



Citation: *MG v Canada Employment Insurance Commission*, 2022 SST 279

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

Decision

Appellant: M. G.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (444261) dated January 5, 2022 (issued by Service Canada)

Tribunal member: Leanne Bourassa

Type of hearing: Teleconference

Hearing date: February 23, 2022

Hearing participants: Appellant

Decision date: March 4, 2022

File number: GE-22-371

Decision

[1] The appeal is allowed. The Tribunal agrees with the Claimant.

[2] The Claimant has shown that he is available for work while taking training. This means that he isn't disentitled from receiving Employment Insurance (EI) benefits. So, the Claimant may be entitled to benefits.

Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant was disentitled from receiving EI regular benefits as of September 7, 2021 because he wasn't available for work while in training. 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.

[4] I have to 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 was available for work.

[5] The Commission says that the Claimant wasn't available because he was taking training full-time.

[6] The Claimant disagrees and says that he is going to college to try and better himself and seek a full-time profession. Also, he would leave his training at any time for work.

Issue

[7] Was the Claimant available for work while in school?

Analysis

[8] Two different sections of the law require claimants to show that they are available for work. The Commission decided that the Claimant was disentitled under both of these sections.

- **The Claimant was not disentitled under subsection 50(8) of the Employment Insurance Act**

[9] 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.

[10] In looking through the evidence, I did not see any requests from the Commission to the Claimant to prove he was making reasonable and customary efforts to find a job. I also do not see any claims from the Commission that if they did, his proof was insufficient.

[11] The Commission did ask the Claimant what sort of jobs he was looking for and where he was looking for work. In the context of the conversation, this does not seem to be anything more than confirming the Commission's presumption that the Claimant was restricting his search to jobs that worked around his school schedule. A request for a job search must be more specific and include what the Claimant would need to provide to the Commission for it to be a satisfactory job search. A mere question about what jobs the Claimant was looking for does not fulfill that.

[12] 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.

[13] 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.

- **The Claimant was disentitled under paragraph 18(1)(a) of the Employment Insurance Act**

[14] 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.¹ Case law gives three things a claimant has to prove to show that they are “available” in this sense.² I will look at those factors below.

[15] In addition, the Federal Court of Appeal has said that claimants who are taking training full-time are presumed to be unavailable for work.³ This is called “presumption of non-availability.” It means we can suppose that students aren’t available for work when the evidence shows that they are taking training full-time.

[16] I will start by looking at whether I can presume that the Claimant wasn’t available for work. Then, I will look at whether he was available based on the three factors set out in the case law about availability.

Presuming full-time students aren’t available for work

[17] The presumption that students aren’t available for work applies only to full-time students.

– **The Claimant doesn’t dispute that he is a full-time student**

[18] The Claimant agrees that he is a full-time student, and I see no evidence that shows otherwise. So, I accept that the Claimant is taking training full-time.

[19] The presumption applies to the Claimant.

¹ See section 18(1)(a) of the Act.

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

³ See *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.

Capable of and available for work

[20] Since the Claimant is presumed to not be available for work because of his studies, to qualify for benefits he would have to meet the availability obligations that apply to all applicants for EI benefits.

[21] I have to consider whether the Claimant was capable of and available for work but unable to find a suitable job.⁴ Case law sets out three factors for me to consider when deciding this. The Claimant has to prove the following three things:⁵

- a) He wants to go back to work as soon as a suitable job is available.
- b) He has made efforts to find a suitable job.
- c) He hasn't set personal conditions that might unduly (in other words, overly) limit his chances of going back to work.

[22] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.⁶

– Wanting to go back to work

[23] The Claimant has said that he wants to go back to work as soon as a suitable job is available.

[24] Since the beginning, during his discussions with the Commission, the Claimant has said clearly that he wants and needs to work. His objective in taking the training program is to give him better opportunities to work in the future. He has been looking for jobs while he was in his training program.

[25] However, saying that he wants to go back to work is not enough. The Claimant has to show he wants to go back to work by making efforts to find a job.

⁴ See section 18(1)(a) of the Act.

⁵ 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.

⁶ Two decisions from case law set out this requirement. Those decisions are *Canada (Attorney General) v Whiffen*, A-1472-92; and *Carpentier v Canada (Attorney General)*, A-474-97.

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

[26] The Claimant has made enough effort to find a suitable job.

[27] The Claimant's efforts to find a new job included: giving his friends and family resumes to pass out, personally handing out about 10-15 resumes a week, going to places that said they were hiring, then expanding to those who might have jobs, searching on job banks and visiting in person when he saw an available job.

[28] The Claimant also testified that he was looking for any sort of job. He applied for fast food jobs, retail jobs as well as manual labour. He says he was looking for part-time or full-time work and did not tell employers he was in school because if he got a full time job he would leave school. He was looking for jobs everyday, as soon as he got out of school. I also note that the Claimant confirmed that he was willing to travel up to an hour for work.

[29] The Commission argues that the Claimant's statements about his job search are not credible because there are inconsistencies in his statements about his intentions to accept work or continue with his course. I disagree. On the contrary I find that every time the Commission asked the Claimant, he responded that he would leave his program to take full-time work.

[30] I questioned the Claimant about the fact that on the form he filled out for the Commission on September 30, 2021 he only indicated his most recent employer in the section that asked him to say the names and addresses of employers he had contacted. The Claimant explained that he misunderstood this question and isn't sure why he didn't add more examples. He had been actively searching for a job, but on the form, he wrote that because before starting his program he had talked to his employer to see if there was any winter work available.

[31] I found the Claimant's testimony to be credible. Although he did not have an organized listing of the jobs he applied for, he was able to be specific about where he had applied and how he was going about his job search. His testimony was consistent with what the Commission had noted and what he wrote on documents on file.

[32] Also, the Commission has offered very little support for its claims that the Claimant was inconsistent. Their notes show only a small amount of discussion with the Claimant, seeming to be directed at proving he was not available, rather than accepting his statements that he was willing to work and looking for a job.

[33] Those efforts are enough to meet the requirements of this second factor because the Claimant has been looking for a wide variety of jobs, through both face to face and online searches.

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

[34] The Claimant hasn't set personal conditions that might unduly limit his chances of going back to work.

[35] The Claimant says he hasn't done this because he needs to work. He says he wouldn't mind missing school if he had a job. He has been frustrated that he hasn't been able to get a job.

[36] The Commission says it is not credible that the Claimant would drop his course to accept full-time employment. They say he invests a lot of money and time for his training and was counting on the completion of his course to obtain a career.

[37] I find that the Claimant hasn't limited his chances of going back to work.

[38] Although the Claimant did say that he was available to work after school hours, he was not limiting his search to jobs within those hours. He consistently said he would leave school if a full-time job was available.

[39] I questioned the Claimant specifically if he was looking for part-time or full-time work. He said that he was looking for whatever he could get and was not telling employers he was in school. He did not mind missing school to work.

[40] The Claimant also testified that he was willing to give up the tuition he had already paid to take a job, even though he had waited to start the course. He explained

that he didn't have enough money to pay for another semester so he needed to work. His parents are helping with his job search as well.

– **So, is the Claimant capable of and available for work?**

[41] Based on my findings on the three factors, I find that the Claimant has shown that he is capable of and available for work but unable to find a suitable job.

Conclusion

[42] The Claimant has shown that he is available for work within the meaning of the law. Because of this, I find that the Claimant isn't disentitled from receiving benefits. So, the Claimant may be entitled to benefits.

[43] This means that the appeal is allowed.

Leanne Bourassa
Member, General Division – Employment Insurance Section