



[TRANSLATION]

Citation: *DT v Canada Employment Insurance Commission*, 2023 SST 819

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

Decision

Appellant: D. T.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (550276) dated
November 21, 2022 (issued by Service Canada)

Tribunal member: Normand Morin
Type of hearing: In person
Hearing date: March 30, 2023
Hearing participant: Appellant
Decision date: May 26, 2023
File number: GE-22-4170

Decision

[1] The appeal is allowed in part.

[2] I find that the Appellant has shown that, if she hadn't been sick, she would have been available for work three working days per week, starting January 10, 2022.¹ This means that her entitlement to Employment Insurance (EI) sickness benefits (special benefits) has to be established at three working days per week from that date until the end of the period she was unable to work for medical reasons—until April 3, 2022.

[3] I find that the Appellant has shown that she was available for work three working days per week from April 4, 2022.² This means that her entitlement to regular EI benefits has to be established at three days per week from that time.

Overview

[4] From November 16, 2020, to January 11, 2022, the Appellant worked as a nurse at the integrated university health and social services centre of the Capitale-Nationale (CIUSSS de la Capitale-Nationale or CIUSSS de Québec-Nord or employer) and stopped working for that employer because of an illness or injury.³

[5] On April 9, 2022, she applied for EI sickness benefits (special benefits).⁴ A benefit period was established effective January 9, 2022.⁵

[6] On September 7, 2022, the Commission told her that she wasn't entitled to sickness benefits (special benefits) from January 10, 2022, because she didn't prove that she would have been available for work if she hadn't been sick. The Commission told her she said that, if she hadn't been sick, she would only have agreed to work part-

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

² See section 18(1)(a) of the Act, and sections 9.001 and 9.002(1) of the *Employment Insurance Regulations (Regulations)*.

³ See GD2-9, GD2-11, and GD5-2.

⁴ See GD3-3 to GD3-9.

⁵ See GD3-1 and GD4-1.

time.⁶ In its arguments, the Commission explains that it imposed a definite disentitlement on the Appellant from January 10, 2022, to April 1, 2022.⁷

[7] On September 8, 2022, the Commission also told her that it could not pay her benefits (regular benefits) from April 4, 2022. The Commission explained to her that, since she had told it that she only wanted to work part-time and that she had found that type of job, it considered that she wasn't available for full-time work.⁸

[8] On November 21, 2022, the Commission told her that it was upholding the February 7, 2022,⁹ decisions about her availability for work if she hadn't been sick (sickness benefits), and her availability for work.¹⁰

[9] The Appellant argues that she would have been available for work if she hadn't been sick. She explains that, after retiring in October 2020, she went back to work in November 2020. The Appellant says that she chose to work three days per week when she went back to work. She says that she worked as a nurse in the fields of vaccination and epidemiological investigation. The Appellant argues that, during the period when she was unable to work for medical reasons—from January 12, 2022, to April 3, 2022—she would have been available for work three days per week.

[10] Concerning her availability for work, the Appellant says that she was available for work from April 4, 2022. She says that she told her employer, the CIUSSS de la Capitale-Nationale, that she was available for work as of that time, three days per week, like she did when she went back to work in November 2020. The Appellant says that she went back to work for the employer on April 13, 2022, and stopped working for it on December 21, 2022. She says that she is in touch on a regular basis with the employer to give her availability. The Appellant says that, to work in the institutions of the CIUSSS

⁶ See GD2-15 and GD3-19.

⁷ See GD4-2.

⁸ See GD3-20.

⁹ Although the Commission's decision about her availability for work as of April 4, 2022, is dated September 8, 2022, a summary of a conversation between one of its representatives and the Appellant dated September 7, 2022, indicates that she was first told of that decision verbally before being told in writing on September 8, 2022—GD3-18.

¹⁰ See GD2-14, GD3-27, and GD3-28.

de la Capitale-Nationale, she has to apply through it, not to each of its affiliated institutions. She points out that the territory the CIUSSS de la Capitale-Nationale covers extends from La Malbaie to Portneuf. The Appellant says that she made no other efforts to find another job because she knew that she would go back to work at the CIUSSS de la Capitale-Nationale as soon as her health would let her. She says that she was available for work and meets the requirements of the Act in this regard, even though she isn't available full-time. She points out that it doesn't say anywhere on the government's website (EI website) that a person working part-time isn't entitled to benefits.

