



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. M. v. Canada Employment Insurance Commission*, 2017 SSTGDEI 77

Tribunal File Number: GE-16-4751

BETWEEN:

S. M.

Appellant

and

Canada Employment Insurance Commission

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Employment Insurance Section

DECISION BY: Takis Pappas

HEARD ON: May 29, 2017

DATE OF DECISION: June 5, 2017

REASONS AND DECISION

PERSONS IN ATTENDANCE: The Appellant did not attend the teleconference hearing on May 29, 2017. The Tribunal waited 15 minutes past the appointed time and then proceeded to conclude the hearing. The Tribunal notes that the Notice of Hearing was mailed to the Appellant on April 19, 2017. Evidence on file indicates that the Appellant received and signed for the Notice of Hearing on April 24, 2017. Section 12(1) of the *Social Security Tribunal Regulations* provides that if a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received notice of the hearing. The Tribunal is satisfied that the Appellant received her notice of hearing.

INTRODUCTION

[1] The Appellant established a claim for employment insurance benefits on September 4, 2016.

[2] The Respondent imposed a disentitlement on the Appellant according to section 18 of the *Employment Insurance Act* (the Act) because she failed to prove her availability for work while attending a course of instruction.

[3] On October 21, 2016, the Appellant requested a reconsideration of the Respondent's decision. The Respondent maintained its original decision and on December 16, 2016 the Appellant appealed to the General Division of the Social Security Tribunal.

[4] The hearing was held by Teleconference for the following reasons:

- a) The complexity of the issue(s) under appeal.
- b) The fact that the appellant will be the only party in attendance.
- c) The information in the file, including the need for additional information.

- d) The form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ISSUE

[5] Whether a disentitlement should be imposed according to sections 18(a) because the Appellant failed to prove her availability for work while attending a course of instruction.

EVIDENCE

[6] The Appellant established a claim for employment insurance benefits on September 4, 2016.

[7] The Appellant advised the Respondent that she was enrolled in two courses and spending 5 hours per week in class (GD3-16).

[8] As of September 6, 2016 the Appellant enrolled as a part-time student at Dalhousie University in the first year of the Bachelor of Commerce program. She was only available for work outside of her class schedule. The class hours were Monday, Wednesday, and Friday from 1:00 pm to 2:15 pm and on Thursday from 4:00 pm to 5:30pm. In addition to the five hours and 15 minutes of class time, she was spending an additional 8 to 9 hours per week on her studies. The program cost her \$6,000 with an additional \$1,000 for books. The Appellant had her name on a list through her union hiring hall but did not look for work with any other employers. She specified she would leave the program if she was offered work through the union hall (GD3-17).

[9] The Respondent imposed a disentitlement on the Appellant according to section 18 of the Act effective September 6, 2016 because she failed to prove her availability for work while attending a course of instruction.

[10] In her request for reconsideration, the Appellant wrote that she was available only for hours outside her schedule, that she had not submitted any resumes to employers and was relying on her union for work. She also stated that she would drop the course for work with the union because she would be paid over \$70,000 per year and reiterated that her understanding was that she could rely on her union to get work for a six week period.

SUBMISSIONS

[11] The Appellant submitted that:

- a) She took the appropriate steps when filing for EI by leaving the issue of looking for work with her union for the first six weeks and only after that actively looking for work herself.
- b) She was looking for work with most of her job search being online. She is hopeful that and believes she can find a job that is able to work around her school schedule (GD2-3).

[12] The Respondent submitted that:

- a) A person who attends a full-time course without being referred by an authority designated by the Commission must demonstrate that she is capable of and available for work and unable to obtain suitable employment, and must meet the availability requirements of all claimants who are requesting regular Employment Insurance benefits.
- b) The Appellant has failed to rebut the presumption of non-availability while attending a full-time course because she is available without restriction only on Saturday, Sunday and Tuesday. On Monday, Wednesday, Thursday and Friday she is restricted to working in the evenings outside of her class schedule. She does not have a pattern of working while attending a program of instruction. The facts show that the Appellant was relying on her union hall to find work for her and would only leave the course if work was obtained through the union.
- c) The Appellant has not provided any evidence of an in-depth, continuous job search to show she has made genuine efforts to obtain employment despite the fact that she has been advised that this is necessary.

ANALYSIS

[13] The relevant legislative provisions are reproduced in the Annex to this decision.

[14] For the purpose of proving availability under paragraph 18(1) (a) of the Act, subsection 50(8) of the Act states that the Commission may require the claimant to prove that she is making reasonable and customary efforts to obtain suitable employment.

[15] In *Faucher v. Canada* (A-56-96), the Court stated that that availability must be determined by analyzing three factors:

- a) the desire to return to the labour market as soon as a suitable job is offered,
- b) the expression of that desire through efforts to find a suitable job, and
- c) not setting personal conditions that might unduly limit the chances of returning to the labour market.

[16] There is a presumption that a person enrolled in a course of full-time study is not available for work. This presumption of fact is rebuttable by proof of exceptional circumstances (*Cyrenne* 2010 FCA 349; *Wang* 2008 FCA 112; *Gagnon* 2005 FCA 321; *Rideout* 2004 FCA 304; *Boland* 2004 FCA 251; *Primard* 2003 FCA 349; *Landry* A-719-91).

[17] The presumption may be rebutted by a history of full-time employment while studying. This history must be established over the years (*Rideout* 2004 FCA 304; *Boland* 2004 FCA 251; *Loder* 2004 FCA 18; *Primard* 2003 FCA 349; *Landry* A-719-91).

