Citation: *TA v Canada Employment Insurance Commission*, 2022 SST 418

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	T. A.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (439349) dated November 25, 2021 (issued by Service Canada)

Tribunal member:	Charlotte McQuade
Type of hearing:	Videoconference
Hearing date:	January 24, 2022
Hearing participants:	Appellant
Decision date:	February 14, 2022
File number:	GE-22-11

Decision

[1] The appeal is dismissed. The Tribunal disagrees with T. A. (Claimant).

[2] The Claimant hasn't shown that he was available for work while in school from October 5, 2020 to September 22, 2021. This means that he can't receive Employment Insurance (EI) benefits for this period.

Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant was disentitled from receiving EI regular benefits from October 5, 2020 to September 22, 2021 because he 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 have to decide whether the Claimant has proven that 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 in school full-time.

[6] The Claimant disagrees. He says he was available to work full-time and was looking for full-time work. He says most of his classes were online and recorded and if a job conflicted with school, he could have made an adjustment to his schedule or dropped the class or program if necessary. He says he was actively looking for work.

[7] I have decided for the reason set out below, that the Claimant has not proven his availability for work from October 5, 2020 to September 22, 2021.

Matters I have to consider first

The Claimant provided post-hearing documents

[8] The Claimant testified about his job search. He also testified that he had returned to work in July 2021. I permitted the Claimant until January 25, 2022 to provide

confirmation of any jobs applied to and confirmation that he had been recalled to work and the hours worked. On January 25, 2022 the Claimant provided a list of jobs applied to and a document showing his work shifts from July 28, 2021 to some date in August, 2021 along with a calendar for August, 2021 showing his work shifts combined with his class schedule. However, the only readable document was the job search list. The documents were provided to the Commission and the Commission provided responding submissions. However, the Tribunal called the Claimant on January 26, 2022 and requested a clearer copy of the documents. No documents were received.

[9] I sent a letter to the Claimant on February 7, 2021 requesting that he provide a clearer copy of the documents as soon as possible and no later than February 8, 2022 at 4:00 p.m. The Claimant sent an email on February 7, 2022 saying he had already sent a second email on January 26, 2022 with an attached zip file and he attaching the zip file again. However, the Tribunal had not received the January 26, 2022 email and there were no attachments to the February 7, 2021 email. On February 10, 2022 the Tribunal phone the Claimant to advise there was no attachment. There was no response. The onus is on the Claimant to provide readable documents to the Tribunal. The Claimant has been provided a reasonable opportunity to do that. As I cannot read the document showing the work shifts or the calendar for August, 2021, I am unable to consider those documents.

Issue

[10] Was the Claimant available for work from October 5, 2020 to September 22, 2021, while in school?

Analysis

[11] 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, he has to meet the criteria of both sections to get benefits.

[12] 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]

[13] If a claimant does not comply with a request to prove that the claimant has made reasonable and customary efforts, then the claimant may be disentitled from benefits until the claimant complies with a request and supplies the requested information.[3] In order to disentitle a claimant under this section, the Commission must first ask the claimant for proof and specify what kind of proof will satisfy its requirements. [4]

[14] The Claimant was asked about his job search. He told the Commission about his job search.[5] However, I see no evidence that the Commission told the Claimant what reasonable and customary efforts were or that he would be disentitled if he failed to provide proof of those efforts. The decision letter of October 9, 2021 does not refer to a disentitlement for failure to provide proof of reasonable and customary efforts, but rather a disentitlement for reason the Claimant's job search efforts were not aggressive enough to prove his availability.[6] So, I find the Commission did not disentitle the Claimant because he had not provided proof of reasonable and customary efforts but rather because he had not proven his availability for work. So, I will only consider that issue.

[15] 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.[7] Case law gives three things a claimant has to prove to show that they are "available" in this sense.[8] I will look at those factors below.

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[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 50(1) of the Act.
[4] See *L. D. v. Canada Employment Insurance Commission*, 2020 SST 688. I am not bound to apply other decisions of the Tribunal. However, I find the reasoning in this decision persuasive and adopt it.
[5] GD3-31.
[6] GD3-33.
[7] See section 18(1)(a) of the Act.
[8] See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

[16] In addition, the Federal Court of Appeal has said that claimants who are in school full-time are presumed to be unavailable for work.[9] 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 in school full-time.

