



Citation: *RS v Canada Employment Insurance Commission*, 2021 SST 714

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant:

R. S.

Respondent:

Canada Employment Insurance Commission

Decision under appeal:

Canada Employment Insurance Commission
reconsideration decision (433634) dated September 21,
2021 (issued by Service Canada)

Tribunal member:

Gary Conrad

Type of hearing:

Teleconference

Hearing date:

November 1, 2021

Hearing participant:

N/A

Decision date:

November 3, 2021

File number:

GE-21-1841

Decision

[1] The appeal is dismissed. The Claimant has not proven his availability. The disentitlement issued by the Commission is upheld.

Overview

[2] Claimants have to be available for work in order to get regular employment insurance (EI) benefits. Availability is an ongoing requirement; claimants have to be searching for a job.

[3] The Commission decided that the Claimant was disentitled from being paid EI benefits from October 19, 2020, to June 25, 2021, as he was not available for work since he was in school.

[4] The Claimant says he was working part-time when he was in school but he left his job as his father was at high risk from COVID, and has not found another one.

[5] I must decide whether the Claimant has proven¹ that he was available for work.

Matters I have to consider first

The Claimant did not attend the hearing

[6] The Claimant wasn't at the hearing. A hearing can go ahead without the Claimant if the Claimant got the notice of hearing.² I think that the Claimant got the notice of hearing.

[7] The Claimant allowed the Tribunal to communicate with him by email.³ On October 20, 2021, the notice of hearing was sent to the email address the Claimant supplied to the Tribunal. There is no evidence the email was not delivered successfully. So, the hearing took place when it was scheduled, but without the Claimant.

¹ The Claimant has to prove this on a balance of probabilities, which means it is more likely than not.

² Section 12 of the *Social Security Tribunal Regulations* sets out this rule.

³ GD02-3

Section 50(8) Disentitlement

[8] In their submissions the Commission states they disentitled the Claimant under subsection 50(8) of the *Employment Insurance Act* (Act). Subsection 50(8) of the Act relates to a person failing to prove to the Commission that they were making reasonable and customary efforts to find suitable employment.

[9] In looking through the evidence, I did not see any requests from the Commission to the Claimant to prove his reasonable and customary efforts, or any claims from the Commission that if they did, his proof was insufficient.

[10] I further find the Commission did not make any detailed submissions on how the Claimant failed to prove to them that he was making reasonable and customary efforts; the Commission only summarized what the legislation says in regard to subsection 50(8) of the Act and what it says about reasonable and customary efforts.

[11] Based on the lack of evidence the Commission asked the Claimant to prove his reasonable and customary efforts to find suitable employment under subsection 50(8) of the Act, the Commission did not disentitle the Claimant under subsection 50(8) of the Act. Therefore, it is not something I need to consider.

Issue

[12] Was the Claimant available for work?

Analysis

[13] The law requires claimants to show that they are available for work.⁴ In order to be paid EI benefits, claimants have to be capable of and available for work and unable to find suitable employment.⁵

⁴ Paragraph 18(1)(a) of the *Employment Insurance Act* provides that a claimant is not entitled to be paid benefits for a working day in a benefit period for which he or she fails to prove that on that day he or she was capable of and available for work and unable to obtain suitable employment.

⁵ Paragraph 18(1)(a) of the *Employment Insurance Act*.

[14] In considering whether a student is available pursuant to section 18 of the Act, the Federal Court of Appeal, in 2010, pronounced that there is a presumption that claimants who are attending school full-time are unavailable for work.

[15] The Act was recently changed and the new provisions apply to the Claimant.⁶ As I read the new provisions the presumption of unavailability has been displaced. A full-time student is not presumed to be unavailable, but rather must prove their availability just like any other claimant.

[16] In order to be paid EI benefits, claimants have to be capable of and available for work and unable to find suitable employment.⁷ The Claimant has to prove three things to show he was available:

1. A desire to return to the labour market as soon as a suitable job was available
2. That desire expressed through efforts to find a suitable job
3. No personal conditions that might have unduly limited his chances of returning to the labour market⁸

[17] I have to consider each of these factors to decide the question of availability,⁹ looking at the attitude and conduct of the Claimant.¹⁰

Did the Claimant have a desire to return to the labour market as soon as a suitable job was available?

