



Citation: *CL v Canada Employment Insurance Commission*, 2022 SST 1247

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

Decision

Appellant: C. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (457308) dated February 23, 2022 (issued by Service Canada)

Tribunal member: Angela Ryan Bourgeois

Type of hearing: Videoconference

Hearing date: June 15, 2022

Hearing participants: Appellant

Decision date: August 1, 2022

File number: GE-22-946

Decision

[1] The appeal is allowed. The Tribunal agrees with the Appellant (Claimant).

[2] The Claimant couldn't work because of her illness. She would have been available for work if she hadn't been sick. Her illness was the only thing that stopped her from being available for work.

[3] This means that the Claimant isn't disentitled from receiving employment insurance (EI) sickness benefits.

Overview

[4] The Claimant wasn't able to work because of her illness. To be able to receive EI sickness benefits, the Claimant must "otherwise be available for work."¹ In other words, the Claimant's illness has to be the only reason why she wasn't available for work.

[5] The Canada Employment Insurance Commission (Commission) says that the Claimant would not have been available for work because the Claimant is a full-time student. The Commission disentitled the Claimant from receiving EI sickness benefits from January 25, 2021, to May 7, 2021.²

[6] The Claimant disagrees. She says that despite her full-time course, she was just as available for work as she had been before she got sick.

Issue

[7] The Claimant wasn't able to work because of her illness. But, was her illness the only thing stopping her from being available for work?

Analysis

[8] It is clear that, if you are sick or injured, you aren't available for work. The law for EI sickness benefits reflects this. However, the law says that, if you are asking for

¹ Section 18(1)(b) of the *Employment Insurance Act* (EI Act) sets out this rule and uses this wording.

² See page GD3-25.

sickness benefits, you must **otherwise** be available for work. This means that the Claimant has to prove that her illness is the only reason why she wasn't available for work.³

[9] The Claimant has to prove this on a balance of probabilities. This means she has to show that it is more likely than not that she would have been available for work if it hadn't been for her illness.

Available for work

[10] Case law sets out three factors for me to consider when deciding whether a claimant is available for work. A claimant has to prove the following three things:⁴

- a) They want to go back to work as soon as a suitable job is available.
- b) They are making efforts to find a suitable job.
- c) They haven't set personal conditions that might unduly (in other words, overly) limit their chances of going back to work.

[11] The Claimant doesn't have to show that she is actually available. She has to show that she would have been able to meet the requirements of all three factors if she hadn't been sick. In other words, the Claimant has to show that her illness was the only thing stopping her from meeting the requirements of each factor.

– Wanting to go back to work

[12] The Claimant has shown that she would have wanted to go back to work as soon as a suitable job was available. She did this by trying to return to work on February 16, 2021, April 19, 2021, and again on October 12, 2021. Her efforts show that she wanted to get back to work.

³ See section 18(1)(b) of the EI Act.

⁴ These three factors appear in *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96. This decision paraphrases those three factors for plain language.

– **Making efforts to find a suitable job**

[13] The Claimant has shown that she would have made enough efforts to find a suitable job. She maintained her job by keeping in touch with her supervisor. This factor is also satisfied by her efforts to return to work.

– **Unduly limiting chances of going back to work**

[14] The Claimant didn't set personal conditions that would have unduly limited her chances of going back to work.

[15] The Claimant says she didn't do this because she worked while taking a course before. She says it wasn't her course that prevented her from working – it was her illness.

[16] The Commission says that the Claimant's course impeded her ability to resume employment to the same capacity prior to taking sickness leave.⁵

[17] I find that the Claimant's course was not a personal condition that would have unduly limited her chances of returning to work because of the following circumstances:

- The Claimant proved she could work and attend a full-time course by doing so when she attended X (in person) and worked at X (in person).⁶
- For the period of disentitlement, the Claimant's course was online. Although she had to be in class at specific times, she didn't have to travel to and from class.
- For the period of disentitlement, the Claimant's work at X was online and consisted of irregular work hours.
- Given the online nature of both her classes and her work, the Claimant could log out of her class and log into work within minutes and without leaving her home.
- Her employer approved her work schedule.

⁵ See the Commission's representations on page GD4-5.

⁶ The Claimant's testimony and also see page GD6-7.

[18] Normally, looking for a job to accommodate a school schedule doesn't meet the availability requirements under the law.⁷ But that doesn't apply here. The Claimant wasn't unemployed and looking for a job to accommodate her class schedule. The Claimant already had a job and the employer had provided her with a work schedule that fit with her class schedule. In fact, due to the 24-hour nature of the employer's business, the employer requires employees to work irregular hours. The only reason the Claimant wasn't working was because she was sick.

[19] Considering the circumstances, especially the Claimant's past work history while taking a full-time course, and her ongoing job, I am satisfied that the Claimant's course didn't unduly limit her chances of getting back to work. If it hadn't been for her health condition, she would have been working.

– **So, would the Claimant have been available for work?**

[20] Based on my findings on the three factors, I find that the Claimant has shown that she would have been available for work.

[21] The Claimant would have met the requirements of all three factors if she hadn't been sick.

Other matter I have to consider

– **Documents filed after the hearing**

[22] I asked the Commission to provide some more information.⁸ It did so within the allotted time, and I accepted the representations.⁹ I gave the Claimant time to provide a response. I waited beyond the time allowed, but the Claimant didn't file any more documents.¹⁰ So I proceeded with this decision.

⁷ For example, see *Horton v Canada (Attorney General)*, 2020 FC 743.

⁸ See GD7.

⁹ See GD8.

¹⁰ See GD9.

Conclusion

[23] The Claimant has shown that she would have been available for work within the meaning of the law. Because of this, I find that the Claimant isn't disentitled from receiving EI sickness benefits from January 25, 2021, to May 7, 2021.

[24] The appeal is allowed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section