[11] On December 16, 2022, the Appellant challenged the Commission's reconsideration decisions. Those decisions are being appealed to the Tribunal.

Issues

[12] I have to decide whether the Appellant has shown that, if she hadn't been sick, she would have been available for work from January 10, 2022.¹¹

[13] I also have to decide whether the Appellant has shown that she was available for work from April 4, 2022.¹²

Analysis

Availability for work from January 10, 2022, if the Appellant hadn't been sick

[14] The Act says that a claimant isn't entitled to be paid 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.¹³

¹¹ See section 18(1)(b) of the Act.

¹² See section 18(1)(a) of the Act and sections 9.001 and 9.002(1) of the Regulations.

¹³ See section 18(1)(b) of the Act.

[15] In other words, a claimant has to show that, if they hadn't been sick, injured, or in quarantine, they would have been available for work.

[16] They have to prove this on a balance of probabilities. This means that they have to show that it is more likely than not that they would have been available for work if they hadn't been sick, injured, or in quarantine.

[17] The notion of "availability" isn't 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.¹⁴ These three criteria are:

- wanting to go back to work as soon as a suitable job is available
- expressing that desire through efforts to find a suitable job
- not setting personal conditions that might unduly limit the chances of going back to work¹⁵

[18] But, in the case of illness, injury, or quarantine, the claimant doesn't have to show that they are actually available. They have to show that they would have been able to meet the requirements of all three availability for work criteria if they hadn't been sick, injured, or in quarantine. This means that the claimant has to show that the only thing stopping them from meeting the requirements of each of these factors was their illness, injury, or quarantine.

[19] In this case, I find that the Appellant has shown that, from January 10, 2022, when the Commission disentitled her from receiving sickness benefits (special benefits), she was available for work three working days per week.¹⁶

¹⁴ The Court established or reiterated this principle in *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

¹⁵ The Court established or reiterated this principle in *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

¹⁶ See section 18(1)(b) of the Act.

[20] The Appellant argues that she would have been available for work if she hadn't been sick. Her testimony and statements indicate the following:

- a) In October 2020, she retired after 43 years of service. She went back to work in November 2020.¹⁷
- b) When she went back to work, she chose to work three days per week. She gave the employer three days of availability each week, from Sunday to Saturday, and the employer scheduled her work based on the availability she gave. She points out that she is [translation] "flexible" when it comes to the employer organizing her work schedule.¹⁸
- c) She says that she met the criteria that say she was unable to work for medical reasons from January 12, 2022, to April 3, 2022, after her surgery (total knee replacement).¹⁹
- d) During the period when she was unable to work for medical reasons, she would have been available for work, three days per week.²⁰
- e) She went back to work on April 13, 2022, under the conditions set when she went back to work in November 2020.
- f) She argues that she meets all the requirements to be able to receive sickness benefits. She had enough insurable hours in the 52 weeks before applying for benefits.²¹
- g) She says that she doesn't understand why working part-time doesn't allow her to be entitled to sickness benefits during the period she was unable to work for medical reasons.²²

¹⁷ See GD2-8 and GD3-23.

¹⁸ See GD2-8 and GD3-23.

¹⁹ See GD2-8, GD3-22, GD3-23, and GD5-2.

²⁰ See GD3-22 and GD3-23.

²¹ See GD2-8, GD3-22, and GD3-23.

²² See GD2-8 and GD2-22.

h) She argues that it doesn't say anywhere on the government site (EI site) that a person has to be available for full-time work to be entitled to benefits.²³

[21] The Commission argues the following:

- a) The facts of the case show that, if she hadn't been sick, the Appellant would not have been available for work, since she is voluntarily limiting her availability to three days per week.²⁴
- b) Although the Appellant meets the conditions to establish a claim for sickness benefits from January 9, 2022, she also has to show that she would have been available for work if she hadn't been sick.²⁵
- c) Illness isn't the only reason why the Appellant isn't available for work.²⁶
- d) If the Appellant hadn't been sick, she would not have been available for work, since she would have limited her availability to three days per week, as she did before and after her period of illness.²⁷
- e) Since she hasn't shown that she would have been available for work if she hadn't been sick, she isn't entitled to sickness benefits from January 10, 2022, to April 1, 2022, under section 18(1)(b) of the Act.²⁸
- f) The Court has confirmed the principle that sickness benefits are payable to a claimant only where their own illness makes them unable to work, and during a period where the claimant was available for work.²⁹

²³ See GD2-8 and GD2-22.

