



Citation: *EC v Canada Employment Insurance Commission*, 2022 SST 510

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

Decision

Appellant: E. C.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (443128) dated January 12, 2022
(issued by Service Canada)

Tribunal member: Gary Conrad
Type of hearing: Videoconference
Hearing date: March 24, 2022
Hearing participant: Appellant
Decision date: March 25, 2022
File number: GE-22-463

Decision

[1] The appeal is dismissed.

[2] The Claimant hasn't shown she is available for work. This means that she is disentitled from receiving benefits.

Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant is disentitled from receiving Employment Insurance (EI) regular benefits from January 11, 2021, because she isn't available for work. 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 must decide whether the Claimant has proven that she is available for work. The Claimant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that she is available for work.

[5] The Commission says that the Claimant isn't available because she has made inadequate efforts to find work and her schooling limits her availability.

[6] The Claimant disagrees and states that she did not realize exactly what constituted job search activities. She thought it was only doing interviews and applying for a job, so that is why it seems like her efforts were sub-par. She did not know all of the other actions she was doing to find work count as job search activities so she never spoke of them.

[7] The Claimant says that yes, she is going to school, but she can work evenings and weekends, and in fact started working again in June 2021.

Issue

[8] Is the Claimant available for work?

Analysis

[9] 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. So, she has to meet the criteria of both sections to get benefits.

[10] First, the *Employment Insurance Act* (Act) says that a claimant has to prove that they are making “reasonable and customary efforts” to find a suitable job.¹ The *Employment Insurance Regulations* (Regulations) give criteria that help explain what “reasonable and customary efforts” mean.² I will look at those criteria below.

[11] Second, 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.³ Case law gives three things a claimant has to prove to show that they are “available” in this sense.⁴ I will look at those factors below.

Reasonable and customary efforts to find a job

[12] The law sets out criteria for me to consider when deciding whether the Claimant’s efforts are reasonable and customary.⁵ I have to look at whether her efforts are sustained and whether they are directed toward finding a suitable job. In other words, the Claimant has to have kept trying to find a suitable job.

[13] I also have to consider the Claimant’s efforts to find a job. The Regulations list nine job-search activities I have to consider. Some examples of those activities are the following:⁶

- assessing employment opportunities
- preparing a résumé or cover letter
- registering for job-search tools or with online job banks or employment agencies

¹ See section 50(8) of the *Employment Insurance Act* (Act).

² See section 9.001 of the *Employment Insurance Regulations* (Regulations).

³ See section 18(1)(a) of the Act.

⁴ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

⁵ See section 9.001 of the Regulations.

⁶ See section 9.001 of the Regulations.

- attending job-search workshops or job fairs
- networking
- contacting employers who may be hiring
- applying for jobs

[14] The Commission says that the Claimant isn't doing enough to try to find a job as when looking at her job search efforts there are some months she did not apply for any positions and in the months she did, it was only to a couple locations.

[15] The Claimant says that when she originally spoke to the Commission she told them she was not looking for work as she thought that only having interviews and actually applying for a position counted towards looking for work.

[16] The Claimant says she was unaware that all her other activities counted until she saw the list of activities that were considered job search efforts in the Commission's submissions.

[17] The Claimant says that she has been doing extensive job search activities ever since she was not called back to her job as expected in December 2020.

[18] The Claimant says that while she has applied to very little, that does not mean that she has not been extensively looking to find work; a lack of applications is simply due to not finding many jobs that work for her.

[19] The Claimant says she is always looking at online sites for jobs, looking for positions on Instagram, networking with her instructors at school to see if they know of any openings, speaking with other students at the school to see what work they are able to find, looking at the job board at school, networking with guest speakers at her school to see if they know of any opportunities, and attending job fairs at her school.

[20] The Claimant says that her job search efforts are ongoing even though she started working again in June 2021, as she does not want to work in a restaurant for the rest of her life.

[21] While it is true the Claimant has not made many applications, I note that applying for jobs is only one of the many factors the law considers as reasonable and customary efforts to find a job.

[22] I accept the Claimant's testimony regarding all her efforts to find work, and when I consider all of those efforts, in light of all the factors the law sets out as reasonable and customary efforts, I find the Claimant has proven that she is making ongoing efforts to find a job that are reasonable and customary.

