

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: JENNIFER EASTWOOD-FISHER, Plaintiff

– and –

EQUINE CANADA c.o.b. as EQUESTRIAN CANADA, GROUPHEALTH GLOBAL BENEFIT SYSTEM INC. c.o.b. as GROUPHEALTH BENEFIT SOLUTIONS, SSQ LIFE INSURANCE COMPANY INC., and JULIA K., Defendants

BEFORE: C. MacLeod RSJ

COUNSEL: Andrew Montague-Reinholdt and Kendra Landry, for the Plaintiff

Sam Campbell, for Defendant Equine Canada

Tracey L. Hamilton, for SSQ defendants

HEARD: February 10, 2026

ENDORSEMENT

[1] This is a motion for summary judgment brought by the plaintiff in a claim against her former employer (Equine Canada) and the entities responsible for arranging and providing employee group benefits including Long Term Disability insurance.

[2] The plaintiff alleges that she was wrongfully dismissed and wrongfully denied LTD benefits she applied for in what should have been the notice period. She alleges she became totally disabled either before she was terminated or within the period of statutory or common law reasonable notice.

[3] The employer agrees that summary judgment is appropriate in relation to the wrongful dismissal claim but not the LTD claim. The insurance defendants take no position on the wrongful dismissal but deny that the issue of disability or entitlement can be addressed on a summary judgment motion.

Background Facts

[4] The plaintiff was injured in a motor vehicle accident in December of 2016. As a result of that accident, the plaintiff suffered a number of injuries. There is ongoing litigation in respect of that accident and the consequences to the plaintiff (Court file no. CV-18-81616). In that proceeding, the plaintiff details significant post accident health impacts including traumatic brain

injury, mild neurocognitive disorder, chronic pain syndrome, persistent depression, anxiety, sleep disturbance and an inability to regulate her emotions.

[5] At the time of the motor vehicle accident, the plaintiff was employed at the Ottawa Hospital Research Institute. She returned to work after the accident and then worked briefly at another hospital. She continued to look for work and was hired by the defendant later that year.

[6] In November of 2017 the plaintiff began a one year contract with the defendant. This was originally a term contract but in approximately November of 2018 it became an indeterminate contract of employment. At that time, the plaintiff held the position of Director of Technical Development. She held that position until February 8, 2019 when she was apparently terminated without cause.

[7] Her salary at that time was \$81,600.00 plus benefits which included the LTD policy in issue in this proceeding. According to the defendant employer, the termination was the result of financial constraints and business decisions resulting in the elimination of the position. According to the plaintiff, she had been struggling at work and was just about to go off on LTD when she received the notice of termination.

[8] It is the plaintiff's evidence that she had become overwhelmed in trying to manage her disabilities at work. According to her affidavit, she had ceased to be able to perform her job functions effectively before she received the notice of termination. She attests that she had contemplated medical leave and her employer was aware of this.

[9] When the plaintiff received notice of termination, she understood that she was given two week's notice including continuation of benefits. Subsequently, the employer provided an additional two weeks of pay in lieu of notice and extension of benefits (although there is some evidence that the extension did not include LTD). The plaintiff believed she had LTD coverage until March 8, 2019 and sent an email to confirm this.

[10] Sometime between March 6th and March 8th, the defendants were formally made aware that the plaintiff was applying for LTD benefits. She has a report from her doctor saying she was off work for medical reasons as of February 8th. Ultimately the insurer denied her claim. It is the position of GroupHealth and SSQ that coverage ceased the day her employment ceased which in their view was February 9th. They take the position that no application was made within the coverage period.

[11] The LTD plan in question has the fairly standard "own occupation", "any occupation" provision. This provides an initial period of coverage for two years if a person is disabled from earning income by pursuing their own occupation but after two years coverage is extended only if disability prevents the insured person from working at any occupation.

[12] Even if the application was submitted in time, the insurer takes the position the plaintiff is not disabled within the meaning of the policy. So, there are two independent questions. Firstly, was the plaintiff covered by the LTD plan when she purports to have become disabled? Secondly, has she been continuously disabled within the meaning of the policy and therefore entitled to benefits?

[13] With respect to the employer, the plaintiff pleads that she was entitled to more than two weeks notice. Furthermore, she claims that she was entitled to benefit continuation during the notice period. If that is correct and if the employer's contract with the insurer did not actually extend the benefits during the notice period, the plaintiff contends that the employer would be liable to pay the LTD benefits.

