



[TRANSLATION]

Citation: *JF v Canada Employment Insurance Commission*, 2022 SST 267

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

**Decision**

**Appellant:** J. F.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (433049) dated  
September 14, 2021 (issued by Service Canada)

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**Tribunal member:** Normand Morin  
**Type of hearing:** Teleconference  
**Hearing date:** February 15, 2022  
**Hearing participants:** Appellant  
Appellant's mother  
**Decision date:** March 4, 2022  
**File number:** GE-22-97

## Decision

[1] The appeal is dismissed. I find that the Canada Employment Insurance Commission (Commission)'s refusal to pay the Appellant Employment Insurance (EI) special benefits (sickness benefits) for the period from June 21, 2020, to October 3, 2020, is justified because he got this type of benefit for the maximum number of weeks he was entitled to.<sup>1</sup> The Appellant has to repay the amount he was overpaid (overpayment).<sup>2</sup>

## Overview

[2] On November 26, 2019, the Appellant applied for EI sickness benefits (special benefits) after he stopped working as the head of human resources for employer X on November 11, 2019, for medical reasons.

[3] On December 23, 2019, the Commission told him it had approved his claim for sickness benefits (special benefits). It told him that if he still was unable to work at the end of that period, he would have to give it more medical evidence.<sup>3</sup>

[4] The Appellant got this type of benefit for eight weeks, from December 1, 2019, to January 25, 2020.<sup>4</sup> He then started to get regular benefits as of January 26, 2020.<sup>5</sup>

[5] On July 2, 2021, after the Appellant presented medical documents to the Commission, it told him that it had approved his claim for sickness benefits (special benefits) for the maximum of 15 weeks starting May 3, 2020. It told him that it had already paid him eight weeks of benefits. The Commission told him that he was not entitled to sickness benefits (special benefits) for the period from June 21, 2020, to October 3, 2020, because it had already paid him this type of benefit for 15 weeks, which is the maximum. It told him that if he owed money, he would get a notice of debt.<sup>6</sup>

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<sup>1</sup> See section 12(3)(c) of the *Employment Insurance Act* (Act).

<sup>2</sup> See sections 43, 44, and 52 of the Act.

<sup>3</sup> See GD3-17 and GD3-18.

<sup>4</sup> See GD3-17 and GD3-18.

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

<sup>6</sup> See GD3-23 and GD3-24.

[6] On September 14, 2021, after a request for reconsideration, the Commission told him that it was upholding the July 2, 2021, decision.<sup>7</sup>

[7] The Appellant says the medical evidence he presented to the Commission in September 2020 does not mean that he was unable to work for health reasons for the period on the document, from April 29, 2020, to September 25, 2020. He argues that this doctor's note says he was available for work and looking for a job during that period. The Appellant says when he presented the doctor's note, a Commission agent told him that the document was incomplete and asked him to go back to the doctor who filled it out to add information. He says the note the doctor added to the document says he was unable to work during the period indicated. The Appellant argues that he gave the Commission the medical note with the added information to protect himself in case he needed sickness benefits. He also wanted the Commission to understand why he still had not found a job. The Appellant argues that despite the information in the document, he was capable of, available for, and fit to work. He says he made multiple efforts to find a job in the period from March 2020 to September 2020. On January 7, 2022, the Appellant challenged the Commission's reconsideration decision. That decision is now being appealed to the Tribunal.

## Issues

[8] I have to determine whether the Commission's refusal to pay the Appellant EI special benefits (sickness benefits) for the period from June 21, 2020, to October 3, 2020, is justified.<sup>8</sup>

[9] I also have to determine whether the Appellant has to repay the benefits he was overpaid.<sup>9</sup>

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<sup>7</sup> See GD3-32 and GD3-33.

<sup>8</sup> See section 12(3)(c) of the Act.

<sup>9</sup> See sections 43, 44, and 52 of the Act.

## Analysis

### Payment of sickness benefits (special benefits)

[10] The *Employment Insurance Act* (Act) the maximum number of weeks for which benefits can be paid in a benefit period because of illness, injury, or quarantine is 15.

[11] In this case, I find that the Appellant cannot get sickness benefits (special benefits) for more than the 15 weeks he got.