[18] In the case at bar, the Respondent submitted that the Appellant did not prove her availability for work because she was not available for full-time work. She is available without restriction only on Saturday, Sunday and Tuesday. On Monday, Wednesday, Thursday and Friday she is restricted to working in the evenings outside of her class schedule. The Appellant does not have a pattern of working while attending a program of instruction. The facts show that the Appellant was relying on her union hall to find work for her and would only leave the course if work was obtained through the union.

[19] The Appellant submitted that she feels that she took the appropriate steps when filing for EI by leaving the issue of looking for work with her union for the first six weeks and only after that actively looking for work herself. She was looking for work with most of her job search

being online. She is hopeful and believes she can find a job that is able to work around her school schedule.

[20] The Tribunal considered that the restrictions placed on the Appellant's hours of availability because of her course and finds that they restrict her ability to accept full-time employment during normal business hours. If she was laid off and did not enroll in a course of instruction and she met the requirements of the Act, it is possible that she would be entitled to benefits. The facts in this case indicate that the Appellant did enroll in school.

[21] The Tribunal also considered that there is no evidence provided to indicate that the Appellant had a history of full-time employment while studying.

[22] In *Canada (AG) v. Gauthier*, 2006 FCA 40 the Court established the principle that a person who unduly restricts her availability is not entitled to benefits under section 18 of the Act, and section 32 of the Regulations excludes Saturdays and Sundays from the definition of "working day" for the purposes of section 18.

[23] In *Faucher v. Canada (A-56-96)*, the Court clearly stated that one is available by not setting personal conditions that might unduly limit the chances of returning to the labour market.

[24] The Appellant stated to the Respondent that she was relying on her union hall to find work for her and would only leave the course if work was obtained through the union.

[25] The Tribunal accepts the Respondent's submission that passively waiting for work through one's union while being hopeful and believing that one can find employment around a school schedule, combined with the absence of a job search, is not indicative of a sincere effort to secure employment.

[26] The Tribunal considered that the Appellant did not provide job search information that demonstrates that she is making reasonable and customary efforts to find suitable employment. In *Faucher v. Canada (A-56-96)*, the Court clearly stated availability must be determined by examining the desire to return to the labour market as soon as a suitable job is offered and demonstrating that desire through efforts to find a suitable job.

[27] The Tribunal finds that the Appellant was not available for work for the period starting September 6, 2016.

[28] It is possible that the Appellant had good reason for taking a course to better her chances of obtaining employment in a field that she liked but she still had to prove her availability for work. The Umpire in *CUB 80859* addresses the role of the intent of the Employment Insurance Act in relation to training courses.

“The claimant undoubtedly made an excellent personal decision to take a course that will improve his chances of finding good employment, but he still had to prove his full availability for employment pursuant to the Act. The Employment Insurance Act is not intended as a means for subsidizing claimants’ studies, except in the cases where the Commission refers them to specific training courses.”

[29] For all the above reasons, the Tribunal finds that the Appellant failed to prove her availability for work while attending a course of instruction therefore a disentitlement should be imposed on her claim effective September 6, 2016.

CONCLUSION

[30] The appeal is dismissed.

Takis Pappas

Member, General Division - Employment Insurance Section

ANNEX

THE LAW

Employment Insurance Act

18 (1) A claimant is not entitled to be paid benefits for a working day in a benefit period for which the claimant fails to prove that on that day the claimant was

- (a) capable of and available for work and unable to obtain suitable employment;
- (b) unable to work because of a prescribed illness, injury or quarantine, and that the claimant would otherwise be available for work; or
- (c) engaged in jury service.

(2) A claimant to whom benefits are payable under any of sections 23 to 23.2 is not disentitled under paragraph (1)(b) for failing to prove that he or she would have been available for work were it not for the illness, injury or quarantine.

50 (1) A claimant who fails to fulfil or comply with a condition or requirement under this section is not entitled to receive benefits for as long as the condition or requirement is not fulfilled or complied with.

(2) A claim for benefits shall be made in the manner directed at the office of the Commission that serves the area in which the claimant resides, or at such other place as is prescribed or directed by the Commission.

(3) A claim for benefits shall be made by completing a form supplied or approved by the Commission, in the manner set out in instructions of the Commission.

(4) A claim for benefits for a week of unemployment in a benefit period shall be made within the prescribed time.

(5) The Commission may at any time require a claimant to provide additional information about their claim for benefits.

(6) The Commission may require a claimant or group or class of claimants to be at a suitable place at a suitable time in order to make a claim for benefits in person or provide additional information about a claim.

(7) For the purpose of proving that a claimant is available for work, the Commission may require the claimant to register for employment at an agency administered by the Government of Canada or a provincial government and to report to the agency at such reasonable times as the Commission or agency directs.

(8) For the purpose of proving that a claimant is available for work and unable to obtain suitable employment, the Commission may require the claimant to prove that the claimant is making reasonable and customary efforts to obtain suitable employment.

(8.1) For the purpose of proving that the conditions of subsection 23.1(2) or 152.06(1) are met, the Commission may require the claimant to provide it with an additional certificate issued by a medical doctor.

(9) A claimant shall provide the mailing address of their normal place of residence, unless otherwise permitted by the Commission.

(10) The Commission may waive or vary any of the conditions and requirements of this section or the regulations whenever in its opinion the circumstances warrant the waiver or variation for the benefit of a claimant or a class or group of claimants.