



[TRANSLATION]

Citation: *SL v Canada Employment Insurance Commission*, 2023 SST 824

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

Decision

Appellant: S. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (555119) dated December 15, 2022 (issued by Service Canada)

Tribunal member: Normand Morin

Type of hearing: Videoconference

Hearing date: June 8, 2023

Hearing participant: Appellant

Decision date: June 29, 2023

File number: GE-22-4182

Decision

[1] The appeal is allowed in part.

[2] I find that the Canada Employment Insurance Commission (Commission) wasn't justified in disentitling the Appellant from receiving Employment Insurance (EI) sickness benefits (special benefits), from June 26, 2022.¹ The Appellant has shown that she is entitled to this type of benefit, two working days a week, from that date.²

[3] I find that the Commission wasn't justified in disentitling the Appellant from receiving EI regular benefits from October 16, 2022.³ The Appellant has shown that she is available for work three working days per week from October 16, 2022.⁴ This means that she is entitled to EI regular benefits, three working days per week, from that date.

Overview

[4] From December 6, 2021, to June 21, 2022, inclusive, the Appellant worked as an executive assistant at the registry office for the Municipality of X (employer).⁵

[5] On July 11, 2022, she made an initial claim for EI benefits (regular benefits).⁶ A benefit period was established effective June 26, 2022.⁷

[6] When she applied for benefits, the Appellant provided a medical certificate, dated March 25, 2022, indicating that her medical condition required her to work no more than three days per week for a period of one year.⁸

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

² See section 18(1)(b) of the Act.

³ See section 18(1)(a) of the Act, as well as sections 9.001 and 9.002(1) of the *Employment Insurance Regulations* (Regulations).

⁴ See section 18(1)(a) of the Act and sections 9.001 and 9.002(1) of the Regulations.

⁵ See GD2-19, GD2-20, GD3-15, and GD3-16.

⁶ See GD3-3 to GD3-14.

⁷ See GD3-1 and GD4-1.

⁸ See the medical certificate issued by Dr. Sophie Charbonneau-Sarnel of X Medical Clinic, dated March 25, 2022—GD2-18, GD3-17, and GD3-28. See also GD4-1.

[7] On October 14, 2022, the Commission told her that it could not pay her EI sickness benefits (special benefits) from June 26, 2022, because there was no medical evidence to show that she was incapacitated.⁹

[8] On October 14, 2022, the Commission also told her that it could not pay her EI benefits from October 16, 2022. The Commission explained to her that, since she had told it that she was only willing to work three days a week, it considered that she wasn't available for full-time work.¹⁰

[9] On December 15, 2022, after a request for reconsideration, the Commission told her that it was upholding the October 14, 2022, decisions about her entitlement to sickness benefits (special benefits – failure to provide proof of incapacity) and her availability for work.¹¹

[10] The Appellant says that she is entitled to sickness benefits (special benefits) from June 26, 2022. She argues that she provided the Commission with a medical certificate saying that she could work no more than three days per week from March 25, 2022, and specifying she would be incapacitated for one year. The Appellant says that the Commission first told her that it accepted the medical certificate and that she would receive sickness benefits for 15 weeks but told her a few days later that she was no longer entitled to them. She argues that the Commission didn't explain why the medical certificate she had given wasn't acceptable. The Appellant says that the Commission didn't tell her what other information or evidence she needed to provide to receive sickness benefits. She points out that the Commission didn't ask her to provide another medical certificate.

[11] The Appellant says that she has been available for work since October 16, 2022, three days a week. She argues that she wants to work. The Appellant says that she made job search efforts by taking into account the recommendations on her medical certificate. She argues that she didn't set personal conditions that limited her availability

⁹ See GD3-23.

¹⁰ See GD3-21 and GD3-22.

¹¹ See GD2-15, GD2-16, GD3-31, and GD3-32.

for work, as the Commission argues. The Appellant says that she found a job as a student monitor in January 2023 and that she started working for the Municipality of X again in March 2023. She says that she has also been working as a secretary (meeting secretary) for another employer since late March 2023. The Appellant points out that she still works for the three employers in question. She says that she is entitled to EI regular benefits.

[12] On December 19, 2022, the Appellant challenged the Commission's reconsideration decisions before the Social Security Tribunal of Canada (Tribunal). Those decisions are being appealed to the Tribunal.

Issues

[13] In this case, I have to decide whether the Commission was justified in disentitling the Appellant from receiving EI sickness benefits (special benefits) from June 26, 2022.¹²

[14] I also have to decide whether the Appellant has shown that she was available for work from October 16, 2022, and whether she is entitled to EI regular benefits from that date.¹³ To do this, I have to answer the following questions:

- Has the Appellant:
 - shown a desire to go back to work as soon as a suitable job is available?
 - expressed that desire through efforts to find a suitable job?
 - set personal conditions that might have unduly limited her chances of going back to work?