²⁴ See GD4-5.

²⁵ See GD4-5.

²⁶ See GD4-5.

²⁷ See GD4-5.

²⁸ See GD4-5.

²⁹ See the Court's decision in *Canada (AG) v X*, A-479-94. See also GD4-6.

[22] In this case, I find that, if the Appellant hadn't been sick, she would have been available for work three working days per week from January 10, 2022.

[23] The Appellant has shown that she wasn't in a situation that completely prevented her from being available for work if she hadn't been sick or injured like the Commission found.

[24] After retiring, the Appellant chose to go back to work in November 2020 and work three days per week.

[25] I understand from the Appellant's testimony that she tells her employer she is available three days per week, from Sunday to Saturday, and that her employer schedules her work based on the number of days of availability she gives it. I also note that this means the Appellant was available for work three working days per week.

[26] Objectively, from January 10, 2022, the date from which the Commission disentitled the Appellant from receiving sickness benefits (special benefits), she would have remained available for work three working days per week if she hadn't been sick.

[27] I find that, from that date, the Appellant continued to show her desire to go back to work as soon as a suitable job was available.³⁰

[28] But, I find that the Appellant's choice to work three days per week doesn't show her desire to go back to work for every working day of the week from January 10, 2022.

[29] I also find that, if the Appellant hadn't been sick, she would have shown her desire to go back to work through efforts to find a job three days per week.³¹ She would have continued working at her job.

[30] I note that, for the purpose of paying sickness benefits (special benefits), section 18(1)(b) of the Act doesn't require a claimant to be available to get a suitable

³⁰ One of the criteria related to availability for work that the Court established or reiterated in the following decisions: *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

³¹ One of the criteria related to availability for work that the Court established or reiterated in the following decisions: *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

job, but rather to be available for work if they hadn't been sick. I am of the view that, in such a case, a claimant's availability has to be examined hypothetically, since they are sick.

[31] I also note that section 9.002 of the *Employment Insurance Regulations* (Regulations), which describes the criteria for determining what constitutes a suitable job, says that it applies when an issue of availability is raised under section 18(1)(a) of the Act. Section 18(1)(b) isn't mentioned in this section.

[32] I am also taking into account the fact that the Appellant went back to work as soon as she could after being unable to for medical reasons.

[33] I am of the view that, by choosing to work three days per week, the Appellant set personal conditions related to her availability for work.³²

[34] But, I don't have to determine whether, because of this choice, the Appellant's personal conditions unduly limited her chances of going back to work,³³ since she returned to work for the employer from April 13, 2022.

[35] So, I don't accept the Commission's argument that the Appellant hasn't shown that she would have been available for work because she was voluntarily limiting her availability to three days per week.³⁴

[36] In summary, I find that, from January 10, 2022, the Appellant has shown that, if she hadn't been sick, she would have been available for work three working days per week.

[37] This means the Commission wasn't justified in disentitling the Appellant from receiving sickness benefits (special benefits) as of that date.³⁵

³² One of the factors related to availability for work that the Court established or reiterated in the following decisions: *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

³³ One of the factors related to availability for work that the Court established or reiterated in the following decisions: *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

³⁴ See GD4-5.

³⁵ See section 18(1)(b) of the Act.

[38] Since the Appellant has shown that she was available for work three working days per week, her disentanglement to benefits should be applied only for two working days per week.³⁶

[39] The appeal is based in part on the issue of the Appellant's availability for work from January 10, 2022, if she hadn't been sick.

Availability for work from April 4, 2022

[40] Two different sections of the Act indicate that claimants have to show that they are available for work.³⁷ Both sections deal with availability, but they involve two different disentanglements.³⁸

[41] First, 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 capable of and available for work and unable to find a suitable job.³⁹

[42] 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.⁴⁰

[43] To determine whether a claimant was 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.⁴¹ According to these criteria, the efforts must be 1) sustained, 2) directed toward finding a suitable job, and 3) consistent with nine specified activities that can be used to help claimants get a suitable job.⁴² These activities include assessing job opportunities, registering for job search tools or with online job banks or

³⁶ See section 18(1)(b) of the Act.

