



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *B. L. v Canada Employment Insurance Commission*, 2019 SST 865

Tribunal File Number: GE-19-652

BETWEEN:

**B. L.**

Appellant

and

**Canada Employment Insurance Commission**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Employment Insurance Section**

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DECISION BY: Angela Ryan Bourgeois

HEARD ON: February 12, 2019

DATE OF DECISION: March 12, 2019

## **DECISION**

[1] The appeal is dismissed. The Claimant, B. L., is not entitled to receive benefits between September 6, 2018, and October 13, 2018, because she did not prove that she was available for work during this period.

## **OVERVIEW**

[2] The Claimant applied for and qualified to receive regular benefits, under the *Employment Insurance Act* (Act). The Claimant started university on September 6, 2018. The Province of Nova Scotia approved the Claimant's course under their Fast Forward program on October 14, 2018.

[3] The Canada Employment Insurance Commission (Commission) determined that the Claimant had not proven her availability between September 6, 2018, and October 13, 2018, because her course was only approved under the Fast Forward program on October 14, 2018.

[4] Authorization under the Fast Forward program is considered a referral under s 25 of the Act. Such an authorization allows claimants to meet the availability requirements under the Act, even though they are not actually available for work because they are taking a course.

[5] I must decide whether the Claimant has proven her availability for work by:

(a) proving that section 25 of the Act applies to the period before October 14, 2018, OR

(b) by proving that she was actually available for work between September 6, 2018, and October 13, 2018.

## **ISSUES**

[6] Can the Claimant rely on section 25 of the Act to prove her availability between September 6, 2018, and October 13, 2018?

[7] Has the Claimant proven she was actually availability for work?

## ANALYSIS

[8] To receive benefits for a working day in a benefit period, claimants must prove, not simply allege, that they are capable of and available for work and unable to obtain suitable work on that day.<sup>1</sup> A working day is any day of the week, except for Saturday and Sunday.<sup>2</sup> Claimants must also prove that they are making reasonable and customary efforts to find suitable work.<sup>3</sup>

[9] However, if they meet the criteria, claimants may rely on section 25 of the Act to prove their availability. Section 25 of the Act deems claimants to be unemployed, capable of, and available for work **during the period** that they are attending a course to which they were referred by the Commission or its designate.<sup>4</sup>

### **Can the Claimant rely on section 25 of the Act to prove her availability between September 6, 2018, and October 13, 2018?**

[10] No. The Claimant cannot rely on section 25 of the Act to prove her availability before October 14, 2018.

[11] There is no dispute that a designate of the Commission referred the Claimant to her course on October 14, 2018. The Claimant explained to the Commission that she was approved as of that date because that is when she passed in her application for the program.

[12] Section 25 of the Act only applies **during the period** when claimants are attending a referred course. Because the Claimant was referred to her course on October 14, 2018, the period when she was attending a referred course cannot start before October 14, 2018. As such, the Claimant cannot rely on section 25 of the Act to meet the availability requirements before October 14, 2018.

[13] The Claimant argues that she received conflicting information from Service Canada and those running the Fast Forward program. She testified that someone at Service Canada told her that the Fast Forward referral could be backdated, but when she spoke to someone at Fast

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<sup>1</sup> Failing to prove this is a disentitlement from receiving benefits under s 18(1)(a) of the Act.

<sup>2</sup> S 32 of the *Employment Insurance Regulations*.

<sup>3</sup> The requirement to make reasonable and customary efforts to find work is under s 50(8) of the Act, and the disentitlement from receiving benefits for failing to prove this is under s 50(1) of the Act.

<sup>4</sup> See s 25 of the Act.

Forward, she was told that they did not have the authority to back date her referral. While she may have received conflicting advice, section 25 applies to the period starting when the referral begins, and not before. I cannot change the law, and must apply it as written.

[14] The Claimant argued that she was as available for work before October 14, 2018, as she was before, and therefore, section 25 should apply to the entire period of her course. I do not agree. The Claimant is entitled to receive benefits from October 14, 2018, because section 25 of the Act applies as of that date, not because she was actually available for full-time work. Section 25 cannot be relied upon to establish her entitlement to benefits before she was actually referred to her course on October 14, 2018.

[15] Because section 25 of the Act applies only as of October 14, 2018, I must determine if the Claimant has proven that she was actually available for work between September 6, 2018, and October 13, 2018.