[17] 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 two sections of the law on availability.

Presuming full-time students aren't available for work

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

– The Claimant disputes that he is a full-time student

[19] The Claimant was attending a computer science program at Sheridan College. The Claimant said the program was two years plus a year of co-op. He says the College considered his program a full-time program, but, based on the time spent and work involved, he considered it to be only part-time effort.

[20] The Commission says the Claimant was a full-time student. The Commission says the Claimant reported on training questionnaires completed on September 18, 2020, January 22, 2021 and May 28, 2021 that his schooling was full-time and that he spent more than 25 hours per week on his training. He was asked on all the questionnaires if he worked at his own pace or was obligated to attend class and he said he was obligated to attend class.

[21] The Claimant testified that in his first semester from September 14, 2020 to December 16, 2020, he was taking five courses, which his school considered a full course load. He had 15 hours of lectures. The classes occurred on Monday from 9 a.m. to 12 p.m., Tuesday from 10 a.m. to 12 p.m., Wednesday from 1 p.m. to 3 p.m., Thursday from 8 a.m. to 2 p.m. and Friday from 1 p.m. to 3 p.m. He says there is no

[9] See *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.

black and white answer to whether attendance was required which is why he said on the questionnaires that attendance was required. The lectures were all pre-recorded and online. However, on some days of the week he had to attend labs for 30 to 60 minutes and for quizzes. The Claimant said the required attendance depended on the week. He was required to attend the Wednesday class in person. In the first term, he had required quizzes every three weeks or so. Tests were held after four and a half weeks. He says although attendance was required for quizzes and tests, some students got things moved around due to Covid-19 or if they were studying abroad. He says the College was flexible. The Claimant explained that with some of the lectures, he would speed up the video to shorten the time he spent watching them.

[22] The Claimant said he started with five courses in the second term from January 18, 2021 to April 23, 2021 but dropped to four courses after the fourth or fifth week. He had 13 hours of lectures. His classes were Monday from 10 a.m. to 1 p.m., Tuesday from 8 a.m. to 1 p.m., Thursday from 9 a.m. to 11 a.m., and Friday from 1 p.m. to 4 p.m. The Claimant said the situation was the same as first term. All the classes pre-recorded and online. He was required to attend certain classes if there were quizzes or tests. He was required to attend the Monday class.

[23] The Claimant said the third term went from May 17, 2021 to August 20, 2021. He was taking three courses this term. He is unsure if the College considered this a part-time or full-time load. He thought he may have been able to take up to six courses in the summer term. He had 12 hours of lectures. The classes were held on Monday from 12 p.m. to 3 p.m., Tuesday from 11 a.m. to 2 p.m., Wednesday from 12 p.m. to 3 p.m., and Friday from 8 a.m. to 11 a.m. He was required to attend classes but they were pre-recorded and online. If there was a quiz or test, he would have to attend. He was required to attend the Monday class.

[24] The Claimant explained that in addition to lectures, he spent 4 to 5 hours of additional time on school work. He says this program felt like part-time effort to him. He said that when he completed the three training questionnaires and said he spent 25 or

more hours on his classes, he did not have a lot of detail about the courses or know how much time they would take.

[25] I accept the Claimant's explanation of why he noted he was spending 25 or more hours on his schooling. However the time spent on schooling still amounted to between 16 and 20 hours per week which is a significant amount of time.

[26] I find the Claimant was attending school full-time in each of the three terms. Even though in the summer he was taking less courses, it was a more condensed period than the other terms. Overall, the Claimant was spending a significant amount of time on his schooling. I find it significant as well that he had classes scheduled on almost every weekday. Further the College considered this a full-time program. So, the Claimant was attending school full-time.

– **The Claimant is a full-time student**

[27] The Claimant is a full-time student. But the presumption that full-time students aren't available for work can be rebutted (that is, shown to not apply). If the presumption were rebutted, it would not apply.

[28] There are two ways the Claimant can rebut the presumption. He can show that he has a history of working full-time while also in school.[10] Or, he can show that there are exceptional circumstances in his case.[11]

History of working full-time while in school.

