



Citation: *US v Canada Employment Insurance Commission*, 2021 SST 741

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant:	U. S.
Respondent:	Canada Employment Insurance Commission
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Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (419973) dated April 9, 2021 (issued by Service Canada)
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Tribunal member:	Gary Conrad
Type of hearing:	Videoconference
Hearing date:	June 28, 2021
Hearing participant:	Appellant
Decision date:	October 22, 2021
File number:	GE-21-761

Decision

[1] The appeal is dismissed.

[2] The Claimant has not proven her availability for work. She was not making sufficient efforts to find employment and she set personal conditions that would unduly limit her chances of returning to the labour market.

Overview

[3] 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. The Commission decided that the Claimant was disentitled from being paid EI benefits because she was not available for work while attending a training course¹.

[4] The Claimant says that she had no choice but to leave her employment in order to take her training.

[5] The Claimant says that initially she was working full-time during her training but, due to the COVID pandemic, rules were put in place that prevented people from working in two different health care facilities at the same time. The Claimant says she had to do a practical placement for her training in a different health care facility than where she was working. She was told she must leave her current position in order to be able to do the practical placement due to the law preventing her from working in two health care facilities at the same time.

[6] I must decide whether the Claimant has proven² that she is available for work.

Matter I have to consider first

[7] 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

¹ GD03-40

² The Claimant has to prove this on a balance of probabilities, which means it is more likely than not.

relates to a person failing to prove to the Commission that they were making reasonable and customary efforts to find suitable employment.

[8] In looking through the evidence I did not see any requests from the Commission to the Claimant to prove her reasonable and customary efforts, or any claims from the Commission that if they did, her proof was insufficient. I further find the Commission did not make any detailed submissions on how the Claimant failed to prove to them that she was making reasonable and customary efforts.

[9] Based on the lack of evidence the Commission asked the Claimant to prove her 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

[10] Is the Claimant available for work?

Analysis

[11] The law requires claimants to show that they are available for work.³ In order to be paid EI benefits, claimants have to be capable of and available for work and unable to find suitable employment.⁴

[12] 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.

[13] The Act was recently changed and the new provisions apply to the Claimant⁵. As I read the new provisions the presumption of unavailability has been displaced. A full-

³ 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.

⁴ Paragraph 18(1)(a) of the *Employment Insurance Act*.

⁵ Subsection 153.161(1) of the *Employment Insurance Act*

time student is not presumed to be unavailable, but rather must prove their availability just like any other claimant.

[14] The Claimant has to prove three things to show she is available:

1. A desire to return to the labour market as soon as a suitable job is available
2. That desire expressed through efforts to find a suitable job
3. No personal conditions that might unduly limit their chances of returning to the labour market⁶

[15] I have to consider each of these factors to decide the question of availability,⁷ looking at the attitude and conduct of the Claimant.⁸

Does the Claimant have a desire to return to the labour market as soon as a suitable job is available?

[16] I find the Claimant has shown a desire to return to the labour market as soon as a suitable job is available.

[17] The Claimant testified that she was working full-time while taking her training. The Claimant says she would attending her training in the day and then work a full night shift. I find this testimony credible and accept the Claimant was working full-time while attending training.

[18] The Claimant says she continued working while taking her training until the provincial government made a law that a person could not work in two different health care facilities at the same time.

⁶ *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

⁷ *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

⁸ *Canada (Attorney General v Whiffen*, A-1472-92 and *Carpentier v The Attorney General of Canada*, A-474-97.

[19] The Claimant says she ignored the situation for a while but the school she was taking her training at kept sending her letters about only being able to work at one healthcare facility at a time and eventually spoke to her about it face-to-face.

[20] The Claimant testified that she had no choice but to take a leave of absence from her job so that she could finish her training and attend the practical placement.

[21] The Claimant says she tried to get a job at the healthcare facility where she was doing her practical placement, but they were not interested in hiring her since they knew it would only be temporary as she would return to her original job once the training was finished.

[22] The Claimant says she lives on her own and has no financial support so being able to work is very important for her.

[23] I find the Claimant having worked during her training, stopping only due to the law being changed, supports she has a desire to return to the labour market. She has clearly shown that work is a priority for her as she was working full-time night shifts even when taking full-time training during the day. The fact she even tried to find a job at the healthcare facility where she was doing her practical placement further shows her desire to work. I have no doubt the Claimant wishes to work.

Has the Claimant made efforts to find a suitable job?

[24] I find the Claimant did not make enough efforts to find a suitable job.

[25] The Claimant testified the only work she looked for once she was on a leave of absence from her regular job was to ask the healthcare facility where she was doing her practical placement if they would hire her.

[26] The Claimant testified she did not look for any other work outside her field of healthcare.

[27] I find that only asking the healthcare facility where she was doing her practical placement if they had a position for her is not enough effort to find employment.

[28] Even if the Claimant felt she would not have much success in finding work outside her field or even if she did not want to work outside her field the Court has said that no matter how little chance of success a claimant may feel a job search will have they still need to be actively looking for work.⁹

Has the Claimant set personal conditions that might unduly limit his chances of returning to the labour market?

[29] Yes, the Claimant did set personal conditions that might have unduly limited her chances of returning to the labour market.

[30] I find the Claimant's decision to only look for work within her field and only apply at the workplace she was doing her practical placement at was a personal condition that would unduly impact the Claimant's chances of returning to the labour market.

[31] I find it would unduly impact her chances of returning to the labour market as choosing to only look in her field would significantly reduce the job opportunities open to her. Further, limiting that choice to only one employer, the place where she was doing her practical placement, would be a drastic restriction to the possible jobs she could apply to.

[32] I find that such a severe restriction to the possible jobs she could apply for would unduly limit her chances of returning to the labour market.

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

[33] Considering my findings on each of the three factors together, I find that the Claimant did not show that she is capable of and available for work and unable to find suitable employment.

⁹ *Canada (Attorney General) v Cornelissen-O'Neill*, A-652-93

CONCLUSION

[34] The appeal is dismissed.

[35] The Claimant has not proven her availability for work. This means the disentitlement imposed by the Commission for not being available for work is upheld.

Gary Conrad

Member, General Division – Employment Insurance Section