



Citation: *MC v Canada Employment Insurance Commission*, 2023 SST 2001

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

Decision

Appellant: M. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (559581) dated December 15, 2022 (issued by Service Canada)

Tribunal member: Susan Stapleton

Type of hearing: Videoconference

Hearing date: July 13, 2023

Hearing participant: Appellant

Decision date: September 8, 2023

File number: GE-23-791

Decision

[1] The appeal is allowed in part.

[2] The Appellant hasn't shown that she was capable of, available for, and unable to find suitable employment from October 31, 2022 to April 30, 2023. Because of this, I find that she is disentitled from receiving EI regular benefits during that period.

[3] The Appellant has shown that she was capable of, available for, and unable to find suitable employment from May 1, 2023 to June 1, 2023. I therefore find that she is not disentitled from receiving benefits during that period.

Overview

[4] The Appellant worked full time at a university. She sustained a concussion injury in February 2022. She went off work because of her injury in June 2022. She returned to work in September 2022, at reduced hours, on a gradual return to work plan. She received EI sickness benefits for 15 weeks, while she was off work completely and after she returned on the gradual return to work plan, until October 30, 2022.

[5] The Appellant applied for EI regular benefits after her sick benefits were exhausted. The Commission decided that she was disentitled from receiving EI regular benefits as of October 31, 2022, because she wasn't available for work every day of the week, and could only work part time hours on some days, due to temporary incapacity related to her injury. The Commission says the Appellant could not prove she was available while following her gradual return to work plan.¹

[6] The Commission later decided that as of December 20, 2022, the Appellant has proven her availability for two days per week. It maintained a disentitlement on her claim for the other three days each week, as it considered her incapable of working, and therefore not available, for three days each week.²

¹ See GD4-3.

² See GD4-3.

[7] The Appellant disagrees with the Commission's decision and says that working full time wasn't possible for her. Her doctors would only approve a gradual return to work plan starting at low part-time hours, to carefully monitor her symptoms.³ But once her doctor knew what the availability requirements were for EI purposes, he was willing to adapt her return to work plan as much as possible, to ensure she was eligible to receive EI.⁴ She feels she is entitled to regular benefits, because her sickness benefits had ended, she was struggling financially and couldn't afford her daily living expenses and medical expenses on her part-time salary alone.⁵

[8] The Appellant started working full time for a different university on June 1, 2023. She no longer has any restrictions on her ability to work.

[9] I must decide whether the Appellant is entitled to EI regular benefits from October 31, 2022, when her sickness benefits ended, until June 1, 2023, when she returned to working full time.

[10] Claimants who want to receive regular benefits must satisfy the requirements of section 18(1)(a) of the *Employment Insurance Act* (Act), which requires them to prove that they are capable of and available for work and unable to obtain suitable employment. The Appellant has to prove on a balance of probabilities that she meets these requirements. This means that she has to show that it is more likely than not that she was capable of and available for work and unable to obtain suitable employment.

Issue

[11] Was the Appellant capable of and available for work and unable to find suitable employment from October 31, 2022 to June 1, 2023?

³ See GD3-26.

⁴ See GD3-31.

⁵ See GD2-7.

Analysis

[12] A claimant has to be capable of and available for work, and unable to find a suitable job, to get EI regular benefits. This is an ongoing requirement, set out in section 18(1)(a) of the Act.

[13] The inability to obtain suitable employment is a distinct element of the requirements under section 18(1)(a) of the Act. A claimant has to satisfy all three of the elements in order to prove that they are entitled to regular benefits.

[14] The criteria for determining what constitutes suitable employment 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.⁶

[15] I find that suitable employment for the Appellant was employment that she had the health and physical capabilities to perform, according to the gradual return to work plan directed by her doctor.

[16] Medical evidence from the Appellant's doctor says that the Appellant was restricted to working part time hours on some days of the week.⁷ When she returned to work in September, 2022, she was working according to this plan. She received sickness benefits until October 30, 2022.

[17] The Appellant testified that she went to see her doctor in December 2022, to "work up a new plan," so that she would qualify to receive EI benefits. The Appellant's doctor provided a report on December 20, 2022, which said that she could now work two full days per week, but she wasn't capable of working the other three days of each week, due to her injury.⁸

⁶ See section 9.002(1) of *the Employment Insurance Regulations* (Regulations).