³⁷ See sections 18(1)(a) and 50(8) of the Act.

³⁸ See sections 18(1)(a) and 50(8) of the Act.

³⁹ See section 18(1)(a) of the Act.

⁴⁰ See section 50(8) of the Act.

⁴¹ See section 9.001 of the Regulations.

⁴² See section 9.001 of the Regulations.

employment agencies, contacting prospective employers, and submitting job applications.⁴³

[44] The criteria for determining what constitutes a suitable job 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 aren't incompatible with the claimant's family obligations or religious beliefs, and 3) the nature of the work isn't contrary to the claimant's moral convictions or religious beliefs.⁴⁴

[45] In addition to the three criteria the Court set out,⁴⁵ the Claimant's attitude and conduct have to be considered when determining whether she was available for work.⁴⁶

[46] I find that, from April 4, 2022, the Appellant met the Court's criteria to prove her availability for work. She has shown that her efforts to find a job from that date were reasonable and customary.

Issue 1: Did the Appellant show a desire to go back to work as soon as a suitable job was available?

[47] I find that the Appellant has shown her desire to go back to work as soon as a suitable job was available from April 4, 2022.

[48] The Appellant argues that she was available for work. Her testimony and statements indicate the following:

- a) After retiring in October 2020, she went back to work in November 2020, since she still felt a [translation] "need to help."⁴⁷

⁴³ See section 9.001 of the Regulations.

⁴⁴ See section 9.002(1) of the Regulations.

⁴⁵ These three criteria are: wanting to go back to work as soon as a suitable job is available; expressing that desire through efforts to find a suitable job; and not setting personal conditions that might unduly limit the chances of going back to work. See Court decisions in *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

⁴⁶ See the Court's decisions in *Carpentier*, A-474-97; *Whiffen*, A-1472-92; and *Rondeau*, A-133-76.

⁴⁷ See GD3-23.

- b) She told the employer she has worked with for over 40 years that she was available for work three days per week from Sunday to Saturday. She didn't choose the days she could work. The employer set her work schedule taking into account employee seniority.
- c) Since going back to work, she worked successively in the fields of vaccination and epidemiological investigation (work with [translation] "public health" and through the "JeContribue" website).⁴⁸
- d) After she was unable to work for medical reasons from January 12, 2022, to April 3, 2022, she told the employer that she could go back to work and was available three days per week.
- e) She returned to work on April 13, 2022. She continued to work for it until December 21, 2022, and still tells it that she is available for work.

[49] I find that the Appellant choosing to go back to work in November 2020 after having retired shows her desire to go back to work to find a suitable job since then.

[50] I have no reason to doubt that the Appellant has wanted to work and keep working from April 4, 2022.

[51] She didn't stop showing her desire to go back to work as soon as a suitable job was available from that date.

[52] After being unable to work for health reasons from January 10, 2022, to April 3, 2022, the Appellant went back to work at the CIUSSS de la Capitale-Nationale from April 13, 2022. She worked for that employer until December 21, 2022, and still tells it that she is available to do so.

⁴⁸ See GD2-8.

Issue 2: Has the Appellant expressed this desire through efforts to find a suitable job?

[53] I find that the Appellant has shown a desire to go back to work through efforts to find a suitable job from April 4, 2022.

[54] With respect to her job search, the Appellant's testimony and statements indicate the following:

- a) To work in institutions of the CIUSSS de la Capitale-Nationale, she has to apply for jobs through that employer and not the institutions affiliated with it (for example, hospitals, family medicine groups – FMGs, local community service centres – CLSCs). She points out that the CIUSSS de la Capitale-Nationale is [translation] “so big” as an employer that she should be able to continue working for it. The territory this employer serves stretches from La Malbaie to Portneuf.
- b) Each month, she receives an email from the employer (for example, a one-time availability form for vaccination sites) indicating the vaccination sites where she can work and the proposed hours. She must fill out this form to indicate her availability. Shifts are assigned based on employee seniority.⁴⁹
- c) After indicating her availability for work, the employer sends her an email confirming the shifts she has been assigned (for example, an email from the employer to the Appellant dated November 3, 2022, confirming her shifts from November 8 to 21, 2022).⁵⁰
- d) The employer also emails her asking her to indicate her interest in adding shifts or meeting [translation] “last-minute” needs.⁵¹

⁴⁹ See the document entitled [translation] “One-time availability form for vaccination sites from March 26 to April 22, 2023”—GD5-3 to GD5-12.