¹² See section 18(1)(b) of the Act.

¹³ See section 18(1)(a) of the Act and sections 9.001 and 9.002(1) of the Regulations.

Analysis

Appellant's entitlement to sickness benefits (special benefits) from June 26, 2022

[15] The Act says that a claimant isn't entitled to 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.¹⁴

[16] Regarding "entitlement to benefits," the Act says that a claimant who fails to fulfil a condition or requirement that is set out isn't entitled to receive benefits for as long as the condition or requirement isn't fulfilled or complied with.¹⁵

[17] The Act also says that the Commission may at any time require a claimant to provide additional information about their claim for benefits.¹⁶

[18] The Regulations state that the information and evidence that a claimant has to provide the Commission to prove inability to work as a result 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.¹⁷

[19] The Regulations say that illness, injury, or quarantine is any illness, injury, or quarantine that renders a claimant incapable of performing the duties of their regular or usual employment or of other suitable employment.¹⁸

[20] In this case, I find that the Commission hasn't shown that it was justified in disentitling the Appellant from sickness benefits (special benefits) from June 26, 2022.¹⁹

¹⁴ See section 18(1)(b) of the Act.

¹⁵ See section 50(1) of the Act.

¹⁶ See section 50(5) of the Act.

¹⁷ See section 40(1) of the Regulations for the application of sections 18(1)(b) and 152.03(1) of the Act.

¹⁸ See section 40(4) of the Regulations for the application of sections 8(2)(a), 18(1)(b), 28(7), and 152.03(1) of the Act.

¹⁹ See section 18(1)(b) of the Act.

[21] The evidence on file indicates that the Appellant provided the Commission with a medical certificate, dated March 25, 2022, indicating that her medical condition requires no more than three days per week of work for a period of one year.²⁰

[22] She also provided a medical certificate, dated April 11, 2023, indicating that her medical condition required no more than 20 hours of work per week for a period of one year.²¹

[23] The Appellant says that she is entitled to sickness benefits from June 26, 2022.²² Her testimony and statements indicate the following:

- a) The medical certificate she provided to the Commission was from a doctor. This certificate says that her medical condition no longer allowed her to work full-time, but three days per week instead, from March 25, 2022. This document also specifies the length of her period of incapacity, which is one year.²³
- b) This document meets the requirements of the Act and Regulations regarding the evidence she has to provide to prove her inability to work for medical reasons and her entitlement to sickness benefits.²⁴
- c) On October 12, 2022, a Commission representative told her that the medical certificate she had provided was valid and that she would receive 15 weeks of sickness benefits.²⁵

²⁰ See the medical certificate issued by X Medical Clinic, dated March 25, 2022—GD2-18, GD3-17, and GD3-28.

²¹ See the medical certificate issued by X Medical Clinic, dated April 11, 2023—GD7-2.

²² See GD2-12 to GD2-14.

²³ See the medical certificate issued by X Medical Clinic, dated March 25, 2022—GD2-18, GD3-17, and GD3-28. See also GD2-12 to GD2-14, GD3-26, GD3-27, GD3-29, and GD3-30.

²⁴ See sections 18(1)(b), 50(1) and 50(5) of the Act, and sections 40(1) and 40(4) of the Regulations.

²⁵ See GD2-12 to GD2-14, GD3-19, GD3-26, GD3-27, and GD5-1.

- d) On October 14, 2022, another Commission representative told her that the medical certificate she had submitted wasn't valid and didn't allow her to receive sickness benefits.²⁶
- e) The Commission didn't explain to her why the medical certificate she provided it wasn't valid. The Commission didn't ask her to provide another medical certificate. She says she doesn't know or understand what else the Commission wanted.²⁷
- f) In her online EI account ("My Service Canada Account"), a message dated October 16, 2022, said "Benefits Not Payable – Medical Certificate Missing." The Appellant says that is false, since she provided her medical certificate on July 11, 2022, at the same time she applied for benefits. The representatives she spoke with on October 12 and 14, 2022, confirmed to her that the medical certificate in question was in her file.²⁸
- g) Another message in her online EI file dated October 22, 2022, said, [translation] "Our records say you are receiving sickness benefits. If you are still sick" She asked how could "eligible for sickness benefits" also appear in her file a week after her telephone conversations with Commission representatives.²⁹
- h) After she provided the medical certificate to her employer, she continued to work for it three days per week. Her medical condition no longer allowed her to work five days per week. She followed her doctor's recommendations. She left her job on June 21, 2022. The employer could not accept her working three days a week because of her position's workload.³⁰

²⁶ See GD2-12 to GD2-14, GD3-20, GD3-26, and GD3-27.

