



Citation: *SP v Canada Employment Insurance Commission*, 2021 SST 562

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

Decision

Appellant: S. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (423839) dated June 10, 2021
(issued by Service Canada)

Tribunal member: Solange Losier

Type of hearing: Videoconference

Hearing date: September 9, 2021

Hearing participants: Appellant
Appellant's Witness

Decision date: September 21, 2021

File number: GE-21-1128

Decision

[1] The appeal is dismissed. This means that I disagree with the Claimant.

[2] The Claimant has not met the conditions to cancel or terminate her benefit period. The Claimant has not shown that she was available for work. This means that she cannot receive Employment Insurance (EI) benefits.

Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant was disentitled from receiving EI regular benefits from October 5, 2020 because she was not available for work. A claimant has to be available for work to get EI regular benefits. Availability is an ongoing requirement. This means that a claimant has to be searching for a job.

[4] The Commission says that the Claimant was not available because she refused to return to work, has not made efforts to find work or alternate childcare arrangements and has limitations around her hours of availability.

[5] The Claimant disagrees and states that she already had a job, but could not return to work because she had no childcare for her child. She argues that she should have been able to end or cancel her benefit period in order to apply for the Canada Recovery Childcare Benefit with Canada Revenue Agency. The Commission disagreed and denied her request because she did not meet the criteria to end or cancel her benefit period.

[6] I must decide whether the Claimant has proven that she was 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 available for work. The Claimant also has to prove that she meets the criteria to end or cancel her benefit period.

Matters I have to consider first

Two new issues were added

[7] This case had to be adjourned at the first scheduled date because the Claimant said that the issue under appeal should have included ending or canceling her benefit period (GD1; GD14). I wrote to the Commission to ask them about these two issues and my jurisdiction to hear them (GD5; GD7).¹

[8] The Commission replied with their submissions and issued a reconsideration decision on both of these issues (GD3A; GD9; GD13). A copy was shared with the Claimant prior to the hearing. Accordingly, I accepted that I had jurisdiction to hear them.

The Claimant submitted telephone recordings

[9] The Claimant provided a copy of a telephone recording with a Commission agent (GD10). She said that it took place on November 17, 2020 (GD22-4).

[10] The Claimant told the Commission that she wanted cancel her claim and apply for the caregiving benefit with the Canada Revenue Agency. The Commission agent told her that he could cancel her claim. Instead he suggested that she could report sick for the days she was not able to work due to covid/lack of caregiver, or alternately she could stop reporting.

[11] The Claimant also submitted a telephone recording with Canada Revenue Agency (GD11). That agent told the Claimant that she had to close her EI claim before she could get benefits from Canada Revenue Agency.

¹ See section 32 of the *Social Security Tribunal Regulations*.

Issues

[12] Can the Claimant cancel or end her benefit period?

[13] Was the Claimant available for work from October 5, 2020?

Analysis

Cancelling or Ending a benefit period

[14] A benefit period may only be cancelled if certain criteria are met.² One of these criteria says that a benefit period may be cancelled if no EI benefits have been paid or are payable during the period.³ Or, it may be cancelled at the request of a Claimant if they establish a new benefit period and show good cause.⁴

[15] Alternately, a benefit period can end when the Claimant makes a request that their benefit period ends, makes a new initial claim for EI benefits and qualifies to receive EI benefits.⁵

[16] The Claimant wants to cancel or end the benefit period that started on October 4, 2020. The evidence shows that the EI benefit payments were processed on October 16, 2020 to February 5, 2021 (GD20-5 to GD20-23).

[17] The Claimant's husband testified that they called the Commission in early October 2020 and not in April 2021 as reported by the Commission (GD10). However, after the hearing, they reported that the call to the Commission actually happened on November 17, 2020 (GD22-4). They rely on the audio recording from November 17, 2020 proving that her request was made and denied (GD10).

² See section 10(6)(a)(b) of the *Employment Insurance Act* (Act).

³ See section 10(6)a) of the EI Act.

⁴ See section 10(6)(b) of the EI Act.

⁵⁵ See section 10(8)(d) of the EI Act.

The Claimant cannot cancel or end her benefit period

[18] I find that the Claimant cannot cancel her benefit period from October 4, 2020 because she does not meet any of the criteria in listed in law. I do not have the authority to change the law, even if the Claimant has compassionate circumstances or may have been misled.

[19] The evidence shows benefits have been paid from October 16, 2020 to February 5, 2021 (GD20-5 to GD20-23). The Claimant only made her request to cancel her benefit period on November 17, 2020 based on the audio recording she submitted (GD10). Further, the Claimant did not establish a new initial claim and show good cause, both of which are a requirement.

Availability

[20] Two different sections of the law require claimants to show that they are available for work. The Commission decided that the Claimant was disentitled under both of these sections. So, she has to meet the criteria of both sections to get EI benefits.

[21] First, the *Employment Insurance Act* (Act) says that a claimant has to prove that they are making “reasonable and customary efforts” to find a suitable job.⁶ The *Employment Insurance Regulations* (Regulations) give criteria that help explain what “reasonable and customary efforts” mean.⁷ I will look at those criteria below.