[29] The Commission says the Claimant separated from his employment on March 26, 2020 and began his classes on September 14, 2020. [12] The Commission says the Claimant's ROE shows he was working 35 hours per week prior to his layoff. The Commission says there is no evidence that the Claimant had ever worked full time (or at all) while attending courses of instruction. The Commissions says the Claimant was

[10] See *Canada (Attorney General) v Rideout*, 2004 FCA 304.
[11] See *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.
[12] GD3-40 to GD3-41.

asked on the training questionnaire if he had “previously worked while taking a course/program?” to which he answered “No.” [13]

[30] The Claimant testified that he does have a history of working full-time while attending school full-time. He says he attended Ryerson University five years ago. While in his second year of university, he worked at Uber Eats between 5 and 12 hours a day. While in his third year of university, he worked for Paragon security on irregular hours for 40 hours per week and sometimes overtime. The Claimant said his shifts were sometimes at 3 a.m. or 4 a.m. The Claimant said while in his fourth year of university, he worked at Pita Land for 30 to 50 hours per week.

[31] The Claimant explained he worked irregular hours at his last job with Air Canada, prior to his layoff. He said he would work midnight shifts or shifts from 5 p.m. to 4 a.m. He did this for more than six months. He would work sometimes 17 hours a day. The Claimant says in fact he was recalled by his former employer in July 2021 and was working 40 hours biweekly from July to December, 2021.

[32] The Claimant says the Commission’s agents never asked whether he had combined full-time work with full time school. He says he answered “No” to the question on the application as he thought it meant combining work and school while in his current program, which he had not done when he completed the questionnaire.

[33] I accept the Claimant may have misunderstood the question on the application. I found his testimony as to his prior work history along with schooling to be credible. The level of detail he provided about the jobs and his shifts was persuasive. So, I accept that the Claimant has a history of combining full-time work and full-time university over a period of three school years. I find this is a sufficient enough history of combining full-time work and school to rebut the presumption of non-availability.

[34] The Claimant has rebutted the presumption that he is unavailable for work.

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[13] GD3-28.

– **The presumption is rebutted**

[35] Rebutting the presumption means only that the Claimant isn't presumed to be unavailable. I still have to look at the two sections of the law that apply in this case and decide whether the Claimant is actually available.

Capable of and available for work

[36] I now have to consider whether the Claimant was capable of and available for work but unable to find a suitable job.[14] Case law sets out three factors for me to consider when deciding this. The Claimant has to prove the following three things:[15]

a) He wanted to go back to work as soon as a suitable job was available.

b) He has made efforts to find a suitable job.

c) He didn't set personal conditions that might have unduly (in other words, overly) limited his chances of going back to work.

[37] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.[16]

– **Wanting to go back to work**

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

[39] The Commission says "suitable work" for the Claimant would be full time work as his ROE shows he was working full-time prior to being laid off and starting school.[17] I agree that suitable work for the Claimant would be full-time work. The Clamant was earning $16.00 per hour at his last job, where he worked for over a year. [18]The ROE

[14] See section 18(1)(a) of the Act.
[15] 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.
[16] 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.
[17] GD3-40.
[18] GD3-39.

shows the Claimant was paid bi-weekly and was earning on average $1120.00 per pay period.[19] This amounts to 70 hour pay periods, or 35 hours per week, which would be considered full-time work.

[40] The Commission says the Claimant said on his first training questionnaire that he had an obligation to be present for courses either in-person or online. He stated he was looking for work. For the question that asked if work was found that conflicted with his course or program, he did not respond that he would drop the course/program to accept the job. Rather, he said he would modify his school schedule to accept the job, but that after a deadline he would only be able to drop classes.[20] The Claimant repeated the same response on the two subsequent training questionnaires he completed for the following two terms. [21]

[41] The Commission says that although the Claimant stated that he would modify his course schedules to accept a job, he also said he could only drop the courses after a certain deadline. The Commission submits that given the large amount of money invested in the courses, which the Claimant reported to be over $25,000.00, it is highly unlikely that the Claimant would have dropped his courses to accept suitable work.