The Question of Summary Judgment and the test

[14] The question for the court is whether or not these issues can be determined on a summary judgment motion? If so, is the plaintiff entitled to judgment? This is somewhat nuanced.

[15] To be clear on this point, the employer and the plaintiff both agree that the length of the notice period should be determined on a summary judgment motion. That question is therefore governed by Rule 20.04 (2) (b) whereas the question of entitlement to LTD benefits or the equivalent is governed by Rule 20.04 (1).

[16] Where the parties agree that a matter may be determined by summary judgment, the court is required to grant summary judgment "if satisfied that it is appropriate to grant summary judgment". Where the parties disagree, the court will only grant summary judgment if "the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence". There is a subtle difference between these two subsections.

[17] It is also important to observe that the defendant insurer takes the position that the plaintiff's case cannot be proven against it without detailed assessments of credibility and analysis of the evidence that are not appropriate on a motion. If the court agrees with that submission, then the defendant asks that the matter continue to trial.

[18] In some cases courts have determined that a matter is appropriate for summary judgment and then gone on to determine that the plaintiff lacks an element of proof. In those cases, the court can grant summary judgment against the moving party plaintiff, what is sometimes referred to as a "boomerang summary judgment motion".¹ This can be fair if the court determines that there is no genuine issue requiring a trial, that the plaintiff has put forth all of the evidence it has, that the plaintiff was on notice of the risk, and the plaintiff's action cannot succeed. The defendant does not ask for such a finding. I am simply asked to dismiss the motion and award costs.

[19] I am satisfied that the issue of notice can efficiently be determined on a summary judgment motion. Indeed, it has become commonplace for employers and employees to request just that, or, what amounts to the same thing, to bring the question before the court on Application pursuant to Rule 14. This use of Rule 20 in straightforward wrongful dismissal actions has also received appellate support.²

Analysis – notice period

[20] The plaintiff had worked for the defendant for 15 months inclusive of the 12 month term contract. Despite the fact that the term contract would have expired unless it was renewed or

¹ *Graham v. Toronto (City)*, 2022 ONCA 149 (CanLII)

² *Arnone v. Best Theratronics Ltd.*, 2015 ONCA 63 (CanLII)

extended, that period of time should be taken into account in assessing the period of reasonable notice.

[21] The defendant does not dispute that the plaintiff was employed thereafter for an indeterminate term nor that it was an implied term of her employment that her employment would only be terminated for cause or with reasonable notice. The employer does not allege cause. There is also no dispute that the *Employment Standards Act* required two weeks notice nor that common law notice should be assessed using the *Bardal* factors.³ Those factors are the nature of the employment, the length of service, the age of the employee and the availability of similar employment, having regard to his or her experience, training and qualifications.⁴ Subsequent jurisprudence has resulted in some adjustment to how those factors should be weighed but has not displaced them.

[22] One question that divides the parties is the impact of the plaintiff's disability. If it is established that she can no longer work then there is no availability of similar employment. The plaintiff does not argue that this should result in notice extending forever but does argue that it justifies an extended notice period of six months. The defendant, by contrast argues that the notice period should be no more than three months (minus the amounts actually paid).

[23] I agree with the analysis of Aston J. in the case cited by the defendant.⁵ I do not accept that health should be treated as an additional separate factor in determining notice. On the other hand, there are factors that could be influenced by a known health condition or disability. The availability of similar suitable employment is one factor and there may be cases in which the nature of the employment and the plaintiff's need for accommodation make it evident that no such alternative employment is likely to be found. In the same manner, the plaintiff's health or accommodation needs might factor into the duty to mitigate. This is not directly applicable in the current case because the plaintiff was not looking for accommodation and she was not searching for alternative employment. It is her assertion that she became totally disabled either before she was terminated or during the notice period.

[24] In any event, while the availability of similar employment is a factor, even where there is no employment available, that does not result in an indefinite notice period. Poor health alone would not justify doubling or tripling the length of notice required for a relatively short term of employment. While there is no formulaic upper limit on notice, the notice period must still be reasonable.⁶ Here the period of employment was 15 months inclusive of the original term contract. There is no suggestion that the employer did anything to make it harder to find work, which has sometimes justified a longer notice period. Even taking into account the question of health, and the fact that the employer was aware of the plaintiff's medical vulnerability, I consider a notice period of four (4) months to be reasonable under the circumstances.