[23] So, the Claimant should not be disentitled under this section of the law.

Capable of and available for work

[24] 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.

[25] The Act was recently changed and the new provisions apply to the Claimant.⁷ 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.

[26] Case law sets out three factors for me to consider when deciding whether the Claimant is capable of and available for work but unable to find a suitable job. The Claimant has to prove the following three things:⁸

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

⁷ Subsection 153.161(1) of the *Employment Insurance Act*

⁸ 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.

[27] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.⁹

– **Wanting to go back to work**

[28] The Claimant has shown that she wants to go back to work as soon as a suitable job is available.

[29] The Claimant says that she was laid off from her job at a restaurant due to COVID but was expecting to be called back to work in December 2020; this did not happen.

[30] Instead, she had to wait until June 2021, to start working again.

[31] The Claimant says as soon as her employer called her back she started working, as she needs to work due to all of the student debt she has accumulated.

[32] The Claimant says that before she started working again in June 2021, she was putting in a lot of effort to find a job due to her desire, and need, to start working again.

[33] I find the Claimant looking for work when unemployed, and immediately accepting her employer's offer to return to work, even while in school, shows that she had a desire to work as soon as a job was available.

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

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

[35] I have considered the list of job-search activities given above in deciding this second factor. For this factor, that list is for guidance only.¹⁰

[36] The Claimant's efforts to find a new job include

⁹ 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.

¹⁰ I am not bound by the list of job-search activities in deciding this second factor. Here, I can use the list for guidance only.

- assessing employment opportunities
- preparing a résumé or cover letter
- registering for job-search tools or with online job banks or employment agencies
- attending job-search workshops or job fairs
- networking
- contacting employers who may be hiring
- applying for jobs

[37] I explained these reasons above when looking at whether the Claimant has made reasonable and customary efforts to find a job.

[38] Those efforts are enough to meet the requirements of this second factor. Her efforts were ongoing, and extensive, in regard to the number of actions she has taken to find work.

[39] While it is true the Claimant has made few applications, that is not the determinative factor on whether the Claimant was making sufficient efforts; all the efforts the Claimant makes in trying to find employment need to be considered, not just how many applications she has made.

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

[40] The Claimant has set personal conditions that might unduly limit her chances of going back to work.

[41] The Claimant says she has been going to school since January 11, 2021; it even ran through the summer.

[42] The Claimant says that from January 2021, to the end of April 2021, she was taking five classes. Classes were from Monday to Thursday, and usually ran from 8 AM to 11 AM. On Wednesday she had a second class that ran from 12:30 PM to 2:30 PM.

[43] From May to the end of August 2021, she was taking four courses, but only for a couple days a week. The courses ran from 8 AM to 11 AM.

[44] From September 2021, onward her class schedule was Monday, Tuesday, Friday from 8 AM to 11 AM.

[45] The Claimant says that while the classes were recorded, in case you wanted to watch them again or missed a class, it was expected that a person would attend at the scheduled class times as there were things to do during the class.

[46] The Claimant says she can work evenings and weekends and is doing just that at her restaurant position that she started back at in June 2021.

[47] The Commission says the Claimant's schooling limits her availability as she has to work around her class schedule.

[48] I find I agree with the submission of the Commission.

[49] I find, that the Claimant having to attend her classes at set times on set days, means that her availability is restricted to certain times on certain days, which would unduly limit her chances of finding employment¹¹ as any job would have to work around that schedule.

[50] It may seem odd to say the schooling impacts availability and unduly limits returning to the labour market when a person is already working; however, EI is not a fund to subsidize a person who is not making enough at their job due to having an inability to accept more hours, or an inability to find a position with more hours, because they are limiting their availability due to going to school.

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

[51] Based on my findings on the three factors, I find that the Claimant hasn't shown that she is capable of and available for work but unable to find a suitable job.

¹¹ See *Duquet v Canada (Employment and Immigration Commission)*, 2008 FCA 313 which supports this.

Conclusion

[52] The Claimant hasn't shown that she is available for work within the meaning of the law. Because of this, I find that the Claimant is disentitled from receiving benefits.

[53] This means that the appeal is dismissed.

Gary Conrad

Member, General Division – Employment Insurance Section