[42] The Commission also says the Claimant's job search also doesn't show his intention was to go back to work as soon as suitable job was available. The Commission points out that the Claimant only made 4 attempts to look for work between October 2020 and September 22, 2021. Between March 2021 and June 22, 2021, he was helping a friend with a self-employment start up. The Commission says the self-employment endeavour represents an even further commitment by the Claimant to staying in his courses, rather than to find suitable employment.

[43] The Commission says it was only in October 2021, when faced with the prospect of being disentitled to benefits that the Claimant greatly increased his efforts to look for

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[19] GD3-40 to GD3-41.
[20] GD3-16 to GD3-19.
[21] GD3-20 to GD3-23 and GD3-24 to GD3-28.

suitable employment. He said then that he had applied to at least 2 more jobs in the last month and had signed up for online job search tools.[22]

[44] The Commission says the post-hearing job search the Claimant provided is an undated list of jobs. The Commission says this is not evidence that the Claimant had an intention of going back to work as soon as a suitable job was available as there is no information as to when this job search took place.

[45] The Claimant says he wanted to back to work as soon as a suitable job was available. He maintains he was awaiting recall with his existing employer and at the same time looking for full-time work.

[46] The Claimant testified that he was available for full-time work, even during the day. He says if he was offered a job that conflicted with his schooling, he would have first spoken to his professors to see if he could rearrange the dates for his tests or quizzes. The professors had told the students they would be flexible. He says if that was not permitted, he would have dropped some courses or left school.

[47] The Claimant testified he could have left school at any time and he would have done so. He says the $25,811.19[23] cost he noted in his application was for two years of the program. He says his program was paid entirely by an OSAP grant, not a loan. So, the Claimant says he would not have lost any money by leaving. He says he specifically took this program as it was paid for by OSAP instead of another coding program that was shorter as he could not afford the other program. He thinks there would be no impact to his grant if he dropped courses. He explained the refund amounts are reduced, the later the course is dropped but since he didn't pay, it would not have impacted him to drop his course.

[48] The Claimant says if his employer had called him back to work and the work conflicted with his school, he would have left school to go back to work. He says at the time of layoff, the employer said employees would be called back as soon as things

[22] GD3-32.
[23] GD3-23.

picked up. His union also kept assuring employees of this. In May or June 2021, the union told him to expect a call from the employer and he was called back in July 2021. He says after his recall, he worked 40 hours biweekly and would sometimes do more. He says the shift are all over the place but he is working full-time hours.

[49] The Claimant gave evidence about his job search. He explained that he lives with elderly parents so wanted to be careful what jobs he applied to. He testified that he wanted to find something in the airline industry as that was his experience, and even though he was expecting to return, he tried to apply for other jobs “here and there”. He says he spent about 10 hours a week looking for work from October 5, 2020 to September 22, 2021. The Claimant related that he only kept a record of the places he applied to, but not the dates.

[50] The Claimant testified that the third agent at the Commission that he spoke to kept comparing him to her daughter. He says she told him that her daughter wouldn’t dare go to school and work full-time. He says she was accusatory and when he was trying to tell her about the jobs he applied to, she stopped him after six and said that was okay and did not want to hear anything further. He also says that he thought their conversation was about when his payment didn’t go through and so he did not tell her about jobs he applied to back in 2020.

[51] The Claimant said he was registered with Linked in, Monstar.ca, and Glass Door. He says the Commission’s agent misunderstood that he had just started using those services. He said his school had helped them set up a Linked In account so he already had that. He says he had been using these sites all along but started using them more as more companies began to open up and there were more opportunities. He says the reason it seemed like his job search was increasing was because things were opening up more.

[52] The Claimant explained about the jobs he had applied to from October 5, 2020 to September 22, 2021. He said he did not have a licence then so he tried delivering Uber Eats by bicycle for one day in November or December 2020 but did not continue as it

was too cold. He said his friend owned a company called Smartflex. He asked him to work running a machine in a factory. The job was part-time until the probation would end. However, he could not take the job as he had no licence to get to the job and the friend could not take him. He is not sure but thinks this was in November 2020 and he applied there again in April, 2021. He also applied to Teranat in December 2020, which was a full time programing job. The Claimant says he also dropped off resumes at a pizzeria, Subway, Metro and Good Life between September and November 2020. As well, he applied for a job at an endoscopy clinic in December 2020 or January 2021. He recalls applying at Amazon to work in the warehouse, but could not work there as they also required a licence.