[12] The evidence the Appellant sent to the Commission shows that he was unable to work for the following periods:

- from November 26, 2019, to January 13, 2020<sup>10</sup>
- from April 29, 2020, to September 25, 2020<sup>11</sup>

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

- a) He says he got sickness benefits for a period of 15 weeks (8 weeks from December 1, 2019, to January 25, 2020, and 7 weeks from May 3, 2020, to June 20, 2020).
- b) In September 2020, when he went to a Service Canada Centre to submit a medical note,<sup>12</sup> an agent asked him to go back to his doctor to add information she said was missing. This explains why the doctor added a handwritten note saying [translation] "Unfit – 29-04-20 – 25-09-2020 –

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<sup>10</sup> See the medical certificate issued by Dr. Gaétan Gaudreault from the Clinique de médecine familiale Saguenay [Saguenay family medicine clinic] on November 26, 2019. This document says the Appellant is unfit for work until January 13, 2020—see GD3-16.

<sup>11</sup> See the medical certificate (prescription) issued by Dr. Gaétan Gaudreault from the Clinique de médecine familiale Saguenay [Saguenay family medicine clinic], on September 25, 2020. This document says the Appellant is regularly followed for a medical issue. The document says the Appellant is available and looking for work. A handwritten note that the doctor initialed says: [translation] "Unfit – 29-04-20 – 25-09-2020 – retroactive stop date"—see GD3-22.

<sup>12</sup> See GD3-22.

retroactive stop date.”<sup>13</sup> The first time the Appellant wanted to give the medical note to the Commission, the handwritten note was not there.

- c) The Commission did not tell him that by submitting a medical note, the Appellant would get benefits for the maximum of 15 weeks.<sup>14</sup> The Commission did not tell him until July 2021.<sup>15</sup>
- d) He says the Commission’s agents failed to tell him that he could not get sickness benefits for more than 15 weeks when he submitted his medical note. He says that the Commission’s agents provided poor service and that they were incompetent. He says that the Commission’s website does not say a claimant cannot get sickness benefits for more than 15 weeks. The Appellant says he is unfamiliar with the Act.<sup>16</sup>
- e) In September 2020, when he sub his medical note, he felt unwell ([translation] “didn’t feel good” or “didn’t feel as good”) and wanted to protect himself in case he needed sickness benefits. He did not submit this document to get sickness benefits. At the time, he was already getting regular benefits. He wanted the Commission to understand why he still had not found a job but that he was making an effort. He says that he thought submitting this document was the right thing to do but that he should not have submitted it.
- f) He lost all of the weeks of sickness benefits he was entitled to by submitting this note. He says that, as a result, the Commission is asking him to repay thousands of dollars for regular benefits he was overpaid (overpayment) after getting sickness benefits for 15 weeks. He argues that he does not have any overpayment to repay. He argues that the Commission is responsible for the amount it is asking him to repay.<sup>17</sup>

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<sup>13</sup> See GD3-22.

<sup>14</sup> See GD2-10, GD2-11, and GD3-29.

<sup>15</sup> See GD3-23 and GD3-24.

<sup>16</sup> See GD2-9, GD2-10, GD2-11, GD3-30, and GD3-31.

<sup>17</sup> See GD2-9, GD2-10, GD2-11, GD2-12, and GD3-27.

- g) The Appellant argues that, in his September 14, 2021, statements to the Commission, he said he was unable to work between April 25, 2020, and September 25, 2020,<sup>18</sup> and that his mental health was not good enough to answer the questions he was asked then. He points out that the Commission's agent asked him questions about a situation he had experienced the year before.
- h) When he filled out his claimant reports, noting he was fit to work in the period from April 29, 2020, to September 25, 2020, he acted in good faith despite the Commission believing he had made false statements.<sup>19</sup> He points out that if he declared he was available for and capable of work, it is because that was the case.
- i) The medical note from September 25, 2020, also shows that he was available for work and looking for a job.<sup>20</sup>
- j) Even though he was on medication, he [translation] "kept an eye" on job postings and was always actively looking for a job.<sup>21</sup> He applied for jobs with several potential employers from March 2020 to September 2020.<sup>22</sup> He points out that he got financial aid to get services from Emploi-Québec [Quebec employment services] to do mock job interviews, while the Commission determined that he was unfit for work, something he thinks is [translation] "nonsense."
- k) The Appellant argues that his job search efforts for the period during which the Commission found he was not fit to work need to be considered. He points out that, had he been bedridden during this period, he would not have disputed the Commission's decision.