⁵⁰ See GD5-13.

⁵¹ See GD5-14 and GD5-15.

- e) After being unable to work for medical reasons, she told the CIUSSS de la Capitale-Nationale that she was able to go back to work for it from April 4, 2022, three days per week.
- f) She made no other efforts to find another job, since she continued working for the CIUSSS de la Capitale-Nationale as soon as she was able to.⁵²
- g) Although the summary of the statements she made to the Commission on May 4, 2022, and November 18, 2022, indicates that she had decided to work only two days per week for the period from April 13, 2022, to May 7, 2022,⁵³ among others, she didn't make that choice.
- h) When she told the employer that she could go back to work from April 4, 2022, it was to do so three days per week from then on.
- i) She wasn't able to go back to work until April 13, 2022, because the employees' schedules had already been set when she told the employer that she could go back to work starting on April 4, 2022.⁵⁴
- j) The employer decided to give her two days of work per week, starting April 13, 2022, for a period of four weeks.
- k) She went back to work three days per week starting the week of May 8, 2022, and stopped working on December 21, 2022.
- l) She continued to give her availability to the employer until the end of March 2023, since she had to have another surgery in April 2023.⁵⁵
- m) Her part-time job is suitable for her and she doesn't want to work full-time.⁵⁶

⁵² See GD2-8.

⁵³ See GD3-17, GD3-25, and GD3-26.

⁵⁴ See GD2-8, GD3-25, and GD3-26.

⁵⁵ See GD3-23.

⁵⁶ See GD3-18.

- n) The Appellant says she doesn't understand that the Commission requires a person be available full-time to show that they are available for work.
- o) The government website (EI website) doesn't say that you have to be available for full-time work to be entitled to benefits.⁵⁷

[55] In this case, I find that the Appellant made "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.⁵⁸ The Appellant used appropriate means to be able to work (for example, assessing job opportunities, contacting her employer to provide her availability).⁵⁹

[56] In assessing the Appellant's availability for work and her efforts to find a suitable job, I am taking into account that she has shown, since going back to work in November 2020, that she has been working part-time three days per week. I find that this is her usual job and that it is a suitable job in her case.

[57] Although section 9.002(1) of the Regulations describes the criteria for determining what constitutes a suitable job,⁶⁰ it doesn't otherwise or more clearly define "suitable employment."

[58] I note that, in addition to those criteria,⁶¹ the Act also sets out characteristics describing what constitutes employment that is "not suitable."⁶² I find that the criteria set out in the Regulations⁶³ and these characteristics⁶⁴ have to be considered together to

⁵⁷ See GD2-8 and GD2-22.

⁵⁸ See section 9.001 of the Regulations.

⁵⁹ See section 9.001 of the Regulations.

⁶⁰ Those criteria 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 aren't incompatible with the claimant's family obligations or religious beliefs, and (3) the nature of the work isn't contrary to the claimant's moral convictions or religious beliefs.

⁶¹ See section 9.002(1) of the Regulations.

⁶² See sections 6(4) and 6(5) of the Act.

⁶³ See section 9.002(1) of the Regulations.

⁶⁴ See sections 6(4) and 6(5) of the Act.

be able to determine what constitutes a suitable job, based on a claimant's circumstances.

[59] These characteristics indicate, for example, that a job isn't suitable if it isn't in the claimant's usual occupation.⁶⁵ Section 6(4)(c) of the Act also says that this job in a different occupation, or that isn't suitable, includes conditions less favourable or lower earnings than those that a claimant could reasonably expect to obtain, taking into account the conditions and earnings the claimant would have had if they had remained at their previous job. Section 6(5) of the Act broadens the types of jobs that can be suitable, since the provisions of section 6(4)(c) of the Act no longer apply after a reasonable period.

[60] Based on the characteristics set out in the Act to describe what constitutes an unsuitable job,⁶⁶ I am of the view that a suitable job includes, among other things, the same type of work (for example, nature of the job, earnings, and working conditions) that a claimant would do in their usual occupation.⁶⁷

[61] In the circumstances, I find the fact that the Appellant working part-time three days per week since going back to work in November 2020 is the type of work she does in her usual occupation, since it is her usual job.

