



[TRANSLATION]

Citation: *CF v Canada Employment Insurance Commission*, 2022 SST 116

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

# Decision

<b>Appellant:</b>	C. F.
<b>Respondent:</b>	Canada Employment Insurance Commission
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<b>Decision under appeal:</b>	Canada Employment Insurance Commission reconsideration decision (439061) dated November 25, 2021 (issued by Service Canada)
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<b>Tribunal member:</b>	Josée Langlois
<b>Type of hearing:</b>	Teleconference
<b>Hearing date:</b>	January 26, 2022
<b>Hearing participant:</b>	Appellant
<b>Decision date:</b>	January 27, 2022
<b>File number :</b>	GE-22-38

## Decision

[1] The appeal is dismissed.

[2] The Appellant hasn't shown that he was available for work from May 3, 2021, to June 25, 2021.

## Overview

[3] On September 28, 2020, the Appellant applied for Employment Insurance (EI) regular benefits. The Commission established a renewed benefit period for emergency benefits on September 20, 2020.

[4] On November 25, 2021, the Canada Employment Insurance Commission (Commission) decided that the Appellant was disentitled to EI benefits from May 3, 2021, to June 25, 2021, because he was taking training on his own initiative and wasn't available for work during that period.

[5] The Appellant has to be available for work to get EI regular benefits. Availability is an ongoing requirement. This means that the Appellant has to be searching for a job.

[6] The Appellant explains that he asked that Emploi-Québec [Quebec employment services] authorize his tiling training and that it was authorized from June 28, 2021. He argues that he was available for work between May 3, 2021, and June 25, 2021, and that he would not be in this situation if the Commission had made its decision sooner.

[7] I have to decide whether the Appellant was available for work within the meaning of the *Employment Insurance Act* (Act) between May 3, 2021, and June 25, 2021, and whether he can receive EI benefits for that period. The Appellant has to prove his availability on a balance of probabilities. This means that he has to show that it is more likely than not that he was available for work.

## Issue

[8] Was the Appellant available for work between May 3, 2021, and June 25, 2021?

## Analysis

[9] 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.<sup>1</sup> Case law gives three things a claimant—the Appellant—has to prove to show that they are “available” in this sense.<sup>2</sup>

[10] I will look at those factors to decide whether the Appellant was available for work.

### Capable of and available for work

[11] Case law sets out three factors for me to consider when deciding whether a claimant is capable of and available for work but unable to find a suitable job. The Appellant has to prove the following three things:<sup>3</sup>

- He wanted to go back to work as soon as a suitable job was available.
- He made efforts to find a suitable job.
- He didn’t set personal conditions that might have unduly (in other words, overly) limited his chances of going back to work.

[12] When I consider each of these factors, I have to look at the Appellant’s attitude and conduct.<sup>4</sup>

#### – Wanting to go back to work

[13] The facts show that the Appellant took training in tiling at X in Montréal from May 3, 2021, to November 20, 2021.

[14] At the hearing, he explained that he had voluntarily left his last customer service job at Capital One on his doctor’s recommendation because of his health. The Appellant

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

<sup>2</sup> See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

<sup>3</sup> 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.

<sup>4</sup> Two decisions set out this requirement. Those decisions are *Attorney General of Canada v Whiffen*, A-1472-92; and *Carpentier v The Attorney General of Canada*, A-474-97.

explained at the hearing that, for this reason, and because he had started training in tiling on May 3, 2021, he didn't make any job search efforts between May 3, 2021, and June 25, 2021.

[15] I understand from the Appellant's explanations that he started training to get a job as soon as he finished it. He asked that Emploi-Québec authorize the training, and it was recognized from June 28, 2021.

[16] The Appellant showed a desire to go back to work. Now, I have to decide whether he made efforts to find a suitable job between May 3, 2021, and June 25, 2021.

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

[17] To be able to get EI benefits, the Appellant is responsible for actively looking for a suitable job.<sup>5</sup>

[18] The Commission says that the Appellant didn't make any job search efforts and that he prioritized his training. It argues that just saying you are available isn't enough to prove your availability.

[19] At the hearing, the Appellant said that he was available for work. He explained that, if he had been offered a job, he would have accepted it. However, he admitted that he didn't make efforts to find a job during that period. First, he left his previous job on his doctor's recommendation, and then he decided to take six months' training to get a job in another field. The Appellant explained that he is a musician but that job opportunities are rather scarce in this field.

[20] However, the Appellant has to be available for work to be able to get EI regular benefits. Availability is an ongoing requirement. This means that he has to be searching for a job.

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<sup>5</sup> This principle is explained in the following decisions: *Cornelissen-O'Neill*, A-652-93; and *De Lamirande*, 2004 FCA 311.

[21] Efforts must be made with the goal of accepting a suitable job as soon as it is available. In this case, I find that the Appellant made no effort to find a job. At the hearing, he explained that the training lasted six months and that he hoped to find a job in that field.