⁷ See GD3-14-16.

⁸ See GD3-31.

[18] The Appellant testified that she started looking for more work on January 1, 2023, and started working at a second part time job, at five to twenty hours per week, on February 1, 2023. She said that her doctor agreed with her working for both the university (for ten hours per week) and as a contractor (for five to twenty hours per week), because her work hours were “capped,” and she wouldn’t be working full time hours.

[19] I find that from October 31, 2022 to April 30, 2023, the Appellant wasn’t unable to find suitable employment. She was working in suitable employment, in accordance with the return to work plan directed by her doctor, throughout this period. Therefore, she doesn’t meet the requirements of section 18(1)(a) of the Act during this period.

[20] The Appellant testified that although her doctor didn’t ever officially clear her for a full return to work, she felt that the effects of her injury had stabilized such that she could have worked full time as of May 1, 2023. I see no evidence to contradict this.

[21] Next, I will consider whether the Appellant was available for work for the period from May 1, 2023 to June 1, 2023. The Appellant can establish her availability by proving the following three things:⁹

- a) She wanted to go back to work as soon as a suitable job was available.
- b) She has made efforts to find a suitable job.
- c) She didn’t set personal conditions that might have unduly (in other words, overly) limited her chances of going back to work.

[22] When I consider each of these factors, I have to look at the Appellant’s attitude and conduct.¹⁰

⁹ 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.

¹⁰ Two decisions from case law set out this requirement. Those decisions are *Canada (Attorney General) v Whiffen*, A-1472-92; and *Carpentier v Canada (Attorney General)*, A-474-97.

Wanting to go back to work

[23] I find that the Appellant wanted to return to work. She testified that she was experiencing financial difficulties and needed to work full time to meet her financial obligations.

Making efforts to find a suitable job

[24] I find that the Appellant was making enough efforts to find a suitable job. She testified that she searched and applied for full time jobs while she worked in her two part time jobs, at the university and as a contractor. She then went on to secure a full time job that she started working at on June 1, 2023. I find that the Appellant was making enough efforts to find a suitable job from May 1, 2023, because she was able to secure a full time job as of June 1, 2023.

Unduly limiting chances of going back to work

[25] There is no evidence that the Appellant set any personal conditions that might have unduly limited her chances of going back to work.

So, was the Appellant capable of and available for work?

[26] For the reasons outlined above, I find that from October 31, 2022 to April 30, 2023, the Appellant wasn't unable to find suitable employment, so could not prove her entitlement to regular benefits. I find that she did prove her entitlement from May 1, 2023 to June 1, 2023, because during that time, she satisfied all three requirements, of being capable of, available for, and unable to find suitable employment.

Additional argument

[27] The Appellant argues that 15 weeks of sickness benefits wasn't enough time to allow her to recover from her concussion injury and return to full time work. She was unable to meet her financial obligations while she was unable to work full time. She submits that she should be eligible for financial assistance in the form of regular benefits, to offset her reduction in income.

[28] This argument was also made by the claimant in *KP v Canada Employment Insurance Commission*, 2020 SST 592. In that case, the claimant argued that she should be entitled to a “top-up” because she couldn’t work as many hours as she could before her injury. The decision states:

The Employment Insurance scheme is insurance against unemployment. Like all insurance schemes, there are limits on the nature and extent of the benefits available. One such limit is that the scheme will only protect against the loss of employment due to illness or injury to a maximum of 15 weeks of sickness benefits.

[29] I find that the same reasoning applies to the Appellant’s case, with respect to the period from October 31, 2022 to May 1, 2023.

[30] The Appellant is disentitled from receiving benefits from October 31, 2022 to April 30, 2023, because she hasn’t shown that she was unable to find suitable employment during that period. She is not disentitled from receiving benefits from May 1, 2023 to June 1, 2023, because she has shown that during that period, she was capable of, available for, and unable to find suitable employment.

Conclusion

[31] The Appellant hasn’t shown that she was unable to find suitable employment from October 31, 2022 to April 30, 2023. Because of this, I find that she is disentitled from receiving EI benefits during that period.

[32] The Appellant has shown that she was capable of, available for, and unable to find suitable employment from May 1, 2023 to June 1, 2023. So, I find that she is not disentitled from receiving benefits during that period.

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

Susan Stapleton
Member, General Division – Employment Insurance Section