



Citation: *RP v Canada Employment Insurance Commission*, 2022 SST 65

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

Decision

Appellant: R. P.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (437216) dated October 18, 2021
(issued by Service Canada)

Tribunal member: Solange Losier
Type of hearing: Videoconference
Hearing date: January 12, 2022
Hearing participant: Appellant
Decision date: January 14, 2022
File number: GE-21-2141

Decision

[1] The appeal is dismissed. The Claimant has not shown that he was available for work. This means that he is disentitled from being paid benefits.

Overview

[2] The Canada Employment Insurance Commission (Commission) decided that the Claimant was disentitled from receiving Employment Insurance (EI) regular benefits from November 22, 2020 because he was not available for work.¹

[3] The Commission says that the Claimant was not available for work because he is in school full-time.² His study permit only allows him to work a maximum of 20 hours per week. Because of this, he was retroactively disentitled from receiving EI benefits and this resulted in an overpayment.

[4] The Claimant disagrees and states that the Commission should have known not to pay him EI benefits if he was not eligible.³ He also says that he made efforts to find work and was available for work even though he was in school.

[5] 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.

[6] I must decide whether the Claimant has proven that he was available for work. The Claimant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that he available for work.

Issue

[7] Was the Claimant available for work from November 22, 2020?

¹ See reconsideration decision dated October 18, 2021 at GD3-24 to GD3-25.

² See Commission's submissions at GD4-1 to GD4-6.

³ See notice of appeal forms at GD2-1 to GD2-14.

Analysis

[8] Two different sections of the law require claimants to show that they are available for work;⁴ the Commission disentitled the Claimant from being paid benefits under both. In addition, the Federal Court of Appeal has said that claimants who are attending school full time are presumed to be unavailable for work.⁵

[9] I am going to start by looking at whether the presumption applies to the Claimant. Then, I will look at the two sections of the law on availability.

Presumption that full-time students are not available for work

[10] The presumption applies only to full-time students. The Claimant agrees that he was studying full-time. Accordingly, I accept that the Claimant is in school full-time. This means that the presumption applies to the Claimant.

[11] The presumption can be rebutted which means that it would not apply. The Claimant can rebut the presumption that full-time students are not available for work by showing that he has a history of working full-time while also studying⁶ or by showing exceptional circumstances.⁷

[12] I find that the Claimant has not rebutted the presumption that he is unavailable for work because he does not have a history of working full-time hours while in school. The Claimant agreed that he could not work more than 20 hours a week because of his study permit restrictions. He has not shown his circumstances were exceptional.

⁴ Subsection 50(8) of the *Employment Insurance Act* (EIA) provides that, for the purpose of proving that a claimant is available for work and unable to obtain suitable employment, the Commission may require the claimant to prove that he or she is making reasonable and customary efforts to obtain suitable employment. Paragraph 18(1)(a) of the EIA 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 *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.

⁶ *Canada (Attorney General) v Rideout*, 2004 FCA 304.

⁷ *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.

Reasonable and customary efforts to find a job

[13] The first section of the law that I am going to consider says that Claimants have to prove that their efforts to find a job were reasonable and customary.⁸

[14] The law sets out criteria for me to consider when deciding whether the Claimant's efforts were reasonable and customary.⁹ I have to look at whether his efforts were sustained and whether they were directed toward finding a suitable job.

[15] I also have to consider the Claimant's efforts in the following job-search activities:

- a) assessing employment opportunities
- b) preparing a resume or cover letter
- c) registering for job search tools or with online job banks or employment agencies
- d) attending job search workshops or job fairs
- e) networking
- f) contacting employers who may be hiring
- g) submitting job applications
- h) attending interviews
- i) undergoing evaluations of competencies

[16] I find that the Claimant has proven that his efforts to find a job were reasonable and customary. His efforts were sustained and included applying for jobs, receiving job alerts, reviewing job opportunities on LinkedIn, Indeed and Facebook jobs, as well as asking friends about potential jobs. He was also applying for minimum wage jobs in customer service. Many retailers were offering curbside service during the pandemic, so he was hoping to secure a job picking orders. He was also expecting to be recalled back to his former retail job.

⁸ Subsection 50(8) of the *Employment Insurance Act*.

