



[TRANSLATION]

Citation: *LP v Canada Employment Insurance Commission*, 2023 SST 1877

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

## Decision

**Appellant:** L. P.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (593890) dated May 17, 2023  
(issued by Service Canada)

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**Tribunal member:** Josée Langlois  
**Type of hearing:** In person  
**Hearing date:** August 2, 2023  
**Hearing participants:** Appellant  
Support person  
**Decision date:** August 15, 2023  
**File number:** GE-23-1792

## Decision

[1] The appeal is allowed with changes.

[2] The Appellant has shown that she would have been available for work from December 26, 2022, if she hadn't been sick.

## Overview

[3] The Appellant left her job on October 29, 2022, because of her health condition.

[4] The Canada Employment Insurance Commission (Commission) first decided that the Appellant had voluntarily left her job without good cause under the *Employment Insurance Act* (Act). It also decided that she was disentitled from receiving Employment Insurance (EI) regular benefits from December 26, 2022, because she wasn't available for work.

[5] On May 17, 2023, the Commission reconsidered the decision about the Appellant's voluntary leaving in her favour. Because of the medical certificate the Appellant provided, the Commission found that she had just cause for voluntarily leaving her job on October 28, 2022, because she had no reasonable alternative to leaving when she did.

[6] However, the Commission upheld the decision about the Appellant's availability. This means that the Appellant isn't entitled to benefits.

[7] The Appellant has to be available for work to get EI regular benefits. Availability is an ongoing requirement. This means that she has to be searching for a job.

[8] The Appellant disagrees with the Commission's decision. She argues that she made efforts to find a job despite being unable to work. She provided a medical certificate showing a justified leave of absence as of October 29, 2022, and she asks to be paid sickness benefits.

[9] I have to decide whether the Appellant was available for work.

## Issue I have to determine first

[10] To facilitate the process, files GE-23-1791 and GE-23-1792 were joined.

[11] The files were joined because the appeals raise similar questions of fact or law and there is no risk of prejudice to the parties. This means that there is only one decision on both files.

[12] Especially since the Commission reconsidered the decision in GE-23-1791 in the Appellant's favour. The Appellant doesn't dispute this decision.

## Issue

[13] Would the Appellant have been available for work from December 26, 2022, if it weren't for her illness?

## Analysis

[14] As the Court noted in *White*, it may seem absurd for a claimant to have just cause for voluntarily leaving their job to care for a loved one but not be entitled to benefits because they aren't available for work for the same reason.<sup>1</sup>

[15] On this point, when the Commission reconsidered its voluntary leaving decision in the Appellant's favour and found that she had no reasonable alternative to leaving her job because of her health condition, the Commission also found that the Appellant wasn't available for work.

[16] It didn't assess her availability based on her health condition to allow her to receive sickness benefits; it instead found that the Appellant wasn't available for work because she was waiting to be recalled by her seasonal employer. However, the Appellant had voluntarily left her job for health reasons. Some of the facts about the Appellant's situation appear similar to *White*.

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<sup>1</sup> See *Attorney General of Canada v White*, 2011 FCA 190 at paragraph 3; and section 29(c) of the *Employment Insurance Act* (Act).

[17] At the hearing, the Appellant submitted new documents. In particular, she submitted a medical certificate indicating that a leave of absence was justified as of October 29, 2022.<sup>2</sup> This medical document says that the Appellant left her job because of her health condition and that she wasn't in a physical state that allowed her to search for a job.

[18] The Tribunal sent these documents to the Commission and gave it time to provide additional arguments. On August 10, 2023, the Commission told the Tribunal that the Appellant hadn't proven that she was unable to work because of an illness because this report doesn't indicate any limitations on employment or prescribe a leave of absence for health reasons. It is asking that the decision be upheld.