[18] I find the Claimant has not shown he had a desire to return to the labour market.

[19] The Claimant says he was working while attending high school, but stopped on November 30, 2021. The Claimant says he was working in food services which exposed

⁶ Subsection 153.161(1) of the *Employment Insurance Act*

⁷ Paragraph 18(1)(a) of the *Employment Insurance Act*.

⁸ *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

⁹ *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

¹⁰ *Canada (Attorney General v Whiffen*, A-1472-92 and *Carpentier v The Attorney General of Canada*, A-474-97.

him to a lot of people and his father was at high risk from COVID due to health complications, so he quit.¹¹

[20] The Claimant says he was in high school taking classes six hours a day and he also needed one to three hours a day for homework and studying.¹²

[21] The Claimant says he was not willing to quit school to work full-time and that he could not work full-time due to school.¹³

[22] I find the Claimant's focus was on school, not returning to the job market. I find his unwillingness to leave his schooling for work, and the amount of time he spent on his schooling, shows that his schooling was primary focus and concern rather than returning to the labour market.

Has the Claimant made efforts to find a suitable job?

[23] The Claimant did not make enough efforts to find a suitable job.

[24] The Claimant says he was applying at places like Canadian Tire, The Source, and also at Tim Horton's.¹⁴

[25] The Claimant says he has applied to many places and had a few interviews, but has not been successful so far.¹⁵

[26] I note the Claimant has said he applied at "many places" but I find simply making that statement, with out any elaboration, such as at least the names of some of the places he applied at, is insufficient evidence to support he had "many" job applications.

[27] I chose to place greater weight on the statement to the Commission where he listed three specific places he applied at.¹⁶

¹¹ GD02-5

¹² GD03-21

¹³ GD03-21

¹⁴ GD03-28

¹⁵ GD02-5

¹⁶ GD03-28

[28] I find that applying at three different locations over the period of the disentitlement, October 19, 2020, to June 25, 2021, is not sufficient efforts to find employment. Even if the Claimant felt there was no need to search for employment while he was employed up to November 30, 2021, that would mean he applied to only three places in seven months. Still insufficient efforts to find suitable employment.

Did the Claimant set personal conditions that might have unduly limited his chances of returning to the labour market?

[29] I find the Claimant did set personal conditions that might have unduly limited his chances of returning to the labour market.

[30] The Commission says the Claimant was attending high school for 30 hours a week with an additional 5 to 15 hours per week spent on homework. The Commission says they Claimant told them he was only available for part-time work.¹⁷

[31] The Commission says the attendance requirements of the Claimant's school posed restrictions on his availability for work.¹⁸

[32] I find I agree with the submission of the Commission.

[33] The Claimant told the Commission he was attending Grade 12 and was in mandatory classes Monday to Friday from 8:40 AM to 3:30 PM. The Claimant says sometimes they did the classes online if COVID cases got really bad.¹⁹

[34] The Claimant told the Commission that he was only working part-time at his food service job as he was not able to work a full-time job.²⁰

[35] I find the requirement of the Claimant to attend his classes Monday to Friday from 8:40 AM to 3:30 PM, was a personal condition that would unduly limit his chances of returning to the labour market. I find his schooling requirements would unduly, in

¹⁷ GD04-4

¹⁸ GD04-4

¹⁹ GD03-28

²⁰ GD03-21

other words, greatly, limit the jobs he could apply for as they would have to be able to work around his school schedule, which would limit his chances of returning to the labour market as he spent a significant amount of time at school.

[36] The Claimant's schooling limiting his ability to work is further supported by the Claimant's statement he was only working part-time at his food service job as he could not work full-time.

Was the Claimant capable of and available for work and unable to find suitable employment?

[37] Considering my findings on each of the three factors together, I find that the Claimant was not available for work as he did not satisfy all three factors.

CONCLUSION

[38] The appeal is dismissed. The Claimant has not shown he was capable of and available for work and unable to obtain suitable employment. The disentitlement issued by the Commission for not being available for the period of October 19, 2020, to June 25, 2021, is upheld.

Gary Conrad

Member, General Division – Employment Insurance Section