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<sup>18</sup> See GD3-30 and GD3-31.

<sup>19</sup> See GD3-30 and GD3-31.

<sup>20</sup> See GD3-22.

<sup>21</sup> See GD2-11 and GD3-29.

<sup>22</sup> See GD6-1 to GD6-17.

[14] In this case, I find that the evidence shows that the Appellant was unable to work for medical reasons for the period from April 29, 2020, to September 25, 2020.<sup>23</sup>

[15] I find that even though the medical note the Appellant gave the Commission in September 2020 shows that he was available for work and looking for a job, this document also says he was [translation] “unfit.” In other words, he was unable to work for health reasons for the period from April 29, 2020, to September 25, 2020.<sup>24</sup>

[16] I do not accept the Appellant’s argument that he asked his doctor to add that he was not fit to work for the period mentioned on the medical note after the Commission’s agent made a request for him to do so. The fact is that the Appellant chose to submit the document to the Commission after his doctor made the change to show that he was unable to work from April 29, 2020, to September 25, 2020.

[17] I also cannot accept the Appellant’s argument that he submitted a medical note to the Commission not to get sickness benefits but to protect himself, as he says, in case he needed this type of benefit or to explain why he still had not found a job.

[18] I find that when the Appellant submitted a medical note, it was indeed to get sickness benefits.

[19] I point out that the Appellant went back to his doctor so that he could add a note saying the Appellant was unable to work from April 29, 2020, to September 25, 2020, while he had already been getting regular benefits since January 26, 2020,<sup>25</sup> before presenting this medical note in September 2020. Also, nothing shows that the Commission asked him to submit this document in September 2020 even before it was changed or so that he could explain how his job search was going.

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<sup>23</sup> See GD3-22, GD3-30, and GD3-31.

<sup>24</sup> See GD3-22.

<sup>25</sup> See GD4-1.

[20] I also note that in the Appellant's September 14, 2021, statement to the Commission, he himself said he was unable to work between April 25, 2020, and September 25, 2020.<sup>26</sup>

[21] At the hearing, the Appellant said that his mental health was not good enough to answer the questions he was asked and that those questions were about a situation he had experienced the year before. Despite the Appellant's statement, I find that he was able to give specific and reliable information about the processing of his EI file in his statement to the Commission from September 14, 2021. Nothing leads me to believe that the Appellant was unable to answer the Commission's questions from September 14, 2021.

[22] The Appellant argues that he is unfamiliar with the Act and that the Commission did not tell him, when he submitted his medical note, that he could get sickness benefits for only 15 weeks.

[23] The Appellant's arguments on these subjects do not change the fact that he cannot get benefits for more than 15 weeks.

[24] The Appellant says he was available for work and that he made efforts to find a job by applying to several potential employers in the period from March 2020 to September 2020.

[25] Despite the Appellant's arguments about this, as a Tribunal member, I cannot determine whether his entitlement to EI regular benefits can be established.

[26] I point out that the issue is not whether the Appellant has proven that he was available for work and whether he is entitled to EI regular benefits. The issues under appeal are to determine whether the Commission is justified<sup>27</sup> in refusing to pay the

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<sup>26</sup> See GD3-30.

<sup>27</sup> See section 12(3)(c) of the Act.



Appellant EI special benefits (sickness benefits) and whether he has to repay the amount he was overpaid in regular benefits.<sup>28</sup>

[27] On this point, I note that, as a Tribunal member, I cannot decide on an issue that is not before me. The Tribunal can hear only appeals of the Commission's reconsideration decisions.<sup>29</sup> In this case, the Commission's September 14, 2021, decision is about the number of weeks of sickness benefits the Appellant is eligible for and the notice of debt he got as a result.<sup>30</sup> So, I have to make a decision on these issues.

[28] The Commission says the Appellant does not meet the conditions to be entitled to EI regular benefits.<sup>31</sup> It says the Appellant was unable to work and was no longer entitled to sickness benefits, since he had already gotten this type of benefit for the maximum number of weeks he could get them.<sup>32</sup>

[29] In short, the Appellant got sickness benefits for 15 weeks, 8 weeks for the period from December 1, 2019, to January 25, 2020, and 7 weeks for the period from May 3, 2020, to June 20, 2020.