[19] The Commission made a decision about availability under section 18(1)(a) of the Act. However, I will determine whether the Appellant can receive sickness benefits and therefore whether she was available under paragraph 18(1)(b) of the Act. On this point, the Federal Court of Appeal has already determined that, when two distinct notions are dealt with together in the same section of the Act, **it can be considered that the dispute to be resolved isn't the one included in each of the paragraphs, but rather the general intent of the provision.**<sup>3</sup>

## Analysis

### Inability to work

[20] A claimant isn't entitled to receive benefits for any 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.<sup>4</sup>

[21] A medical certificate says that the Appellant had to stand for long periods at work and, given the pain, she had to leave her job. This medical note prescribes a

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<sup>2</sup> GDJ5-12.

<sup>3</sup> This principle is explained in *Easson*, A-1598-92.

<sup>4</sup> Section 18(1)(b) of the Act.

[translation] “justified leave of absence” as of October 29, 2022, and says that the Appellant’s physical condition doesn’t allow her to search for a job.

[22] At the hearing, the Appellant also submitted medical documents showing a left breast tumorectomy followed by X-rays in 2019. A medical report dated May 10, 2023, indicates that suspicious microcalcifications in the right breast are apparent and that the Appellant will have surgery on August 14, 2023.<sup>5</sup>

[23] In addition, other medical documents indicate the presence of moderate spinal spondylodiscarthrosis that may be degenerative.

[24] The Appellant explains that she was in significant pain, and it wasn’t until all the exams had been completed that she understood the reasons for her pain.

[25] Although the Commission argues that the Appellant wasn’t unable to work because the medical certificate she submitted isn’t specific enough, a medical certificate signed by the Appellant’s doctor does prescribe a justified leave of absence as of October 22, 2022. This medical note indicates that the Appellant has significant pain and that her physical condition doesn’t allow her to search for a job.

[26] The Appellant also explained that she had attended numerous medical appointments from December 26, 2022, until she obtained the results explaining her pain. The Commission even found that she had just cause for leaving her job because of her health condition, since she had no reasonable alternative to leaving. While I understand the Commission’s view that the Appellant could look for a job that fit her situation, given the documents presented at the hearing, I am of the view that the Commission is more understanding in some files than others.

[27] The facts show that the Appellant’s doctor justified a leave of absence as of October 29, 2022. The Appellant was in pain and had undergone several exams. She was also scheduled for surgery on August 14, 2023, after post-surgery

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<sup>5</sup> GDJ5-12.

microcalcifications were discovered. She explained that her back pain is the result of degenerative spinal spondylodiscarthrosis.

[28] The medical note provided by the Appellant shows that, as of October 29, 2022, she was on a [translation] “justified leave of absence.” Given all of the medical documents submitted by the Appellant culminating in surgery scheduled for August 14, 2023, I find that the Appellant was unable to work from December 26, 2022.

### **Would the Appellant have been available for work from December 26, 2022, if it weren’t for her illness?**

[29] The Commission says that the Appellant hasn’t shown that she would have worked or would have been available for work because she has personal reasons preventing her from having or searching for a full-time job.

[30] At the hearing, the Appellant explained that, not only would she have been available for work, but that, given that she had no earnings and despite her fatigue, she had looked for a job that could be adapted to her situation.

[31] As she told the Commission, the Appellant made efforts to find a job as of October 29, 2022. Especially since the Commission had informed her of her job-search obligations.

[32] The Appellant was scheduled to have surgery on August 14, 2023. Other than her illness and the various appointments and medical exams she had between December 26, 2022, and August 14, 2023, the Appellant was available for work from Monday to Friday for any working day in her benefit period from December 26, 2022.

[33] In my view, the Appellant has shown that she would have been available for work from December 26, 2022, if it weren’t for her illness.

### **Conclusion**

[34] The Appellant has shown that she was available for work under the Act. Because of this, I find that the Appellant is entitled to sickness benefits.

[35] This means that the appeal is allowed.

Josée Langlois  
Member, General Division – Employment Insurance Section