



Citation: *WF v Canada Employment Insurance Commission*, 2022 SST 553

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

Decision

Claimant: W. F.

Commission: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (447550) dated January 19, 2022
(issued by Service Canada)

Tribunal member: Audrey Mitchell

Type of hearing: Teleconference

Hearing date: March 23, 2022

Hearing participant: Claimant

Decision date: March 28, 2022

File number: GE-22-521

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

[2] The Claimant hasn't shown that she was available for work. This means that she can't receive Employment Insurance (EI) benefits.

Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant was disentitled from receiving Employment Insurance (EI) regular benefits from June 21, 2021 to September 24, 2021, because she wasn'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 was 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 was available for work.

[5] The Commission says that the Claimant wasn't available because she said she was caring for her son. They say that inconsistencies in her statements cast doubt on her statement that she was available for work.

[6] The Claimant disagrees and states that her son didn't want her care for him and told her to go back to work. She said that she had been looking for work

Issue

[7] Was the Claimant available for work?

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

[9] 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.

[10] 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.

[11] The Commission decided that the Claimant was disentitled from receiving benefits because she wasn’t available for work based on these two sections of the law.

[12] I will now consider these two sections myself to determine whether the Claimant is available for work.

Reasonable and customary efforts to find a job

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

[14] 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
- 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.

- applying for jobs

[15] The Commission says that the Claimant didn't do enough to try to find a job.

[16] The Claimant disagrees. She says she called a potential employers, inquired about a job at a drug store, and looked for work using Job Bank. The Claimant says that her efforts were enough to prove that she was available for work.

[17] I find that the Claimant hasn't proven that she was making reasonable and customary efforts to find work. I do so because I don't find she did enough to try to find a job.

[18] The Claimant told the Commission that she called a fast food restaurant and a large retailer at the end of July 2021. She said that they told her they weren't hiring. She said that she called a doctor's office in early August 2021, but couldn't reach them. She also said that she looked for jobs at Job Bank, but most of the jobs were too far for her.

[19] At the hearing, the Claimant named the same potential employers. She added that she went to some ethnic grocery stores, but didn't name them. The Claimant testified that she went to a drug store, but they didn't have any positions. However, this was in October or November 2021. This is outside the period of the Claimant's disenfranchisement.

[20] The Claimant was on vacation from her job from June 18, 2021 and extended her leave to July 23, 2021. She asked her employer for another extension to her leave. They did not agree to it. The Claimant said in her request for reconsideration that she started to look for work at the end of July 2021 after she left her job.

[21] I find from the Claimant's statements to the Commission and from her testimony that she started looking for work after leaving her job. I also find that by contacting potential employers and looking at Job Bank, she was doing the kind of things to find work like those listed in the law. However, I don't find she did enough.

[22] I don't find that from the end of July to September 24, 2021, speaking to two potential employers, calling a third without success, and looking on Job Bank, but deciding that most were too far is enough. Even though the Claimant said that she went to ethnic grocery stores, she did not give sufficient detail to show that this and other activities were enough to prove that she was making reasonable and customary efforts to find work.

[23] The Claimant hasn't proven that her efforts to find a job were reasonable and customary.

Capable of and available for work

[24] Case law sets out three factors for me to consider when deciding whether the Claimant was capable of and available for work but unable to find a suitable job. The Claimant has to prove the following three things:⁷

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

[25] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.⁸

– Wanting to go back to work

[26] The Claimant hasn't shown that she wanted to go back to work as soon as a suitable job was available.

[27] As noted above, the Claimant was on vacation from work from June 18, 2021. She asked her employer to extend her leave. She made her last request for an

⁷ 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.

⁸ 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.

extension of her leave in an email dated July 23, 2021. She asked for an additional four weeks off from work because of her son's accident, and because he needed surgery. She said that she could not return to work under these circumstances. Her employer replied that they could not give her more leave. They said they would have to find someone to replace her.

[28] The Commission spoke to the Claimant on August 30, 2021. At that time, she told them that the reason she left her job is that her son had an injury and she had to look after him. The Commission told her about family caregiver benefits since she had said that she was not working because she had to take care of her son.

[29] The Claimant called the Commission on September 10, 2021. She told them that she didn't want family caregiver benefits because her son would not sign the paperwork. The Commission explained that the Claimant wouldn't be entitled to EI regular benefits. The Claimant said she would speak to her son and call the Commission back.

[30] On September 28, 2021, the Claimant said that she will no longer care for her son because she would not be eligible for benefits. She said that because of this, she was available for work and wanted to receive EI regular benefits.

[31] The Commission questions the Claimant's statements that she was available for work. They refer to the conversations with the Claimant noted above. They also refer to the Claimant's email to her employer where she says she is unable to work because of her son's accident and surgery.

[32] I agree with the Commission. I find that the Claimant's statements and actions aren't consistent with someone who wants to return to work. I asked the Claimant about the Commission's submission that the Claimant said she was caring for her son until she learned that she wouldn't be entitled to regular benefits and would have to repay an overpayment. The Claimant only said that she was looking for a job. I don't find the Claimant's response reasonably explains why she would ask her employer for four weeks' more leave to care for her son, if she wasn't caring for him.

[33] The Claimant testified that when her employer told her they could not give her more leave, she didn't think to ask them to take her back because they said that they would hire a replacement. She testified that she was upset at the time.

[34] I find that if the Claimant had a desire to return to work at the end of July, 2021, she could have returned to the job that she had. From her statements to the Commission and her email to her employer, I find it more likely than not that she continued to care for her son up to the end of September 2021.

[35] I don't find that the Claimant has shown that she wanted to go back to work.

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

[36] The Claimant hasn't made enough effort to find a suitable job.

[37] 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.⁹

[38] The Claimant's efforts to find a new job included calling potential employers, going to ethnic grocery stores and looking on Job Bank for jobs. I explained these reasons above when looking at whether the Claimant has made reasonable and customary efforts to find a job.

[39] Those efforts weren't enough to meet the requirements of this second factor. I don't doubt that the Claimant made some efforts to look for work. However, I don't find that calling a few prospective employers is enough in the approximately two month period from the end of July to the end of September 2021.

[40] The Claimant said that she looked for jobs on the Job Bank. But she said that most of the jobs were too far from her home. I don't doubt that some of the jobs that the Claimant saw would have resulted in an hour commute, which she assessed as too far.

⁹ 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.

However, I am not persuaded that there wasn't at least one job within a reasonable distance from her house that she could have applied for.

[41] As noted above, when the Claimant's employer told her that they couldn't approve her request for more leave, the Claimant didn't tell them she could return as scheduled on July 26, 2021. I don't find that she has shown that she made enough effort to return to work without at least asking her employer if she could return to her job.

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

[42] The Claimant did set personal conditions that might have unduly limited her chances of going back to work.

[43] The Claimant says she hasn't done this because her son didn't want her to care for him and she was looking for work.

[44] In spite of what the Claimant now says, I have already found it likely that the Claimant was caring for her son until the end of September 2021. Given the kind of injury he had and the surgery that followed, I understand why she would want to help him. The Claimant testified that his injury sometimes takes a year to heal. However, I find that having to care for her son may have unduly limited her chances of returning to work.

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

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

Conclusion

[46] The Claimant hasn't shown that she was available for work within the meaning of the law. Because of this, I find that the Claimant can't receive EI benefits.

[47] This means that the appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section