**Has the Claimant proven her availability?**

[16] No. The Claimant has not proven her availability between September 6, 2018, when she started her course, and October 13, 2018, because:

- a) she has not rebutted the presumption of non-availability while attending a full-time course;
- b) she did not have a desire to return to the labour market as soon as possible,
- c) she has not provided a job search that shows a desire to return to work;
- d) her course requirements unduly limited her chances of finding work; and
- e) she was not making reasonable and customary efforts to find a suitable job.

[17] As stated above, to be entitled to receive benefits, the Claimant must prove that she is capable of, and available for work, and unable to obtain suitable employment for every working day for which she claims benefits.

[18] There is no dispute that the Claimant was capable of working. The issue arises with her

availability.

[19] To be available for work, the Claimant must prove:

- a) she had a desire to return to the labour market as soon as suitable work was offered;
- b) she must indicate that desire by efforts to find suitable work; and
- c) she cannot have personal conditions that unduly limit her chances of finding work.<sup>5</sup>

***The Claimant is considered unavailable because she is attending full-time studies.***

[20] When a claimant is attending full-time studies, it is presumed, or considered, that she is not available for work unless she proves “exceptional circumstances.”<sup>6</sup>

[21] I find that the Claimant was attending a full-time course because she indicated so on her application for benefits, and the Commission’s notes indicate that the Claimant stated that she was attending a full-time course, and spending more than 30 hours a week on her course.<sup>7</sup>

[22] The Claimant stated that she started working three to four hours a week at the beginning of October. I find that working these part-time hours is not an exceptional circumstance that would rebut the presumption of non-availability while attending a full-time course.

[23] The Claimant indicated on her application for benefits and testified that she worked part-time while taking one course each term during the 2017-2018 school year. I find that this does not prove a history of working full-time while attending full-time studies, because she was working part-time and attending school part-time. This is not an exceptional circumstance that would rebut the presumption of non-availability while attending a full-time course.

[24] Therefore, because she is attending a full-time course, and has not proven exceptional circumstances, the Claimant is considered unavailable for work.

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<sup>5</sup> *Faucher v Canada Employment and Immigration Commission* A-56-96

<sup>6</sup> *Landry v Canada (Attorney General)*, A-719-91

<sup>7</sup> See page GD3-25.

***She did not have a desire to return to the labour market as soon as possible.***

[25] I find that the Claimant did not have a desire to return to the labour market as soon as suitable employment was offered because she testified that she was not looking for full-time work because she knew that she could return to her part-time job if she wanted to. Further, I find that her hesitation in accepting the part-time job proves that she did not have a desire to return to the labour market as soon as possible.

***She did not provide a job search.***

[26] The Claimant did not provide a job search. She testified that she was not looking for work other than the part-time job she knew was available to her. In her application for benefits, she stated that she had not made efforts to find work because she was attending school. I find that by not looking for work the Claimant has failed to prove that she had a desire to return to work as soon as a suitable job was offered.

***Her commitment to her course unduly limited her chances of finding work.***

[27] I find that the Claimant's course unduly limited her chances of returning to the labour market because she told the Commission that she would not have dropped her course if she found full-time work, and she reported on her application for benefits that she would only accept a full-time job if she could delay the start date to allow her to finish her course. She also reported that she had not looked for work because she was attending school, and that she was only available for work on Saturday, and Sunday.

[28] The Claimant's statements prove that she prioritized her studies over finding full-time work. As such, I find that her commitment to her course unduly limited her chances of finding work.

***She was not making reasonable and customary efforts to find suitable work.***

[29] I find that the Claimant has not proven that she was making "reasonable and customary efforts" as required by subsection 50(8) of the Act<sup>8</sup> because she did not provide a job search, and

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<sup>8</sup> See also section 9.001 of the *Employment Insurance Regulations*.

testified that she was not looking for full-time work.

***She has not proven her availability as required under the Act.***

[30] I find that the Claimant has not proven that she was available for work between September 6, 2018, and October 13, 2018. She did not rebut the presumption of non-availability, she did not have a desire to return to work as soon as possible, she did not look for other work, she prioritized her course over finding work, and she did not make reasonable and customary efforts to find work. Considering all of these factors, I find that the Claimant has failed to prove that she was available for work as required by sections 18(1)(a) and 50 of the Act.

**CONCLUSION**

[31] The appeal is dismissed. The Claimant is not entitled to receive benefits between September 6, 2018, and October 13, 2018, because she failed to prove her availability under sections 18(1)(a) and 50 of the Act.

Angela Ryan Bourgeois

Member, General Division - Employment Insurance Section

HEARD ON:	February 12, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	B. L., Appellant