[62] The Court also tells us that the notion of a suitable job is defined in part with reference to the claimant's personal circumstances.⁶⁸

[63] In assessing the Appellant's availability for work, I am taking into account the specific characteristics of her case, namely that she has worked part-time for more than two years.

⁶⁵ See section 6(4)(c) of the Act.

⁶⁶ See sections 6(4) and 6(5) of the Act.

⁶⁷ Sections 6(4)(b) and 6(4)(c) of the English version of the Act refer to the expression "claimant's usual occupation," which could also be translated as "occupation habituelle d'un prestataire."

⁶⁸ The Court established this principle in *Whiffen*, A-1472-92.

[64] I find that, despite the fact that the Appellant works part-time, she has shown that she was available for work three working days per week from April 4, 2022.

[65] I also find that, since the Appellant stopped working in December 2022, she has shown that she continued to be available for and searching for work by keeping in touch with her employer, the CIUSSS de la Capitale-Nationale.

[66] I am of the view that, by providing her availability for work at the CIUSSS de la Capitale-Nationale, she has the opportunity to work in several of this employer's hospitals.

[67] I don't accept the Commission's arguments that the Appellant hasn't shown her availability for work because she was working part-time and that she wasn't looking to work full-time or more hours, either with her employer or with other employers.⁶⁹

[68] I also don't accept the Commission's argument that a claimant has to accept, from the start of their benefit period, all the hours of work that are offered to them, including those of full-time work.⁷⁰

[69] I note that the Act doesn't specifically require a claimant to be available for full-time work to prove their availability for work.

[70] 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.⁷¹

[71] I note that the Act also says that, when a claimant isn't entitled for certain working days in a week, the weekly benefit rate is reduced proportionately.⁷²

⁶⁹ See GD4-3 and GD4-4.

⁷⁰ See GD4-4 and GD4-5.

⁷¹ The court established or reiterated this principle in *Cloutier*, 2005 FCA 73; and *Boland*, 2004 FCA 251.

⁷² See section 20 of the Act.

[72] I find that the Appellant has shown that she was available, three working days per week, for a suitable job from April 4, 2022. From that date, she fulfilled her responsibility of actively looking for a suitable job to get EI benefits.

Issue 3: Did the Appellant set personal conditions that might have unduly limited her chances of going back to work?

[73] I find that the Appellant didn't set "personal conditions" that unduly limited her chances of going back to work to find a suitable job from April 4, 2022.

[74] I find that, when the Appellant went back to work in November 2020, she set personal conditions.

[75] She says that she made a personal choice to work part-time after going back to work.⁷³

[76] She also says that, since April 4, 2022, she has been available and capable of working under the same conditions as before she stopped working for medical reasons.⁷⁴

[77] But, I find that the conditions the Appellant set haven't unduly limited her chances of going back to work.

[78] I don't accept the Commission's argument that the Appellant is reducing her chances of working and is voluntarily remaining unemployed because of her restrictions, since she is limiting the number of days she is willing to work and isn't accepting full-time hours.⁷⁵

[79] I find that the part-time job the Appellant had since November 2020, after going back to work, is her usual job and is a suitable job in her case.

⁷³ See GD3-23, GD3-25, and GD3-26.

⁷⁴ See GD3-14 to GD3-16.

⁷⁵ See GD4-4.

[80] Also, I note that the Act doesn't require a claimant to work full-time to prove their availability for work.

[81] I also find the fact that the Appellant has remained in contact with her employer since she stopped working in December 2022 by continuing to provide it with her availability for work also shows that she is always ready and willing to work, like she has since going back to work.

[82] I find that, from April 4, 2022, the Appellant didn't set personal conditions that unduly limited her chances of going back to work for a suitable job.

Conclusion

[83] I find that the Appellant has shown that, if she hadn't been sick, she would have been available for work three working days per week from January 10, 2022.

[84] This means that her entitlement to sickness benefits (special benefits) must be established at three working days per week, from that date, until the end of the period she was unable to work for medical reasons—until April 3, 2022.

[85] I find that the Appellant has shown that she was available for work within the meaning of the Act from April 4, 2022, three working days per week.

[86] This means that she is entitled to EI regular benefits three working days per week from that date.

[87] As a result, the appeal is allowed in part on the two issues before the Tribunal.

Normand Morin
Member, General Division – Employment Insurance Section