⁹ Section 9.001 of the *Employment Insurance Regulations*.

[17] I find that the Claimant is not disentitled under this section because he was making reasonable and customary efforts to find suitable employment. However, I still have to determine if he should be disentitled to EI benefits on the basis that he was available for work.

Capable of and available for work and unable to find suitable employment

[18] I must also consider whether the Claimant has proven that he/she is capable of and available for work and unable to find suitable employment.¹⁰ The Claimant has to prove three things to show he was available under this section:

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 have unduly limited their chances of returning to the labour market¹¹

[19] I have to consider each of these factors to decide the question of availability,¹² looking at the attitude and conduct of the Claimant.¹³

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

[20] I find that the Claimant has shown a desire to return to the labour market as soon as a suitable job is available. He testified that he is an international student and that he needs to work in order to meet his financial commitments.

¹⁰ Paragraph 18(1)(a) of the *Employment Insurance Act*.

¹¹ *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

¹² *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

¹³ *Canada (Attorney General v Whiffen*, A-1472-92 and *Carpentier v The Attorney General of Canada*, A-474-97.

Has the Claimant made efforts to find a suitable job?

[21] The Claimant did not make enough efforts to find a suitable job. While they are not binding when deciding this particular requirement, I have considered the list of job-search activities outlined above in deciding this second factor for guidance.

[22] The Claimant's efforts to find a new job included applying for jobs, receiving job alerts, reviewing job opportunities on LinkedIn, Indeed and Facebook and asking friends about potential jobs. He was looking for minimum wage jobs and hoping to find something in customer service, or picking orders. He was also expecting to be recalled back to his former job.

[23] I find that these efforts are enough to meet the requirements of this second factor because he made a consistent and varied effort to try and secure a job while he was laid off. He was actively looking for work.

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

[24] I asked the Claimant about his school schedule. The Claimant testified that he did not tell Commission agents he was in class for 40 hours a week, or that he did 20 hours a week of homework as reported by the Commission.¹⁴ Instead, he said that he was in class 4 hours a day about four days a week. He spent 1-2 hours a day on homework. From November 2020, he noted that his classes were all pre-recorded and online, so he could view them at any time. While he normally attended during regular times, he argues that he was available anytime for work. I accept the Claimant's explanation as reasonable.

[25] I do not find that the Claimant's school schedule was a personal condition that unduly limited his chances of returning to the labour market. His class schedule was flexible because the lectures were all pre-recorded. Also, he was not in class 40 hours a week, but only 16 hours a week.

¹⁴ See supplementary record of claim dated September 15, 2021 at GD3-16.

[26] However, I do find that the Claimant set personal conditions that might have unduly limited his chances of returning to the labour market. Specifically, he was only available to work a maximum of 20 hours a week because of his study permit as an international student.

[27] The Claimant admitted that he could only work 20 hours a week, so I find this was a restriction around his hours. He could not have accepted a full-time job or hours even if it had been offered to him. In my view, this limited the job opportunities available to him. This means that he remains disentitled to benefits under this section.

Other arguments

[28] I acknowledge the Claimant's position that he paid EI premiums, that his employer told him to apply and that he spoke to several EI agents who confirmed he was eligible.

[29] Even if a Claimant pays EI premiums, they still have to show that they qualify for benefits. Also, the court has already decided that any commitment made by the Commission or by its representatives, whether it is in good or bad faith, and if it to act in a way other than that which is prescribed by the Act, is null and void.¹⁵

[30] I acknowledge that repaying the overpayment would create some financial hardship for the Claimant. However, only the Commission has the authority to write-off an overpayment for financial hardship. The Claimant would have to follow up with the Commission directly if he is seeking a write-off of his overpayment.

¹⁵ *Granger v Canada Employment and Immigration Commission*, [1986] 3 FC 70.

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

[31] Considering my findings on each of the three factors together, I find that the Claimant did not show that he was capable of and available for work and unable to find suitable employment.¹⁶

Conclusion

[32] The appeal is dismissed. The Claimant is disentitled from receiving benefits.

Solange Losier
Member, General Division – Employment Insurance Section

¹⁶ Paragraph 18(1)(a) of the *Employment Insurance Act*.