³ *Machtinger v. HOJ Industries Ltd.*, 1992 CanLII 102 (SCC), [1992] 1 SCR 986

⁴ *Bardal v. Globe & Mail Ltd.*, 1960 CanLII 294, 24 DLR (2d) 140 (ON HCJ)

⁵ *Dwyer v. Advanis Inc.*, 2009 CanLII 23869 (ON SC)

⁶ *Strudwick v. Applied Consumer & Clinical Evaluations Inc.*, 2016 ONCA 520 (CanLII)

[25] I therefore find that the period of reasonable notice for the plaintiff was four months less the amounts she was paid. She would also be entitled to the value of the benefit package for that same period of time.

[26] The question of whether the employer is liable to actually provide long term disability benefits during the notice period is less clear and it will be moot if a valid claim was made within the coverage period.

[27] As noted above, the plaintiff contends that she made an LTD claim within one month of her termination and seeks benefits under the policy or the equivalent in LTD benefits from the employer. The question of entitlement under the policy is intertwined with the question of whether the employer is liable for LTD benefits if it failed to ensure coverage during the notice period.

[28] The question for the court is whether or not these issues can be determined on this summary judgment motion or whether they pose a genuine issue that requires a trial. I turn to that question now.

Summary judgment on the LTD claim

[29] There are a number of issues that turn on credibility and nuanced evidentiary findings. The plaintiff asserts that notwithstanding she remained employed and was attending at the workplace, she had become totally disabled prior to receiving the notice of termination.

[30] The plaintiff did not make the LTD claim until after she was fired. The question is firstly, whether coverage remained in place. Here there are differences of interpretation, questions of the policy wording, how it was described in the benefits documents and in communications. Secondly, if the insurance was not technically still in place, were representations made that either bind the insurer or alternatively bind the employer to provide the equivalent coverage?

[31] The plaintiff asserts that she was told she remained covered by LTD provided she submitted her claim in time. It is an open question whether the email correspondence in evidence should be interpreted as an unequivocal representation or whether the advice apparently provided was based on incorrect facts relayed by the plaintiff herself. It is unclear as well whether the insurer's position that coverage under LTD ceased on the day the claimant ceased to be an employee is a reasonable position and whether the plaintiff ceased to be an employee immediately on receiving notice, only at the end of the notice period or at some other point in time.

[32] In my view, the conflicts in the evidence concerning who said what when, what meaning should be ascribed to the communication and who knew what when are not issues that can readily be resolved on the written record. This is a triangular dispute. The LTD policy is an agreement between the employer and insurer. The insurer has obligations under the plan to all those employees who are entitled to coverage. The obligation to provide the coverage to the employees is that of the employer. This is not a large, sophisticated employer. Both the plaintiff and the employer depended upon advice from the benefits consultant.

[33] If the plaintiff is successful in proving entitlement, either under the policy or against the employer, she must then prove that she is and remains entitled to benefits under the terms of the policy. In that regard, there are issues about the admissibility and weight to be given to expert

reports. In addition, as is frequently the case, the weight to be given to expert reports based to some degree on self-reporting will stand or fall with credibility assessments. These types of issues may sometimes be adjudicated in the context of a motion, but this is an additional dimension to the case and an additional challenge in granting summary judgment.

[34] As discussed above, the defendants are not asking for summary judgment against the plaintiff. The only question is whether the conflicts in the evidence can be resolved in favour of the plaintiff and judgment should be granted.

[35] Summary judgment will be appropriate when the evidence before the court on the summary judgment motion allows the judge to make all necessary findings of fact and allows the judge to apply the law to those facts.⁷ The need to assess credibility or untangle complex competing evidence is not always a bar to summary judgment but frequently it is. In my view the evidence does not permit me to make the necessary findings with confidence.

[36] I therefore concur with the defendants that summary judgment on the LTD claim cannot be granted and the issues will have to be resolved at a trial or by a negotiated resolution.

Conclusion

[37] In summary, the court grants summary judgment on the wrongful dismissal claim and declares that the plaintiff was entitled to four month's notice. The plaintiff is entitled to her salary and the value of the benefit package less the amounts actually paid.

[38] Summary judgment is refused on the question of entitlement to LTD benefits. The question of whether the plaintiff was and remains totally disabled within the meaning of the policy, whether the insurer was obligated to provide benefits, and if not, whether the employer is obligated to provide the equivalent benefits are remitted to trial.

[39] The parties are encouraged to discuss what use can be made of the affidavit material, what factual admissions can be made and how the trial can otherwise be streamlined.

[40] I will also hear submissions on costs if that is necessary.

Justice C. MacLeod

Date: May 7, 2026

⁷ *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 SCR 87