



Citation: *EB v Canada Employment Insurance Commission*, 2021 SST 600

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

**Decision**

**Appellant:** E. B.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (420288) dated April 15, 2021  
(issued by Service Canada)

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**Tribunal member:** Suzanne Graves  
**Type of hearing:** Teleconference  
**Hearing date:** June 10, 2021  
**Hearing participant:** Appellant  
**Decision date:** June 21, 2021  
**File number:** GE-21-809

## Decision

[1] I am dismissing the appeal. The Claimant has not shown that she is available for work. This means that she cannot receive regular Employment Insurance (EI) benefits.

## Overview

[2] The Canada Employment Insurance Commission (Commission) decided that the Claimant is disentitled from receiving regular EI benefits as of February 8, 2021, because she is not available for work. A claimant has to be available for work to get regular EI benefits. Availability is an ongoing requirement. This means that a claimant has to be searching for a job.

[3] I must decide whether the Claimant has proven that she is available for work. The Claimant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that she is available for work. The Commission says that the Claimant isn't available because she is not looking for a full-time job.

[4] The Claimant disagrees and states that she already has a part-time job as a school bus driver, and is available to work additional hours for her employer as needed. She says that other people in the same position as herself are collecting EI benefits.

## Issue

[5] Is the Claimant available for work?

## Analysis

[6] The *Employment Insurance Act* (EI Act) says that a claimant has to prove that they are “capable of and available for work” but are not able to find a suitable job.<sup>1</sup> Case law gives three things a claimant has to prove to show that they are “available” in this sense.<sup>2</sup>

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<sup>1</sup> See section 18(1)(a) of the EI Act.

<sup>2</sup> See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

[7] The Commission looked at the three factors and decided that the Claimant is disentitled from receiving benefits because it says she isn't available for work.

[8] I will now consider these factors myself to determine whether the Claimant is available for work.

### **Capable of and available for work**

[9] In order to be paid EI benefits, the law says that claimants have to be capable of and available for work and unable to find suitable employment.<sup>3</sup> The parties agree that the Claimant is capable of working.

[10] Case law sets out three factors for me to consider when deciding whether the Claimant is capable of and available for work but unable to find a suitable job. The Claimant has to prove the following three things:<sup>4</sup>

- a) She wants to go back to work as soon as a suitable job is available.
- b) She has made efforts to find a suitable job.
- c) She hasn't set personal conditions that might unduly (in other words, overly) limit her chances of going back to work.

[11] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.<sup>5</sup>

#### **– Wanting to go back to work**

[12] The Claimant has shown that she wants to take on more work.

[13] The Claimant works part-time as a school bus driver. Her job involves transporting children with disabilities between home and school. She testified that her

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<sup>3</sup> Paragraph 18(1)(a) of the EI Act.

<sup>4</sup> 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.

<sup>5</sup> 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.

hours have reduced due to the pandemic and she wants to take additional work from her employer whenever more hours are available.

[14] The Claimant testified in a sincere and straightforward manner and her testimony was consistent with previous statements she made to the Commission. I accept her evidence that she is ready and willing to take more hours from her employer as needed.

– **Making efforts to find a suitable job**

[15] The Claimant hasn't shown that she made efforts to find additional suitable work.

[16] The Commission acknowledges the Claimant's willingness to take extra hours from her employer, but notes that more work is not currently available in that job. It says that she has not shown her availability because she is not making any efforts to find other employment.

[17] The Commission did not ask the Claimant for a job search record to show that she made reasonable and customary efforts to find work.<sup>6</sup> But I have considered that list of job search activities for guidance to help me decide whether the Claimant has proven that she made efforts to find suitable work.

[18] The *Employment Insurance Regulations* (Regulations) list nine job-search activities I have to consider. Some examples of those activities are the following:<sup>7</sup>

- registering for job-search tools or with online job banks or employment agencies
- applying for jobs
- attending interviews

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<sup>6</sup> I agree with the reasoning in the Tribunal's Appeal Division's decision in *L.D. v Canada Employment Insurance Commission*, 2020 SST 688. In that decision, the Tribunal decided that the Commission cannot disentitle a claimant under section 50(8) of the EI Act without first requiring the Claimant to provide proof of reasonable and customary efforts to find work. So, I will make no finding under subsection 50(8) and will only look at whether the Claimant was available for work under s18(1)(a) of the EI Act.

<sup>7</sup> See section 9.001 of the Regulations.

[19] The Claimant testified that she is not actively looking for a new job. She says that she has worked part-time for the same transportation company for 26 years, and loves her job. She does not intend to look for another job.

[20] The Claimant argues that she is always available to take additional hours from her employer whenever extra work is needed. She says that she never refused that option. So, she says that she is available for work.

[21] I have already accepted the Claimant's evidence that she is willing to take more work from her current employer.

[22] But the Claimant does not dispute that she has made no efforts to look for any additional work. So, she does not meet the requirements of this second factor.

– **Unduly limiting chances of going back to work**

[23] The Claimant has set personal conditions that might unduly limit her chances of taking on more work.

[24] The Claimant says she hasn't set personal conditions because she is available to work additional hours whenever her employer needs her to take on more work.

[25] The Commission says that the Claimant has not shown that she is available for work because she isn't looking for a full-time job.

[26] The law does not require that the Claimant must be looking for a full-time job.

[27] However, I find that the Claimant has set personal conditions which might unduly limit her chances of taking on more work because she has limited her availability to her current employer.

– **So, is the Claimant capable of and available for work?**

[28] Based on my findings on the three factors, I find that the Claimant hasn't shown that she is capable of and available for work but unable to find a suitable job.

[29] The Claimant is clearly a conscientious and dedicated employee, and she has continued her important work through much of the COVID-19 pandemic. But I have to follow the law and I have no ability to make exceptions based on compassion.<sup>8</sup>

## **Conclusion**

[30] The Claimant hasn't shown that she is available for work as of February 8, 2021, within the meaning of the law. Because of this, I find that the Claimant cannot receive EI regular benefits.

[31] This means that the appeal is dismissed.

Suzanne Graves  
Member, General Division – Employment Insurance Section

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<sup>8</sup> In *Canada (Attorney General) v Lévesque*, 2001 FCA 304, the Federal Court of Appeal held that the legislation has to be followed, regardless of the personal circumstances of the appellant (see also *Pannu v Canada (Attorney General)*, 2004 FCA 90).