[22] Given the facts presented, I find that the Appellant made no effort to find a suitable job. Under the Act, the Appellant needs to have made job search efforts to prove his availability for work.

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

[23] The Commission argues that the Appellant hasn't rebutted the presumption of non-availability while taking a full-time training course, that he had to attend classes in person, that he devoted around 40 hours per week to his courses, and that he hasn't shown that he had a work-study history.

[24] The Appellant says that he took six months' training full-time from May 3, 2021, to November 20, 2021.

[25] I presume that the training the Appellant was enrolled in made him unavailable for work within the meaning of the Act.

[26] This presumption of non-availability can be rebutted based on four principles related specifically to returning-to-studies cases.<sup>6</sup>

[27] These principles are:<sup>7</sup>

- the attendance requirements of the course
- the claimant's willingness to give up their studies to accept employment
- whether the claimant has a history of being employed at irregular hours

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<sup>6</sup> *Landry*, A-719-91; *Lamonde*, 2006 FCA 44; *Gagnon*, 2005 FCA 321 (CanLII); *Floyd*, A-168-93.

<sup>7</sup> This principle is explained in the following decision: *Gagnon*, 2005 FCA 321 (CanLII).

- the existence of “**exceptional circumstances**” that would enable the claimant to work while taking their course

[28] According to the Appellant, he was a full-time student, and he devoted around 40 hours per week to his courses, which he attended in person (in addition to assignments, the Appellant attended around 30 hours of classes per week, Monday to Friday). He told the Commission that he would not withdraw from his training if he were offered a job. But at the hearing, he explained that, if he had been offered a job, he would have accepted it.

[29] As the Commission says: A claimant who is taking a training course without having been referred by a designated authority must prove that they are capable of and available for work and unable to find a suitable job. The claimant must meet the availability requirements the same as any other claimant who wants regular benefits.

[30] In my view, the Appellant hasn't rebutted the presumption of non-availability while in school, and he had personal conditions that unduly limited him from going back to work.

[31] As he explained at the hearing, the Appellant voluntarily left his customer service job at Capital One because of his health. He explained that he had decided to take training in tiling to get a job in that field afterwards.

[32] The Appellant admits that he didn't make job search efforts during that period. His intention was to take the training, and he thought it would be authorized. He says that the Commission was slow to make its decision; as a result, he had already received benefits that he now has to repay.

[33] In June 2021, the Appellant asked that Emploi-Québec authorize his training. The tiling training he had started on May 3, 2021, was authorized from June 28, 2021, until the end of his courses. This means that the Appellant could get benefits for that period. However, this isn't the case from May 3, 2021, to June 25, 2021. The training

wasn't authorized then, and the Appellant hasn't shown that he looked for a job during that period.

[34] Moreover, concerning the presumption that a claimant is unavailable while taking training full-time, even if he had accepted a job he had been offered, the fact is that, at the hearing, the Appellant mentioned focusing on his training to get a job in that field afterwards. He says he took this step with his doctor because his previous job wasn't the right fit health-wise.

[35] However, the Appellant applied for regular benefits, not sickness benefits. As the Commission points out, during that period, the Appellant prioritized his training, and he made no effort to find a job between May 3, 2021, and June 25, 2021.

[36] As the Appellant says, it is true that the Commission's decision came after he had received benefits, but it should be remembered that the Appellant didn't ask for permission to take the training while receiving benefits until June 2021. The Commission does acknowledge the delay in making its decision, but, as it says, the decision concerning the Appellant's availability for work can't be set aside because of that.

[37] The Appellant had personal conditions that unduly limited his chances of finding a job, since he was focusing on his training during that period and he had voluntarily left his job because of his health.

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

[38] I have to apply the criteria for determining whether the Appellant was available for work within the meaning of the Act and whether he can receive benefits from May 3, 2021, to June 25, 2021.

[39] Although he had left his previous job because of his health, the Appellant hasn't shown that he was unable to work during that period. On the contrary, he focused on full-time training.

[40] The Appellant made no effort to find a job. To be entitled to receive benefits, the Appellant has to be available for work each working day of his benefit period, and he has to show that he made efforts to find a job each working day of his benefit period.

[41] I find that the Appellant hasn't shown that he was available for work from May 3, 2021, to June 25, 2021, within the meaning of section 50(8) of the Act and under sections 9.001 and 9.002 of the *Employment Insurance Regulations*.

[42] Based on my findings on the three factors, I find that the Appellant hasn't shown that she [*sic*] was capable of and available for work.

## **Conclusion**

[43] The Appellant hasn't shown that he was available for work within the meaning of the Act between May 3, 2021, and June 25, 2021. Because of this, I find that he isn't entitled to benefits for that period.

[44] The appeal is dismissed.

Josée Langlois

Member, General Division – Employment Insurance Section