²⁷ See GD3-26 and GD3-27.

²⁸ See GD2-12 to GD2-14, GD3-26, and GD3-27.

²⁹ See GD2-12 to GD2-14, GD3-26, and GD3-27.

³⁰ See GD2-12 to GD2-14, GD3-18, GD3-19, GD3-26, GD3-27, GD3-29, and GD3-30.

i) She didn't receive sickness benefits.

[24] The Commission argues the following:

a) The Appellant didn't provide any medical evidence that she was unable to perform the duties of her regular or usual job or any other suitable job because of illness, injury, or quarantine.³¹

b) The Appellant's statements, supported by the only medical certificate on file, show that she was capable of working, but with a reduced work schedule—three days per week.³²

c) Her medical restriction greatly reduces her chances of going back to work.³³

d) Sickness benefits can't be paid to the Appellant from June 27, 2022.³⁴

[25] In this case, I find that the Appellant has shown that she has been unable to work for medical reasons, two working days per week, since March 25, 2022.

[26] I don't accept the Commission's argument that the Appellant hasn't provided any medical evidence to show that she was unable to perform the duties of her regular or usual job or any other suitable job because of illness, injury, or quarantine.³⁵

[27] I am of the view that the medical certificate she provided to the Commission on July 11, 2022, along with her claim for benefits, is evidence establishing her inability to work for health reasons, two days per week.³⁶

[28] I objectively find that this certificate shows that, based on her medical condition, the Appellant can only work no more than three days per week from March 25, 2022, for

³¹ See GD4-5.

³² See GD4-5.

³³ See GD4-5.

³⁴ See GD4-5.

³⁵ See GD4-5.

³⁶ See the medical certificate issued by X Medical Clinic, dated March 25, 2022—GD2-18, GD3-17, and GD3-28.

one year, which means that she is unable to work two days per week during the same period.

[29] This certificate was issued by a medical doctor attesting to that inability and indicating the probable duration of the illness, injury, or quarantine, as required by the Regulations.³⁷

[30] I am of the view that this document shows that, from March 25, 2022, the Appellant was unable to perform the duties of her regular or usual job or another suitable job, two days a week, for a period of one year.³⁸

[31] I find that the Commission hasn't explained how this certificate doesn't meet the requirements set out in the Act and Regulations to show that the Appellant was unable to work for health reasons after telling her that this document would allow her to receive sickness benefits.³⁹

[32] I note that, in its arguments, the Commission itself acknowledges that the Appellant has a [translation] "medical restriction" that significantly reduces her chances of going back to work.⁴⁰ That medical condition was still there from June 26, 2022, when the Commission disentitled the Appellant from receiving sickness benefits (special benefits).

[33] In this context, I find the Commission's assertion contradictory that the Appellant hasn't provided any medical evidence that she was incapable of performing the duties of her regular or usual job or any other suitable job.⁴¹

[34] The Court tells us that a medical certificate proving a claimant's inability to work because of an illness or injury is required under the Act.⁴²

³⁷ See section 40(1) of the Regulations for the application of sections 18(1)(b) and 152.03(1) of the Act.

³⁸ See section 40(4) of the Regulations for the application of sections 8(2)(a), 18(1)(b), 28(7), and 152.03(1) of the Act.

³⁹ See GD3-19.

⁴⁰ See GD4-5.

⁴¹ See GD4-5.

⁴² See Court decision in *Ayaji*, 2013 FCA 294.

[35] I find that the medical certificate submitted by the Appellant with her claim for benefits meets the requirements of the Act and the Regulations and shows that she was unable to work for medical reasons two days per week.⁴³

[36] In summary, the Commission disentitling the Appellant from receiving sickness benefits (special benefits) isn't justified from June 26, 2022.

[37] The Appellant has shown that she is entitled to this type of benefit two working days a week from that date.

[38] The appeal has some merit on the Appellant's entitlement to sickness benefits (special benefits).

Availability for work from October 16, 2022

[39] Two sections of the Act indicate that claimants have to show that they are available for work.⁴⁴ Both sections deal with availability, but they involve two different disentitlements.⁴⁵

[40] First, 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 capable of and available for work and unable to find a suitable job.⁴⁶

[41] 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.⁴⁷

[42] To decide whether a claimant is 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.⁴⁸ According to these criteria, the efforts have to be 1) sustained, 2) directed toward finding a suitable job, and 3) compatible with nine specific

⁴³ See section 40(1) of the Regulations for the application of sections 18(1)(b) and 152.03(1) of the Act.