[30] He can get sickness benefits for the maximum of 15 weeks, as the Act states.<sup>33</sup>

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

[32] The Federal Court of Appeal (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>35</sup>

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<sup>28</sup> See sections 43, 44, and 52 of the Act.

<sup>29</sup> See section 113 of the Act.

<sup>30</sup> See GD3-32 and GD3-33

<sup>31</sup> See GD4-4 and GD8-1.

<sup>32</sup> See GD4-4 and GD8-1.

<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 the Court's decision in *Brown*, 2010 FCA 148.

[33] While I 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>36</sup>

### **Liability to repay benefits that were overpaid**

[34] The Appellant has to repay the amount he was overpaid in benefits.

[35] If a person got EI benefits they were not entitled to or because they were disqualified from receiving those benefits, they have to repay those benefits or the resulting overpayment.<sup>37</sup>

[36] The Commission has 36 months to reconsider a claim for benefits paid or payable to a claimant.<sup>38</sup> The Commission has 72 months if, in its opinion, a false or misleading statement or representation has been made about a claim.<sup>39</sup>

[37] In its arguments, the Commission says the facts show that the Appellant did not tell it he was unable to work during the period in question.<sup>40</sup> It says it was only once benefits were paid to the Appellant that he submitted his medical note, on September 25, 2020, indicating he was unfit to work from late April 2020 to September 25, 2020.<sup>41</sup> The Commission says it considered this new information and corrected the Appellant's file.<sup>42</sup> It says it recognizes that there were delays before it could make a decision but that it has to make decisions in accordance with the Act.<sup>43</sup>

[38] The Commission argues that, since the Appellant got benefits he was not entitled to, he has to pay them back.<sup>44</sup>

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<sup>36</sup> The Court established this principle in *Knee*, 2011 FCA 301.

<sup>37</sup> See sections 43 and 44 of the Act.

<sup>38</sup> See section 52 of the Act.

<sup>39</sup> See section 52 of the Act.

<sup>40</sup> See GD4-4.

<sup>41</sup> See GD4-4.

<sup>42</sup> See GD4-4.

<sup>43</sup> See GD4-4 and GD4-5.

<sup>44</sup> See GD4-5.

[39] It says if the Appellant had said he was unable to work when he filled out his statements, as it argues he should have, it would not have paid sickness benefits once he had reached the maximum of 15 weeks and he would not have been overpaid.<sup>45</sup>

[40] I find that the Commission exercised its right to ask the Appellant to repay the amount he was overpaid in benefits.<sup>46</sup>

[41] Even though the Appellant argues that when he filled out his claimant reports saying he was available for and capable of work, which was indeed the case, the fact is that he got benefits he was not entitled to.

[42] The Court tells us that the overpayment amount in a notice of debt becomes repayable on the date of notification and that a person who receives an overpayment of benefits is required to return the amount of the overpayment without delay.<sup>47</sup>

[43] Even though many months passed before the Commission told the Appellant he was not entitled to the regular benefits he had gotten after the last week of sickness benefits he got, it does not change the fact that he was not entitled to get them from that moment on.

[44] However, I am of the view that the Commission should have done its due diligence to tell the Appellant its decision about this.

[45] The Appellant's situation cannot exempt him from having to repay the amount he was overpaid for benefits he is not entitled to.

[46] I find that the Commission is justified in asking the Appellant to repay the overpayment. It is up to the Commission to consider the terms of repayment for the amount it is asking him to repay.

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<sup>45</sup> See GD4-5.

<sup>46</sup> See section 52 of the Act.

<sup>47</sup> The Court established this principle in *Braga*, 2009 FCA 167. See also sections 43 and 44 of the Act.

## **Conclusion**

[47] I find that the Commission is justified in refusing to pay the Appellant EI special benefits (sickness benefits) for the period from June 21, 2020, to October 3, 2020, since he got this type of benefit for the maximum number of weeks he was entitled to.

[48] The Appellant has to repay the amount he was overpaid in benefits and owes the Commission by following the conditions it sets for him to do so.

[49] This means that the appeal is dismissed.

Normand Morin  
Member, General Division – Employment Insurance Section