



Citation: *JM v Canada Employment Insurance Commission*, 2021 SST 850

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

**Decision**

**Appellant:** J. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (431145) dated August 30, 2021  
(issued by Service Canada)

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**Tribunal member:** Gary Conrad

**Type of hearing:** Videoconference

**Hearing date:** November 29, 2021

**Hearing participant:** Appellant

**Decision date:** December 1, 2021

**File number:** GE-21-2030

## Decision

[1] The appeal is dismissed with modification. I find the Claimant has not proven his availability for work for the period of April 12, 2021, to August 31, 2021, but has proven his availability from September 1, 2021, onward.

## 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 April 12, 2021, as he was not available for work while taking his paralegal course.<sup>1</sup>

[4] The Claimant says he asked the Commission for permission to take his training, which started in April 2021, all the way back at the start of February 2021; he was hoping to get benefits while taking his course.

[5] The Claimant says he was told to keep completing his regular reports and someone would get back to him.

[6] The Claimant says that is what he did and yet he did not hear anything from the Commission until July 2021 when they told him he would not qualify for benefits while attending his course.

[7] The Claimant says it is not his fault this overpayment occurred as the Commission took such a long time to review his request.

[8] The Commission submits that the Claimant has failed to prove that he had a desire to return to the labour market as soon as a suitable job was offered as, by his

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<sup>1</sup> See GD03-56 which upholds GD03-49

own statements, he was not actively seeking employment from the beginning of the course and was focusing on his studies.

[9] I must decide whether the Claimant has proven<sup>2</sup> that he was available for work.

## Issue

[10] Is the Claimant available for work?

## Analysis

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

[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 Claimant.<sup>5</sup> 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.

[14] In order to be paid EI benefits, claimants have to be capable of and available for work and unable to find suitable employment.<sup>6</sup> 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

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

<sup>3</sup> 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.

<sup>4</sup> Paragraph 18(1)(a) of the *Employment Insurance Act*.

<sup>5</sup> Subsection 153.161(1) of the *Employment Insurance Act*

<sup>6</sup> Paragraph 18(1)(a) of the *Employment Insurance Act*.

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 market<sup>7</sup>

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

– **Wanting to go back to work**

[16] I find the Claimant has only shown he had a desire to return to the labour market as soon as a suitable job was available, but only from September 1, 2021, onward as he started working for his former employer at that time.

[17] The Commission submits the Claimant has failed to prove that he had a desire to return to the labour market as soon as a suitable job was offered as, by his own statements, he was not actively seeking employment from the beginning of the course and was focusing on his studies

[18] The Claimant testified that he was not looking for work for quite some time as he was waiting to hear back from the Commission on whether or not he would be approved for benefits while taking his paralegal course.

[19] The Claimant testified he was not even sure if he could work and do school as his focus was on school and thus he was not putting in much effort to look for work.

[20] The Claimant says he was contacted by his old employer in the middle of August 2021, and he started working for them at the beginning of September 2021.

[21] I find, that until he started working for his employer at the start of September 2021, the Claimant did not have a desire to return to the labour market. He said he was making little effort to look for work as his priority is school. I find this shows that until he

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

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

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

actually started working again, he did not have an interest in returning to the labour market as he was focused on schooling, rather than working.

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

[22] The Claimant did not make suitable efforts to find a job until the middle of August 2021.

[23] The Claimant says he was not looking for work while he was waiting to find out if the Commission would approve his request to get benefits while taking training.

[24] The Claimant testified his focus was on school, not working, and he was not even sure if he would be able to work while doing his school.

[25] The Claimant said in mid-August 2021, he was contacted by his old employer and offered a job with them. The Claimant said he started working for his old employer at the start of September 2021, and is continuing to work with them while doing his schooling.

[26] I find, that until the Claimant started speaking with his old employer about a job, he was not making sufficient efforts to find employment. He says he was not even looking for work until after he was denied benefits by the Commission and this did not happen until July 2021.

[27] If the Claimant it not looking for work at all it is clear he was not making sufficient efforts to find employment.

[28] The fact that he was waiting to hear from the Commission on whether or not he would be able to get benefits while taking his schooling does not absolve him of the need to look for work. The Federal Court of Appeal has said a claimant needs to look for work even if it appears reasonable for them not too.<sup>10</sup>

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<sup>10</sup> See *Canada (Attorney General) v Cornelissen-O'Neill*, A-652-93 which supports this.

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

[29] I find the Claimant did set personal conditions that might have unduly limited his chances of returning to the labour market, but only until September 1, 2021.

[30] The Claimant testified that he was not looking for work while he was waiting to hear from the Commission on whether he was going to be allowed to collect benefits while he was attending schooling,

[31] The Claimant testified that his schooling was from Monday to Friday and was from 1:00 PM to 5:00 PM.

[32] The Claimant says that in mid-August 2021, he was contacted by his old employer and was offered a part-time job with them.

[33] The Claimant says he accepted the job and started working with them at the beginning of September 2021.

[34] The Claimant says that he works part-time prior to his schooling and works sixty hours every three weeks, as he can work different shifts around his schooling.

[35] I find the Claimant's decision to focus on school and not look for work while waiting to find out if he was going to be allowed to collect benefits while attending his schooling was a personal decision that would have unduly limited his chances of returning to the labour market. It is rather hard to return to the labour market if you are not looking for a job.

[36] However, I find that he removed this personal condition on September 1, 2021, as he started working by that date so clearly he was no longer choosing to solely focus on school at the expense of finding employment.

[37] I further find his schooling does not unduly limit his ability to return to the labour market as he was able to secure a job while attending his schooling. While it may only be part-time there is no requirement in the law that the Claimant look only for full-time work to be considered available.

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

[38] Considering my findings on each of the three factors together, I find that the Claimant has not proven he was available for work until September 1, 2021.

**CONCLUSION**

[39] The appeal is dismissed with modification. I find the Claimant has not proven his availability for work for the period of April 12, 2021, to August 31, 2021, but has proven his availability from September 1, 2021, onward.

[40] This means the Claimant is disentitled from benefits for being unavailable, but only for the period of April 12, 2021, to August 31, 2021.

Gary Conrad  
Member, General Division – Employment Insurance Section