



[TRANSLATION]

Citation: *CP v Canada Employment Insurance Commission*, 2022 SST 927

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

Decision

Appellant: C. P.
Representative: D. Q.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (439530) dated January 21, 2022 (issued by Service Canada)

Tribunal member: Josée Langlois
Type of hearing: Videoconference
Hearing date: March 22, 2022
Hearing participants: Appellant
Appellant's representative
Observer
Decision date: March 25, 2022
File number: GE-22-397

Decision

[1] The appeal is dismissed.

[2] I find that the Appellant was able to work as of June 28, 2021.

Overview

[3] The Appellant initially applied for sickness benefits. After a fall, her doctor put her off work for five weeks, after which she was to gradually go back to work.

[4] On January 21, 2022, the Canada Employment Insurance Commission (Commission) decided that the Appellant wasn't available for work as of June 28, 2021, because she was available for only part-time work and wasn't looking for a job. The Commission also decided that, if it hadn't been for her injury, she would not have been available for work between June 28, 2021, and July 9, 2021, because she was available for only part-time work.

[5] The Appellant argues that she was on a gradual return to work until July 3, 2021, when, according to her doctor, she was once again able to work the same hours as before her injury. She disagrees with the Commission's decision about her entitlement to sickness benefits from June 28, 2021, to July 3, 2021. But, since she was able to work as of July 4, 2021, she isn't claiming sickness benefits or regular benefits after July 4, 2021.

[6] I have to decide whether the Appellant was available for work between June 28, 2021, and July 3, 2021.

Issues

[7] Was the Appellant unable to work between June 28, 2021, and July 3, 2021?

[8] If she hadn't been injured, would the Appellant have been available for work between June 28, 2021, and July 3, 2021?

Analysis

Was the Appellant unable to work between June 28, 2021, and July 3, 2021?

[9] A claimant isn't 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 unable to work because of a prescribed illness, injury, or quarantine, and that the claimant would otherwise be available for work.¹

[10] The Appellant's inability to work until June 27, 2021, isn't in dispute.

[11] The Appellant submitted a first doctor's note dated September 21, 2020, putting her off work until October 5, 2020. Then, she was repeatedly prescribed a gradual return to work. As a result, the parameters of the return to work gradually became less restricted, and the doctor gave the Appellant several doctor's notes attesting to the changes in her ability to work.

[12] A doctor's note dated June 13, 2021, says that the Appellant could work up to 7 hours a day for another two weeks and could work a schedule of up to 8 hours a day after that.² Two weeks means that the Appellant was limited to working 7 hours a day until Sunday, June 27, 2021. So, as of June 28, 2021, she was able to work 8-hour shifts, meaning full-time hours.

[13] The Appellant argues that, given the nature of her warehouse job, she works 35 hours a week on average, but some days, she can work up to 10 hours a day.

[14] The Appellant argues that, on August 26, 2021, a Commission agent found that she was entitled to sickness benefits until July 3, 2021.

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

² GD3-18.

[15] On this point, the Commission submitted a record, dated August 26, 2021, indicating that benefits were granted during the Appellant's gradual return to work, that is, until July 3, 2021.³

[16] As the Appellant explained at the hearing, she initially received sickness benefits on a renewal claim for benefits before claiming sickness benefits again. The record indicates that the Appellant wasn't able to work full days until July 3, 2021.

[17] On October 25, 2021, the Commission made a decision and found that the June 13, 2021, doctor's note restricting the Appellant's schedule wasn't a real limitation. In the Commission's view, the Appellant was able to work as of June 28, 2021. This means she was overpaid benefits. She wants a finding that she was unable to work full days not as of June 28, 2021, but as of July 3, 2021, as the Commission decided on August 26, 2021.

[18] I agree with the Commission's arguments. The Appellant was injured in September 2020 and was unable to work for five weeks. But, after those five weeks, she gradually went back to work, meaning her work schedule was limited. For example, her doctor prescribed a schedule of up to 5 hours a day for three consecutive days in March 2021. But the doctor gradually reduced restrictions and, on June 13, 2021, he considered that the Appellant could work a schedule of up to 7 hours a day until June 27, 2021, and up to 8 hours a day as of June 28, 2021. Her doctor gave her more than 10 doctor's notes by way of follow-up and to update the conditions of her gradual return to work. On June 28, 2021, the Appellant was, in her doctor's opinion, able to work 8 hours a day without a limitation on consecutive days.

[19] Even though the Commission established a benefit period and the record dated August 26, 2021, granted her benefits during her gradual return to work, the Appellant has to submit a doctor's note showing that she was unable to work full days until July 3, 2021. Even though sickness benefits are paid for up to 15 weeks, in her case, the

³ GD9-1.

Appellant was able to receive sickness benefits over a renewed benefit period before making a new claim for benefits.

[20] The Appellant was able to work 8 hours a day every day of the week as of June 28, 2021. Since she hasn't shown her inability to work full days as of that date, she isn't entitled to receive sickness benefits as of that date. She also admits that she was able to work as of July 3, 2021, when her doctor prescribed up to 8 hours of work a day.

[21] The *Employment Insurance Regulations* say that the information and evidence to be provided to the Commission by a claimant to prove inability to work because of illness, injury, or quarantine is a medical certificate completed by a medical doctor or other medical professional attesting to the claimant's inability to work and stating the probable duration of the illness, injury, or quarantine.⁴

[22] In other words, the Appellant's doctor is the one who has to establish her ability to work full days. Even though she feels unable to work, to get sickness benefits, the Appellant has to provide a doctor's note that shows her inability to work full days. In her case, the limitation to 8 hours a day started on June 28, 2021, and this limitation was the same on July 3, 2021, or on September 22, 2021, when—as she admits—she was able to work full days.⁵

[23] The first criterion for determining whether the Appellant is entitled to sickness benefits isn't met. For this reason, I don't have to decide whether, if she hadn't been injured, the Appellant would have been available for work during that period.

Conclusion

[24] The Appellant hasn't shown that she was unable to work as of June 28, 2021. Because of this, I find that the Appellant isn't entitled to benefits.

⁴ Section 40(1) of the *Employment Insurance Regulations* and section 18(1)(b) of the Act.

⁵ GD3-22.

[25] This means that the appeal is dismissed.

Josée Langlois

Member, General Division – Employment Insurance Section