⁴⁴ See sections 18(1)(a) and 50(8) of the Act.

⁴⁵ See sections 18(1)(a) and 50(8) of the Act.

⁴⁶ See section 18(1)(a) of the Act.

⁴⁷ See section 50(8) of the Act.

⁴⁸ See section 9.001 of the Regulations.

activities that can be used to help claimants get a suitable job.⁴⁹ These activities include assessing job opportunities, registering for job search tools or with online job banks or job agencies, contacting prospective employers, and submitting job applications.⁵⁰

[43] 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.⁵¹

[44] 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.⁵² 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 work⁵³

[45] In addition to these criteria, the Claimant's attitude and conduct have to be considered when determining whether she was available for work.⁵⁴

[46] In this case, the Appellant meets the above criteria to prove her availability for work, from October 16, 2022. She has shown that her efforts to find a job from that date were reasonable and customary.

⁴⁹ See section 9.001 of the Regulations.

⁵⁰ See section 9.001 of the Regulations.

⁵¹ See section 9.002(1) of the Regulations.

⁵² The Court established or reiterated this principle in *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

⁵³ The Court established or reiterated this principle in *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

⁵⁴ See the Court's decisions in *Carpentier*, A-474-97; *Whiffen*, A-1472-92; and *Rondeau*, A-133-76.

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 October 16, 2022.

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

- a) She is available for work but isn't [translation] "fully available."
- b) She still has chronic pain after a car accident in 2004.⁵⁵
- c) She is available for work three days a week, as indicated by the medical certificate issued by her doctor on March 25, 2022.⁵⁶
- d) In her online EI account ("My Service Canada Account"), a message dated October 16, 2022, said "Benefits Not Payable – Medical Certificate Missing." The Appellant says this is false, since the medical certificate she provided to the Commission on July 11, 2022, says that she is available for work three days a week.⁵⁷
- e) She says that she doesn't understand why the Commission doesn't accept that she is available for work three days a week and why she would need to be available full-time.⁵⁸

⁵⁵ See GD3-18, GD3-19, and GD5-1.

⁵⁶ See the medical certificate issued by X Medical Clinic, dated March 25, 2022—GD2-18, GD3-17, and GD3-28. See also GD2-12 to GD2-14, GD3-26, GD3-27, and GD3-30.

⁵⁷ See GD2-12 to GD2-14, GD3-26, and GD3-27.

⁵⁸ See GD2-12 to GD2-14.

- f) She says that she finds it [translation] “inconceivable” that she could not receive benefits under the pretext that her situation doesn’t fit into [translation] “completely obsolete” parameters related to availability for work that don’t reflect today’s reality.⁵⁹
- g) Her doctor issued another medical certificate on April 11, 2023, indicating that her medical condition required no more than of 20 hours per week of work for a period of one year.⁶⁰
- h) She points out that she is more than willing to go to work.
- i) She says that she is open to working in a field other than the one she worked in for the Municipality of X.⁶¹
- j) She went back to work in January 2023.
- k) Since March 2023, she has worked for three different employers.

[49] I find that the Appellant has shown her desire to go back to work to find a suitable job since October 16, 2022.

[50] I have no reason to doubt that the Appellant has wanted to work and continue to work since October 16, 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.

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

[52] I find that the Appellant expressed her desire to go back to work through efforts to find a suitable job from October 16, 2022.

⁵⁹ See GD2-12 to GD2-14.

⁶⁰ See the medical certificate issued by X Medical Clinic, dated April 11, 2023—GD7-2.

⁶¹ See GD3-19.

[53] The Appellant says that she started looking for work before she stopped working for the Municipality of X in June 2022.

[54] The Appellant explains that she looked for a suitable job according to her doctor's recommendations or that would allow her to work within her [translation] "physical limitations" (for example, three days per week).⁶² She points out that she worked in municipal jobs in the past before working for the Municipality of X.

[55] The Appellant says that she made the following job search efforts by:

- a) looking at online job postings every day⁶³
- b) subscribing to Le Réseau d'Information Municipale [Municipal Information Network]—the Appellant receives municipal job postings
- c) following Facebook accounts of several municipalities near her residence and consulting job postings from these municipalities
- d) sending her résumé to the City of X
- e) applying in January 2023 to the Centre de services scolaire des Laurentides [Laurentian School Board] for a job as a student monitor

[56] The Appellant says that she returned to work in January 2023.⁶⁴

[57] She explains that she started working at the Laurentian School Board as a student monitor on January 23, 2023.⁶⁵ The Appellant says that she works about 10 hours per week (2 hours per day). She says that she can also work as a childcare monitor in other schools for that employer and replace teachers who are absent (substitute).

