainly meant to show that he is entitled to receive benefits—whether sickness benefits or regular benefits—after receiving sickness benefits (special benefits) for the maximum 15 weeks allowed.

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<sup>22</sup> Coronavirus disease 2019.

<sup>23</sup> See GD2-13, GD3-22, GD3-30, and GD3-41.

<sup>24</sup> See GD3-48 and GD3-49.

<sup>25</sup> See GD2-2, GD3-48, and GD3-49.

<sup>26</sup> See GD3-34.

<sup>27</sup> See GD3-34.

<sup>28</sup> See GD3-6.

[25] I find that, even though he says that he wants to work, the Appellant has not shown that his entitlement to regular benefits can be established from September 20, 2021.

[26] I find that the Appellant is unable to establish his entitlement to such benefits because of his medical condition.

[27] The Appellant's testimony and the medical documents he filed also show that he is unable to make "reasonable and customary efforts" in the "search for suitable employment"—that is, sustained efforts directed toward finding a suitable job and compatible with nine specific activities that can be used to help claimants get a suitable job.<sup>29</sup>

[28] The Court tells us that a person's availability is assessed for each working day in a benefit period for which they can prove that, on that day, they were capable of and available for work and unable to find a suitable job.<sup>30</sup>

[29] The Appellant has failed to do so to prove his availability for work from September 20, 2021.

[30] The Court also tells us that, to prove their availability for work and be able to receive EI regular benefits, a claimant must be actively looking for suitable employment, even if it appears reasonable for the claimant not to do so.<sup>31</sup>

[31] The Appellant has not shown that he fulfilled this responsibility from September 20, 2021, given his inability to work for medical reasons.

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<sup>29</sup> See section 9.001 of the Regulations.

<sup>30</sup> The Court established this principle in the following decisions: *Cloutier*, 2005 FCA 73; and *Boland*, 2004 FCA 251.

<sup>31</sup> The Court established this principle in the following decisions: *De Lamirande*, 2004 FCA 311; and *Cornelissen-O'Neill*, A-652-93.

[32] I find that the Appellant did not set personal conditions that unduly limited his chances of going back to work. In my view, the Appellant's inability to work is an involuntary condition.

[33] However, the Appellant is limiting his chances of going back to work in that he is unable to work for health reasons and says that he is unavailable for work.

[34] I find that the Appellant cannot receive EI regular benefits, since he has not shown that he is available for work because of his medical condition.

### **Payment of sickness benefits (special benefits)**

[35] The Act says that the maximum number of weeks for which sickness benefits (special benefits) may be paid in a benefit period because of illness, injury, or quarantine is 15.<sup>32</sup>

[36] Concerning the sickness benefits the Appellant wants, I find that, even though he argues that he can receive benefits for 50 weeks, he can get sickness benefits for only up to 15 weeks.<sup>33</sup>

[37] The Appellant received all the sickness benefits he was entitled to.<sup>34</sup>

[38] Given that the Appellant received sickness benefits for a period of 15 weeks and that this period ended on September 18, 2021, under the Act, he cannot receive more than the 15 weeks of sickness benefits he received.<sup>35</sup>

[39] The Court has stated that section 12(3)(c) of the Act allows the payment of a maximum of 15 weeks of sickness benefits (special benefits).<sup>36</sup>

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<sup>32</sup> See section 12(3)(c) of the Act.

<sup>33</sup> See section 12(3)(c) of the Act.

<sup>34</sup> See section 12(3)(c) of the Act.

<sup>35</sup> See section 12(3)(c) of the Act.

<sup>36</sup> See the Court's decision in *Brown*, 2010 FCA 148.



[40] While I wholly sympathize with the Appellant's case, the Court tells us that adjudicators, including the Tribunal, are not permitted to rewrite the Act or to interpret it in a manner that is contrary to its plain meaning.<sup>37</sup>

[41] It is up to Parliament to set out, if it deems it appropriate, provisions to help claimants access benefits if they are unable to work for medical reasons for a period exceeding 15 weeks.

## **Conclusion**

[42] I find that the disentitlement to EI regular benefits imposed on the Appellant from September 20, 2021, for failing to prove that he was available for work is justified.

[43] I find that the Commission was justified in refusing to pay the Appellant EI special benefits (sickness benefits) from September 20, 2021, because he received the maximum number of weeks he was entitled to.

[44] This means that the appeal is dismissed.

Normand Morin

Member, General Division – Employment Insurance Section

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<sup>37</sup> The Court established this principle in *Knee*, 2011 FCA 301.