[22] Second, the Act says that a claimant has to prove that they are “capable of and available for work” but aren’t able to find a suitable job.⁸ Case law gives three things a claimant has to prove to show that they are “available” in this sense.⁹ I will look at those factors below.

⁶ See section 50(8) of the Act.

⁷ See section 9.001 of the *Employment Insurance Regulations* (Regulations).

⁸ See section 18(1)(a) of the Act.

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

[23] I acknowledge that the Claimant says that in her opinion availability for work is not an issue. However, the Commission decided that the Claimant was disentitled from receiving EI benefits because she was not available for work based on these two sections of the law. So this remains an issue that was appealed and needs to be determined.

Reasonable and customary efforts to find a job

[24] The law sets out criteria for me to consider when deciding whether the Claimant's efforts were reasonable and customary.¹⁰ I have to look at whether her efforts were sustained and whether they were directed toward finding a suitable job. In other words, the Claimant has to have kept trying to find a suitable job.

[25] I also have to consider the Claimant's efforts to find a job. The Regulations list nine job-search activities I have to consider. Some examples of those activities are the following:¹¹

- assessing employment opportunities
- preparing a résumé or cover letter
- registering for job-search tools or with online job banks or employment agencies
- attending job-search workshops or job fairs
- networking
- contacting employers who may be hiring
- applying for jobs
- attending interviews
- doing competency tests

[26] I find that the Claimant has not made enough efforts to find a job from October 5, 2020. She testified that she made inquiries with friends about jobs and browsed online. She did not make any other efforts to find work because she expected to return to her

¹⁰ See section 9.001 of the Regulations.

¹¹ See section 9.001 of the Regulations.

regular job. Her efforts were not sustained. Therefore, she has not made reasonable or customary efforts to find work and remains disentitled to EI benefits under this section.

Capable of and available for work

[27] Case law sets out three factors for me to consider when deciding whether the Claimant was capable of and available for work but unable to find a suitable job. The Claimant has to prove the following three things:¹²

- a) She wanted to go back to work as soon as a suitable job was available.
- b) She has made efforts to find a suitable job.
- c) She did not set personal conditions that might have unduly (in other words, overly) limited her chances of going back to work.

[28] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.¹³

– Wanting to go back to work

[29] I find that the Claimant has shown that she wanted to go back to work as soon as a suitable job was available. She testified that she has worked the afternoon shift for the same employer since October 14, 2015 and really wanted to go back to work.

– Making efforts to find a suitable job

[30] I have considered the list of job-search activities given above in deciding this second factor. For this factor, that list is for guidance only.¹⁴

¹² 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.

¹³ 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.

¹⁴ I am not bound by the list of job-search activities in deciding this second factor. Here, I can use the list for guidance only.

[31] I find that the Claimant has not made enough efforts to find a suitable job while she collecting EI benefits. The only effort she made was to inquire with her friends about jobs and browsed online. The application clearly states her obligation to look for work under her rights and responsibilities (GD3-7).

[32] The Claimant said that she was called back to work, but had to care for her child during the pandemic. It is clear that she reported this to the Commission during their telephone call on November 17, 2020 (GD10). However, that Commission agent told her to report sick on her reports due to covid and lack of caregiver. It is not clear whether she reported sick for those days, or if she continued to report as available for work as no reports were included in the file.

[33] The court has said that claimants cannot wait to be called in to work, they must seek employment in order to be entitled to EI benefits.¹⁵ No matter how little chance of success a claimant may feel a job search would have, the Act is designed so that only those who are genuinely unemployed and actively seeking work will receive EI benefits.¹⁶

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

[34] I find that the Claimant has set personal conditions that might have unduly limited her chances of going back to work. Specifically, she limited herself to returning to work with her employer. She did not consider other opportunities that may have been available, such as remote work, or perhaps hours that she was available to work (i.e. evenings when her husband arrived home, and/or weekends). Even though she was on a leave of absence from work, it does not necessarily mean she was available.

[35] I accept that the Claimant had some difficulties securing childcare during the pandemic and period she was disentitled from October 5, 2020. She worked the afternoon shift, but could not find a babysitter for her 11 year old. I do not find that her

¹⁵ *De Lamirande v Canada (Attorney General)*, 2004 FCA 311.

¹⁶ *Canada (Attorney General) v Cornelissen-O'Neill*, A-652-93.

lack of childcare was a personal condition that she imposed, but rather it was a circumstance beyond her control that prevented her from going back to work.

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

[36] Based on my findings on the three factors, I find that the Claimant has not shown that she was capable of and available for work but unable to find a suitable job.

Conclusion

[37] The Claimant does not meet any of the conditions to end or cancel her benefit period. Also, she has not shown that she was available for work within the meaning of the law. Because of this, I find that the Claimant cannot receive EI benefits.

[38] I do not have the authority to write-off her overpayment debt, only the Commission can make that decision (GD4-2).¹⁷ The Claimant must make a formal request directly to the Commission based on financial hardship.

[39] This means that the appeal is dismissed.

Solange Losier

Member, General Division – Employment Insurance Section

¹⁷ See subsection 56(1)(f)(ii) of the Regulations.