



[TRANSLATION]

Citation: *ZB v Canada Employment Insurance Commission*, 2023 SST 1182

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

Decision

Appellant: Z. B.
Representative: A. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (550157) dated
December 28, 2022 (issued by Service Canada)

Tribunal member: Josée Langlois

Type of hearing: Teleconference
Hearing date: April 28, 2023
Hearing participants: Appellant
Support person

Decision date: April 28, 2023
File number : GE-23-342

Decision

[1] The appeal is dismissed.

[2] I find that the Appellant isn't entitled to receive sickness benefits from December 13, 2020.

Overview

[3] On December 13, 2020, the Appellant stopped working after catching COVID-19. She had been working part-time. On September 2, 2021, she went back to work on a gradual basis, working 1.25 hours a day.

[4] The Canada Employment Insurance Commission (Commission) decided that the Appellant wasn't entitled to sickness benefits because, if she hadn't been sick, she would not have been available for full-time work.

[5] The Appellant disagrees with the Commission. She says that she was available for full-time work and that she even made efforts to find a full-time job in the fall of 2021.

[6] I have to decide whether the Appellant is entitled to receive sickness benefits from December 13, 2020.

Issues

[7] Would the Appellant have been available for work if it hadn't been for her illness?

Analysis

Would the Appellant have been available for work from December 13, 2020, if it hadn't been for her illness?

[8] A claimant isn't entitled to receive 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.¹

[9] The Commission doesn't dispute that the Appellant was unable to work as of December 13, 2020. The Appellant didn't provide a doctor's note, but she indicated that there was an accident at work on December 13, 2020, and that she received benefits from the CNESST [Quebec's labour standards commission]. She says that she sent her medical certificates to the Commission.

[10] She told a Commission employee that she was working part-time before her injury and that she went back to work on September 2, 2021, working 1.25 hours a day.

[11] On December 15, 2021, the Appellant told a Commission employee that she had always worked that kind of schedule and that she was happy with her job.

[12] On February 10, 2022, she said that she hadn't made efforts to find a job since late 2017. She said that she was satisfied with that job, which suited her.²

[13] On February 22, 2022, the Appellant said that she had made efforts to find a job at an early childhood centre before she got sick, that is, in 2015, 2016, and 2017.

[14] In her notice of appeal, the Appellant says that she was working full-time before her injury on December 13, 2020, and, when this wasn't possible, she always made efforts to find a full-time job.³

[15] At the hearing, she said that she was working between 10 and 15 hours a week before she got sick and that she worked 1.25 hours a day when she went back to work on September 2, 2021. She said she had made efforts to find a full-time job in the fall of 2021.

¹ Section 18(1)(b) of the Act.

² GD3-19.

³ GD2-5.

[16] The Commission argues that the Record of Employment that the employer issued shows that the Appellant was working 8 hours a week before she got sick and that she mentioned being satisfied with that schedule. The Commission argues that she was working part-time and that she unduly limited her availability for work.

[17] The issue is whether the Appellant would have been available for work if she hadn't had this inability to work.

[18] On this point, I agree with the Commission. While I understand that the situation isn't easy for the Appellant, she can't get benefits just by changing her version of the facts.

[19] The facts show that the Appellant was working an average of 8 hours a week before her injury. She even admits that she was working part-time, and her various statements show that she was satisfied with her schedule.

[20] The facts show that the Appellant was working part-time and that she didn't make efforts to find a job in 2020: She confirmed to a Commission employee that she hadn't made efforts to find another job since late 2017.

[21] A claimant isn't entitled to receive 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.

[22] The Appellant chose a part-time schedule of 8 hours a week. Even if I were to accept her explanations at the hearing that she could work between 10 and 15 hours a week and that she had started making efforts to find a full-time job in the fall of 2021, I have to determine whether she would have been available for work within the meaning of the Act during her period of illness. And that isn't the case. She was working part-time before she got sick, and she was satisfied with that schedule. She hasn't shown that she would have been available for work each working day in her benefit period.

[23] I understand the Appellant's disappointment, given that the employer asked her to repay the salary she received during that period. But, she isn't in a position to get Employment Insurance benefits.

[24] I find that the Appellant hasn't shown that she would have been available for work from December 13, 2020, if it hadn't been for her illness.

Conclusion

[25] I find that the Appellant isn't entitled to receive benefits between [sic] from December 13, 2020, because she hasn't proven that she was unable to work during that period.

[26] The appeal is dismissed.

Josée Langlois

Member, General Division – Employment Insurance Section