⁶² See GD3-19, GD3-26, GD3-27, and GD3-29.

⁶³ See GD2-12 to GD2-14, GD3-26, and GD3-27.

⁶⁴ See GD5-2.

⁶⁵ See GD5-2.

[58] The Appellant says that, on March 20, 2023, she went back to work as an executive assistant at the registry office for the Municipality of X. She says that she works 10 to 15 hours per week there.

[59] The Appellant says that she has also worked for employer X since March 26, 2023. She says that she acted as a [translation] “meeting secretary” for this company at its monthly meetings for about eight hours of work every month.

[60] The Appellant says that she is still working for the three employers in question.

[61] She points out that she managed to find jobs that allow her to balance her condition with her availability for work.

[62] In this case, I find that the Appellant made “reasonable and customary efforts” in the “search for suitable employment”—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.⁶⁶

[63] The Appellant used appropriate means to be able to work (for example, assessing job opportunities, registering for job search tools, contacting prospective employers).⁶⁷

[64] In assessing the Appellant’s availability for work, I am also taking into account the criteria set out in the Regulations for determining what constitutes a suitable job, which includes the criterion stating that “the claimant’s health and physical capabilities allow them to commute to the place of work and to perform the work.”⁶⁸

[65] I am taking into account the fact that the Appellant is able to work three days a week, according to her doctor’s recommendations.⁶⁹

⁶⁶ See section 9.001 of the Regulations.

⁶⁷ See section 9.001 of the Regulations.

⁶⁸ See section 9.002 of the Regulations.

⁶⁹ See the medical certificates issued by X Medical Clinic on March 25, 2022, and April 11, 2023—GD2-18, GD3-17, GD3-28, and GD7-2.

[66] I am of the view that the Appellant has shown that she could work at a suitable job according to her health and her physical capabilities to get to the place of work and to perform the work, as the Regulations say.⁷⁰

[67] Although the Commission explains that the medical evidence on file shows that the Appellant is unable to work full-time,⁷¹ I note that the Act doesn't specifically require a claimant to be available for full-time work to prove their availability for work.

[68] 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.⁷²

[69] I also note that the Act says that, when a claimant isn't entitled for certain working days in a week, the weekly benefit rate is reduced proportionately.⁷³

[70] I find that the Appellant has shown that she was available for work, three working days a week, for a suitable job from October 16, 2022.

[71] 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?

[72] 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 October 16, 2022.

[73] The Appellant argues that, although the Commission found that she set personal conditions that greatly limited her chances of going back to work, it hasn't shown that.

⁷⁰ See section 9.002 of the Regulations.

⁷¹ See GD4-4.

⁷² The court established this principle in *Cloutier*, 2005 FCA 73; and *Boland*, 2004 FCA 251.

⁷³ See section 20 of the Act.

[74] I find that the Appellant's explanations about her ability to work and the medical evidence she provided show that she didn't set personal conditions that limited her chances of working.

[75] The Commission says that the Appellant's medical restriction making her unable to work full-time greatly reduces her chances of going back to work.⁷⁴

[76] It argues that, as a result, the Appellant hasn't met the requirements of the Act regarding her availability for work.⁷⁵

[77] I don't accept the Commission's arguments on these points.

[78] I find that the Appellant's medical restrictions indicating that she can't work more than three days per week aren't a personal condition that unduly limit her chances of going back to work.

[79] I also find that the Appellant expanded her search by looking for work in a field other than her field of employment as an executive assistant. I note that, in January 2023, the Appellant agreed to work as a student monitor.

[80] I find that, from October 16, 2022, the Appellant didn't set personal conditions that unduly limited her chances of going back to work for a suitable job.

[81] The appeal has some merit on the Appellant's availability for work from October 16, 2022.

Conclusion

[82] I find that the Commission wasn't justified in disentitling the Appellant from receiving EI sickness benefits (special benefits) from June 26, 2022. The Appellant's entitlement to this type of benefit has to be established at two working days per week, from that date.

⁷⁴ See GD4-4.

⁷⁵ See GD4-4.

[83] I find that the Appellant has shown that she is available for work three working days per week, from October 16, 2022. Her entitlement to regular EI benefits has to be established three working days per week, from that date.

[84] This means that the appeal is allowed in part.

Normand Morin
Member, General Division – Employment Insurance Section