



Citation: *GN v Canada Employment Insurance Commission*, 2025 SST 375

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant:

G. N.

Respondent:

Canada Employment Insurance Commission

Decision under appeal:

Canada Employment Insurance Commission
reconsideration decision (680382) dated July 23, 2024
(issued by Service Canada)

Tribunal member:

Adam Picotte

Type of hearing:

In person

Hearing date:

January 9, 2025

Hearing participants:

Appellant

Decision date:

January 14, 2025

File number:

GE-24-3763

Decision

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

[2] The Appellant wasn't able to work because of his sickness. And, the Appellant would have been available for work if he hadn't been sick. His sickness was the only thing stopping him from being available for work.

[3] This means that the Appellant isn't disentitled from receiving Employment Insurance (EI) sickness benefits. So, the Appellant may be entitled to benefits.

Overview

[4] The Appellant wasn't able to work because of his sickness. He was involved in a motor vehicle accident and his doctor provided a certificate that stated he was unable to work. To be able to receive EI sickness benefits, the Appellant must "otherwise be available for work."¹ In other words, the Appellant's injury has to be the only reason why wasn't available for work.

[5] The Canada Employment Insurance Commission (Commission) says that the Appellant would not have been available for work anyway because the Appellant's work visa was not approved. It decided that it wasn't able to pay him EI benefits as of May 3, 2024.²

[6] The Appellant disagrees. He says that he tried to renew his work permit several times. He was only able to obtain temporary renewals while his passport renewal from Ukraine was outstanding. He was surprised to learn in June 2024, that his temporary application had been rejected. Once his Ukrainian passport was received, the Appellant was provided with a renewed work permit.

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

² GD3-59

Issue

[7] The Appellant wasn't able to work because of his injury. But, was his injury the only thing stopping him from being available for work?

Analysis

[8] 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 his injury is the only reason why he wasn't available for work.³

[9] The Appellant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that he would have been available for work if it weren't for his injury.

Available for work

[10] Case law sets out three factors for me to consider when deciding whether an Appellant is available for work. An appellant has to prove the following three things:⁴

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

[11] The Appellant doesn't have to show that he is actually available. He has to show that he would have been able to meet the requirements of all three factors if he weren't injured. In other words, the Appellant has to show that his injury was the only thing stopping him from meeting the requirements of each factor.

³ See section 18(1)(b) of the EI Act.

⁴ 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.

[12] The parties don't dispute that the Appellant wanted to go back to work as soon as a suitable job was available or that he was making efforts to find a suitable job.

[13] But the Commission argues that the Appellant unduly limited his chances of going back to work because he didn't apply to renew his work permit before the expiry date.

[14] I am mindful that in applying "otherwise available" that I must use a delicate analysis.⁵ This is important given the inherent difficulty in proving a hypothetical. In this case the Appellant had in fact applied for a work permit before it expired, and it was beyond his control that Ukraine being at war would have had delays in issuing a passport to support the application for a work permit.

[15] The Appellant had an open work permit, valid from June 15, 2022, to January 10, 2024.⁶

[16] The evidence on file also shows that the Appellant submitted a further temporary renewal that was granted until June 23, 2024.⁷ However, on May 3, 2024, the Appellant received a letter from Immigration Canada advising that his work permit extension was refused because he had not provided a copy of his requested passport.⁸

[17] The Appellant says that the sole reason that he did not provide his passport as requested was because the Ukrainian government had failed to send it to him as requested. He made the request well in advance of his previous passport expiring. As a result, the Appellant is not at fault for the delay. Instead it was world events that contributed to the delay in processing his passport.

⁵ See *OK v. CEIC*, 2024 SST 111 at paragraph 42.

⁶ GD3-18

⁷ GD3-23

⁸ GD3-42

[18] The Tribunal's Appeal Division (AD) says that not having a work permit will usually limit an appellant's chances of returning to work, but this is a question of fact in every case. The AD has decided that the absence of a formal work permit didn't unduly limit the appellant's chances of going back to work because the parties relied on the appellant's implied status and the appellant's actual work history.⁹

[19] In this case, the Appellant had a valid permit at the time he applied for benefits. And he re-applied before it expired. Unfortunately, the further renewal was not approved, not due to his own action or inaction but rather to the delay by Ukraine to issue a passport because of the war.

[20] I find that the Appellant was otherwise available for work. Specifically, I find that he didn't unduly limit his chances of going back to work. He applied for a work permit well in advance of the expiration. He also applied for a renewed passport well in advance of its expiration. It was only because of a delay from the Ukrainian government that the Appellant did not have this requested document for Immigration Canada.

[21] I also rely on the letters of Immigration Canada which shows that the Appellant maintained his status and made an application prior to the expiration of his work permit. Finally, I rely on the fact, the Appellant continued to seek work permits and obtain his passport from the Ukrainian government prior to his work permit expiration.

Conclusion

[22] The Appellant has shown that he 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. So, the Appellant may be entitled to benefits.

[23] This means that the appeal is allowed.

Adam Picotte

Member, General Division – Employment Insurance Section

⁹ See *LM v Canada Employment Insurance Commission*, 2022 SST 617.