



Citation: *WC v Canada Employment Insurance Commission*, 2022 SST 247

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

Decision

Appellant: W. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (443540) dated January 14, 2022 (issued by Service Canada)

Tribunal member: Suzanne Graves

Type of hearing: Teleconference

Hearing date: February 24, 2022

Hearing participant: Appellant

Decision date: March 21, 2022

File number: GE-22-380

Decision

[1] The appeal is allowed. The Claimant has shown that he was referred by a designate of the Commission to take full-time training. This means that he can receive Employment Insurance (EI) benefits while in school.

Overview

[2] The Canada Employment Insurance Commission (Commission) decided that the Claimant is disentitled from receiving EI regular benefits from September 20, 2021, to May 20, 2022, because he isn't available for work while taking a full-time course.

[3] If a claimant is referred to training, they are considered to be available for work to get EI regular benefits. I have to decide whether the Claimant has proved that he was referred to take his course. If not, I must consider whether he has shown that he is available for work. The Claimant has to prove this on a balance of probabilities.

[4] The Claimant says he was injured, and could not resume his career in the trades. He consulted with Work BC, and went through several evaluations and testing to determine the best career path for him. He followed the direction of Work BC to enrol in the course of study that was recommended by his Work BC Case Manager.

[5] The Commission says that the Claimant isn't available because he is in school full time. It says there is no proof that the Claimant was referred to his course by Work BC.

Post-hearing documents

[6] I allowed time after the hearing for the Claimant to send in additional documents related to his job search or referral to training. The Claimant submitted documents related to his job search.¹ I accepted those documents as evidence, as they are relevant to the issue of whether he is available for work.

¹ The Claimant's post hearing documents are at GD-5 and GD-7.

Issue

[7] Is the Claimant available for work while in full-time school?

Analysis

[8] A claimant who is taking a full-time course must show that they are capable of, and available for work. Availability is an ongoing requirement. This generally means that claimants must be looking for work.

[9] Sometimes, the Commission (or a program the Commission authorizes) refers people to take a course.² If a claimant is referred to training, they are considered to be capable of and available for work during the time they are attending school. So, if they are referred to training, a claimant doesn't have to show that they are actively looking for work.

[10] If a claimant is not referred to training, two different sections of the law require them to show that they are available for work. The Commission decided that the Claimant was disentitled under both of those sections.

[11] First, the *Employment Insurance Act* (EI Act) says that a claimant has to prove that they are making "reasonable and customary efforts" to find a suitable job.³ The *Employment Insurance Regulations* give criteria that help explain what "reasonable and customary efforts" mean.⁴

[12] Second, the EI 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.⁵

² See section 25 of the *Employment Insurance Act* (EI Act).

³ See section 50(8) of the EI Act.

⁴ See section 9.001 of the *Employment Insurance Regulations*.

⁵ See section 18(1)(a) of the EI Act.

[13] The main argument in this case relates to the issue of whether the Claimant was referred to his course by a designate of the Commission, so I will address that issue first.

Was the Claimant referred by Work BC to take training?

[14] The parties agree that Work BC is a designate of the Commission. As such, it has the authority to refer EI claimants to take programs of study.

[15] The Commission argues that there is no proof that the Claimant was actually referred to training by Work BC. In particular, it says that Work BC did not make the necessary inputs into the project tab in Full Text Screens, or list a Notice of Intent online in LMDAaccess (Labour Market Development Agreements). So, it says that the Claimant has either not provided the right information, or was not referred to training.⁶

[16] The Claimant argues that he followed the direction of Work BC to take his course. He says that he was fully evaluated by Work BC after a head injury that stopped him from returning to his previous occupation. He testified that he took comprehensive evaluations to determine his most appropriate career path, including personality, motivation and intelligence testing. His Work BC counsellor then recommended that he take his training.

[17] He says that he understood that the training was approved, so he was eligible for benefits while taking the course. He explained that he did not have direct access to his file, so he asked Work BC for copies of the relevant approval documents. Work BC told him that the file documents were no longer available because his file is closed. He testified that he made a formal request through the BC Ministry of Justice for proof that he was approved for training, and submitted all available documents.

[18] As part of his appeal to the Tribunal, the Claimant included copies of the following records:

⁶ The Commission's submission on this point is at GD4-3.

- a) A medical report dated March 8, 2021, stating that the Claimant was evaluated after a head injury in December 2020. The report also states that he is deemed fit to enter into a retraining program, with the goal of finding an occupation that is less physically demanding and has less risk of another head injury.⁷
- b) Pages from a Work Safety Solutions (WSS) report that include the following excerpts:⁸
- i. “Client is seeking financial supports using LMDA attachment (EI Active) for retraining in order to be able to find sustainable employment as a professional actor.”
 - ii. “Client has been excused from a job search due ... to: medical reasons ... Occupational Skills Training - is required to provide client with skills that will allow for sustainable employment. This is the fastest route to sustainable workplace attachment in the Victoria labour market.”
 - iii. Client will pay tuition shortfall, will engage with courses and projects in order to complete training successfully.”
 - iv. Under Summary of Labour Market Information, reference is made to a report attachment entitled: “Labour Market Research Credential Confirmation.pdf”⁹
 - v. A WSS Case Manager recommendation for training intervention: “Based on Client’s eligibility for this service, along with active participation in Case Management, and their combination of skills, values and interests, I recommend them for Skills Enhancement Occupational Skills Training for Acting For Film and TV Program.”

⁷ This medical report is at GD2-9.

⁸ These statements are in the WSS report at GD2-10 to 11.

⁹ The Labour Market Research Credential Confirmation.pdf attachment was not included in the Claimant’s documents.

- c) A neuropsychological assessment of the Claimant by a Registered Psychologist. The assessment states that the Claimant was seen to assist in vocational and educational planning.¹⁰

[19] I allowed more time after the hearing for the Claimant to obtain any further documents relating to a Work BC referral to training. The Claimant informed the Tribunal that he could not get any more documentation.¹¹

[20] I considered all of the relevant evidence, including the documents filed by the Claimant, and his forthright testimony about the Work BC approval process. I find that he has provided sufficient evidence to show, on the balance of probabilities, that he was referred to his course by Work BC, a designate of the Commission.

[21] In making my finding, I have put most weight on the excerpts from the Work BC report stating that he was recommended to training by his case manager, and that a labour market credential confirmation was completed to support the training intervention.

[22] The Commission says that certain inputs to its system are required to prove that a claimant is referred to training. But this is just the Commission's practice. It is not the law. And I have to apply the law.

So, is the Claimant available for work while taking a full-time course?

[23] I find that the Claimant was referred to his training, so he has shown that he is considered to be capable of and available for work but unable to find a suitable job.

[24] Since I have found that the Claimant was referred to his training, I don't need to decide whether he has made reasonable and customary efforts to find work, or if he has proved that he is capable of and available for work under the other sections of the EI Act.

¹⁰ The neuropsychological assessment of the Claimant is at GD2-12 to 14.

¹¹ See GD-5.

Conclusion

[25] The Claimant has proved that he is available for work within the meaning of the law. Because of this, I find that the Claimant can receive EI benefits.

[26] This means that the appeal is allowed.

Suzanne Graves
Member, General Division – Employment Insurance Section