



Citation: *CL v Canada Employment Insurance Commission*, 2023 SST 1724

**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 (466411) dated April 29, 2022 (issued by Service Canada)

Tribunal member: Angela Ryan Bourgeois

Type of hearing: In person

Hearing date: October 11, 2023

Hearing participant: Appellant

Decision date: November 21, 2023

File number: GE-23-1987

Decision

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

[2] The Appellant wasn't able to work because of her illness. And the Appellant would have been available for work if she hadn't been sick. Her illness was the only thing stopping her from being available for work.

[3] This means that the Appellant isn't disentitled from receiving Employment Insurance (EI) sickness benefits.

Overview

[4] The Appellant is a teacher. In 2021, she got sick. She applied for EI sickness benefits. She couldn't return to work when classes started in September 2021 because of her illness.

[5] To be able to receive EI sickness benefits, the Appellant must "otherwise be available for work."¹ This means that the Appellant's illness has to be the only reason why she wasn't available for work.

[6] The Canada Employment Insurance Commission (Commission) says that because the Appellant was taking a course, she hasn't shown that she would have been available for work if she weren't sick. It disentitled her from receiving EI sickness benefits from September 27, 2021.²

[7] The Appellant disagrees. She says that the only reason she took the course was because she couldn't work and thought it would help her get better.³ She didn't need to take the course and wouldn't have taken it if the Commission had told her that it would interfere with her EI sickness benefits.

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

² See page GD3-31.

³ See page GD2-5.

[8] I have to decide if the Appellant would have been available for work if not for her illness.⁴

Issue

[9] The Appellant couldn't work because of her illness. But, was her illness the only thing stopping her from being available for work?

Analysis

Otherwise available for work

[10] 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 sickness benefits, you must **otherwise** be available for work. This means that the Appellant has to prove that her illness is the only reason why she wasn't available for work.⁵

[11] The Appellant has to prove this on a balance of probabilities. This means that 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.

[12] 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:⁶

- 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.

⁴ This is the second time this appeal has been heard by the General Division of the Tribunal. The Appellant appealed the first General Division decision. The Appeal Division allowed the appeal and returned the matter to a different member of the General Division to be reconsidered. See *C.L. v Canada Employment Insurance Commission*, AD-22-916.

⁵ See section 18(1)(b) of the EI Act.

⁶ 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.

- c) They haven't set personal conditions that might unduly (in other words, overly) limit their chances of going back to work.

[13] The Appellant 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 Appellant 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**

[14] The Appellant has shown that she would have wanted to go back to work as soon as the suitable job was available. The Appellant testified that if she'd been able to work, she wouldn't have taken the course. I accept what she said because she told the Commission the same thing.

[15] The Appellant completed a training questionnaire in June 2021. In that questionnaire she reported that her intentions, once she recovered from her illness, were to continue the course before returning to her employment.

[16] The Commission says that this statement shows that her course took precedence over employment and suggests that her illness was not the sole reason for her continued leave from work.⁷

[17] At the hearing, the Appellant explained that she didn't understand the context of that question on the questionnaire because her doctor had put her off work until the following September. Given the nature of her illness, she knew the course would be over before she would be capable of returning to work.

[18] I accept the Appellant's explanation about why she answered the questionnaire in that manner. Her explanation is consistent with what she told the Commission and me. I find that despite her answer on the questionnaire, she meets this first factor.

⁷ See page GD4-4

[19] Also, I find she would have wanted to return to work because despite being on medical leave from her usual employer, she tried to work part-time to support her family.

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

[20] I see no reason why the Appellant wouldn't have been able to meet this factor if she hadn't been ill.

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

[21] The Appellant didn't have personal conditions that would have unduly limited her chances of going back to work if she hadn't been ill.

[22] The Commission says that the Appellant's involvement in her long-term, full-time training suggests that she wouldn't have been available for work for the duration of her course. The Commission says that in addition to spending more than 25 hours a week on her schoolwork, the Appellant committed to a course that cost \$5,500 and would last from September 1, 2021, to June 11, 2022. The Commission points out that this is a significant investment and commitment.⁸

[23] Despite the financial investment and commitment, I find that the Appellant's course wouldn't have unduly limited her chances of returning to work if she hadn't been sick. This is why:

- The Appellant's classes were all online. She spent 1.5 days a week in lectures – Tuesday and Thursday morning.
- One of her classmates worked a full-time job. They attended class when they could, but otherwise they just watched the recorded lectures. It's likely this option would have been available to the Appellant if she had been capable of working.
- Her school explained that the course is designed so that students can do the course and pursue employment.⁹

⁸ See page GD4-4.

⁹ See page RGD2-10.

- She was given a lot of time during class to do assigned work.
- All lectures, including a monthly guest lecturer, were recorded unless everyone was there. All lecture notes and course content were available online.

[24] Given the flexibility of the program and the recorded classes, I find that the course wouldn't have unduly limited her chances of finding a job.

[25] I noted that the Appellant's training questionnaire says that she had classes Monday to Friday, morning and afternoon. I place more weight on her testimony that she only had classes two days a week. This is because the questionnaire was completed in June 2021, before she had her class schedule and before she started the course.

[26] The Commission says that the Appellant showed that her course affected her availability for work because she said she could only work one shift per week because of her course.¹⁰

[27] The Appellant's comment must be considered in the context in which it was made. She was talking about trying to get back to work in January 2022. This period isn't relevant because it is after the time when she will have received the maximum weeks of EI sickness benefits. Besides, she tried to work on a casual basis in January 2022, but couldn't continue because of her illness. She got worse just going to the school. She wasn't capable of working because of her illness, not because of her course. She also had difficulties with her course. She tried to attend all her classes, but sometimes she just had the computer on. She couldn't turn on the camera to actually participate in class. She couldn't complete all her assignments and needed extensions.

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

[28] Based on my findings on the three factors, I find that the Appellant has shown that if it hadn't been for her illness, she would have been available for work.

¹⁰ See page GD4-4. See also page GD3-29.

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

Service Canada's conduct

[30] The Appellant is upset about the advice she received from Service Canada when she first considered taking the course, and the delay before it finally decided she hadn't been entitled to EI benefits. I understand her frustration, but that hasn't impacted my decision, as it isn't a relevant consideration when deciding if the Appellant was otherwise available for work.

Conclusion

[31] The Appellant has shown that she would have been available for work within the meaning of the law. Because of this, I find that the Appellant isn't disentitled from receiving EI sickness benefits.

[32] The appeal is allowed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section