



Citation: *YA v Canada Employment Insurance Commission*, 2021 SST 772

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant:

Y. A.

Respondent:

Canada Employment Insurance Commission

Decision under appeal:

Canada Employment Insurance Commission
reconsideration decision (434585) dated September 24,
2021 (issued by Service Canada)

Tribunal member:

Gary Conrad

Type of hearing:

Videoconference

Hearing date:

November 24, 2021

Hearing participant:

Appellant

Decision date:

November 29, 2021

File number:

GE-21-1954

Decision

[1] The appeal is dismissed. I find the Claimant has not proven his availability for work.

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 January 11, 2021, to April 28, 2021, as he was not available for work while taking university.¹

[4] The Claimant says he was available for work as he only had four hours of mandatory class time in the week as the rest of his classes were recorded and he could watch them whenever.

[5] The Claimant says he was applying for hundreds of jobs, but due to COVID no one was hiring.

[6] I must decide whether the Claimant has proven² that he was 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 relates to a person failing to prove to the Commission that they were making reasonable and customary efforts to find suitable employment.

¹ See GD03-87 which upholds GD03-81

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

[8] 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.

[9] 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.

[10] 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

[11] Was the Claimant available for work?

Analysis

[12] 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

[13] 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.

[14] The Act was recently changed and the new provisions apply to the Claimant.⁵ 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.

[15] In order to be paid EI benefits, claimants have to be capable of and available for work and unable to find suitable employment.⁶ 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 market⁷

[16] I have to consider each of these factors to decide the question of availability,⁸ looking at the attitude and conduct of the Claimant.⁹

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

[17] I find the Claimant has shown he had a desire to return to the labour market as soon as a suitable job was available.

[18] The Claimant testified that he was looking for work the whole time he was in university as he needed to work due to his expenses.

[19] The Claimant says he was applying to hundreds of places trying to find a job, but, due to COVID, he could not find anything.

[20] I accept the Claimant wanted to work and in fact needed to work, in order to support himself while in school and that he was trying to find a job. I find that he wanted

⁶ Paragraph 18(1)(a) of the *Employment Insurance Act*.

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

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

⁹ *Canada (Attorney General v Whiffen*, A-1472-92 and *Carpentier v The Attorney General of Canada*, A-474-97.

to work, supported by the fact he was trying to find work and this shows he had a desire to return to the labour market.

Has the Claimant made efforts to find a suitable job?

[21] The Claimant did make sufficient efforts to find suitable employment.

[22] The Claimant says he was applying to every kind of job he could find, full-time or part-time.

[23] The Claimant says he applied for retail, restaurant, grocery stores, office assistant, anything he could find. He says he applied in-person and online.

[24] The Claimant says he even contacted his mother, who worked as a manager at a clothing store, to see if she had any openings at her store or any other locations. The Claimant says his mother told him that due to COVID every location was laying people off rather than hiring.

[25] I accept the Claimant's testimony regarding his job search efforts. He was forthright and his statements line up with his comments to the Commission that he was looking for a job every day.¹⁰

[26] I find the Claimant's efforts of looking online for jobs, applying in-person, and networking, as in speaking to his mother, show sufficient, ongoing efforts to find employment.

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

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

¹⁰ GD03-20

[28] The Commission submits that the Claimant originally told them he had lab work that he had to attend in-person four days a week and that his classes were not recorded.¹¹

[29] The Commission submits that in the Claimant's appeal he changed the amount of time he was doing lab work and he said that all of his classes were recorded and he could access them at any time.¹²

[30] The Commission says that the Claimant is making contradictory statements and is changing his statements since his original statements led to him getting disentitled from benefits.¹³

[31] The Claimant testified that he had two in-person labs one on Monday and one of Thursday and they were both from 9:30 AM to 11:30 AM.

[32] The Claimant says everything else was moved online due to COVID and the classes were recorded so he could watch them at any time.

[33] The Claimant says that when he was talking to the Commission on August 26, 2021, and told them he was in school from 9:00 AM to 2:00 PM Monday to Wednesday and Thursday from 10:00 AM to 12:00 PM he was saying when things could be scheduled, not when he had to be in class.¹⁴

[34] The Claimant says that when he told the Commission employers had a problem with him being a student he was talking about the trouble he was having at that time, in the summer. He says that he would talk to employers and they would ask him what his school schedule was and he was not sure so he told them the range of times that he could be in school and they did not like that there was no certainty on his availability as he did not yet know his schedule.

¹¹ GD04-4

¹² GD04-4

¹³ GD04-4

¹⁴ GD03-20

[35] I disagree with the Commission the Claimant has changed the amount of time he must attend in-person labs after his file was denied. I note in the conversation he had with the Commission prior to being disentitled he did not say how much time he had to spend on in-person labs. He only said that school alternated between online and in-person.¹⁵

[36] So, I find there is no contradiction there and I accept the Claimant's testimony he had four hours of in-person labs to attend every week.

[37] However, there is a contradiction in the Claimant's statement regarding whether his classes were recorded.

[38] In his conversation with the Commission on August 26, 2021, the notes say the Claimant said his online classes were not recorded.¹⁶

[39] This is different than his notice of appeal and testimony where he said his classes were recorded and he could watch them at anytime.¹⁷

[40] I understand the Claimant's testimony that in that particular conversation the Commission has misinterpreted things he had said and that he was speaking about what was going on that the time, but I choose to place greater weight on his August 26, 2021, statement to the Commission as opposed to his testimony.

[41] The reasons I chose to do this are as follows:

- The Commission's notes for August 26, 2021, say that they were discussing the Claimant's training from Jan 11, 2021, to April 28, 2021, not what was going on at the time of the conversation.¹⁸

¹⁵ GD03-20

¹⁶ GD03-20

¹⁷ GD02-5

¹⁸ GD03-20

- All of the Claimant's stated answers are referring to something that was happening in the past.¹⁹
- He told the Commission that he was restricted in his availability and a job would have to fit around his school schedule.²⁰
- The Claimant said on his application that he was only able to work on the weekends.²¹
- His statement that his online classes were not recorded was given to the Commission before their initial decision to deny him benefits. His statement that his online classes were recorded came in his notice of appeal and in his testimony to me, which all took place after his request for reconsideration was denied.

[42] When I consider all of those factors together I find they provide greater support to the Claimant's statement to the Commission that his online classes were not recorded.

[43] I find, that the Claimant having to attend his online classes at set times, along with having to attend his in-person labs, means that his availability was restricted to certain times on certain days which would unduly limit his chances of finding employment.²²

[44] I find the Claimant's schooling would unduly limit his chances of returning to the labour market as it would significantly restrict his availability which would unduly limit his chances of finding employment as any job would have to work around his school schedule.

[45] I note the Claimant even told the Commission that no one would offer him a job that would fit his school schedule as employers did not like the restrictions on his

¹⁹ GD03-20

²⁰ GD03-20

²¹ GD03-17

²² See *Duquet v Canada (Employment and Immigration Commission)*, 2008 FCA 313 which supports this.

availability.²³ I find this shows it would not be a simple matter for the Claimant to find work with his schooling as, by his own admission, his school schedule negatively impacted his chances of getting hired.

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

[46] Considering my findings on each of the three factors together, I find that the Claimant was not available for work.

CONCLUSION

[47] The appeal is dismissed. I find the Claimant has not proven his availability while taking his schooling. This means the disentitlement is upheld.

Gary Conrad
Member, General Division – Employment Insurance Section

²³ GD03-20