[53] The Claimant says he applied to a flight analyst position and two middle management positions at Air Canada and in May 2021 which were full-time jobs. He says he also applied to Paragon security in June 2021.

[54] The Claimant explained that between February and June 2021, he and a colleague were trying to start up a business. They were hoping to make money off it. He worked on it whenever he could. He says he spent 5 to 6 hours a week on this but also continued to look for work. They were going to salons and trying to sell products. He says when he was at the salons, he would also enquire if they were hiring as part of his job search.

[55] The Claimant said he had gone to Dubai from June 14, 2021 to June 25, 2021 as his brother had a situation and a friend wanted to introduce him to his employer. He had an interview while there. He said he told the Commission this from the start.

[56] Since the Claimant said he had not recorded the dates of applications and in his testimony he seemed somewhat unsure of his dates of applications, I asked the Claimant whether he could provide confirmation of his job applications. I also asked for confirmation of when he was recalled to work and what hours he was working when he returned to work. The Claimant testified that he had a confirmation of some of the applications he actually made and would submit that.

[57] The Claimant provided a post-hearing list of 17 jobs he says he applied for during the period in question. [24] No dates of application are provided and no confirmation of the applications actually having been made was provided.

[58] I am not persuaded that the Claimant's true intention was to go back to work as soon as a suitable job was available. I find his primary intention was to focus on his schooling and accept work around his school schedule.

[59] Although the Claimant said his program was largely online and recorded, there still was required attendance for at least one course per term and all quizzes and tests and exams. Given the number of courses the Claimant was taking, even a requirement for attendance for all quizzes, tests and exams would require a significant amount of required attendance on weekdays.

[60] The Claimant says that if a job conflicted with his schooling, he would change the schedule. I am also not persuaded that the Claimant would have changed his schedule to accept a job or that making a change was even possible. The Claimant said in the training questionnaires that he could only drop courses after a certain date. This suggests that changing the schedule would only be possible to a limited extent. The Clamant says he could have asked his professors to adjust his quizzes and tests if a class conflicted with a job. However, there is no evidence that the Claimant actually asked his professors if this was possible. Further, given the number of classes the Claimant had and the number of quizzes, tests, and exams that would have occurred across his courses during the week, I find is unlikely he would have been able to rearrange all those obligations to accommodate a job.

[61] The Claimant testified that if he could not adjust his scheduling, he would drop his schooling to take a job. Yet he said in three separate questionnaires to the Commission that if he found full time work but the job conflicted with his course/program, he would change his course schedule to accept the job. He did not

[24] GD5-1.

say he would drop the course/program to accept the job. [25] Since those questionnaires were completed while the Claimant was attending his schooling, I place more weight on them than his subsequent testimony. I don't find it credible that the Claimant would have dropped the program, particularly when to do so might mean losing the benefit of a grant of over $25,000.00 to attend school.

[62] The most significant reason I find the Claimant was prioritizing his schooling over finding a job is his job search. I find the Claimant's job search is insufficient to prove that his intention was to go back to work as soon as a suitable job was available.

[63] The Claimant says that he did engage in an active job search. He says I should prefer his testimony over the Commission's notes about his job search. He says the Commission's agent only let him explain about six job applications and then cut him off. He says she was comparing him to her daughter. The Claimant says in fact he applied to more jobs. He testified he was awaiting recall and in the meantime, he was job searching. He said he had registered with multiple online job sites and was job searching for 10 hours a week. He testified as having applied to 13 jobs and having had one interview. The Claimant provided a post-hearing job search list with 17 jobs listed but no verifying information such as dates applied tor, or confirmation that the applications were sent.

[64] The Claimant has not persuaded me that I should prefer his testimony over what is recorded in the Commission's notes about his job search. I allowed him the opportunity to provide confirmation of his job search as a post-hearing submission. His post-hearing document lists 17 jobs he says he applied to but there are no dates of application listed there and no proof the applications were actually made.

[65] The application for benefits the Claimant completed advises claimants are responsible for keeping a job search record as they might be asked for it. All three of the training questionnaires the Claimant completed advised he was required to "Keep a list of the employers contacted. Record the name of the person you spoke to, the date

[25] GD3-19. GD3-23 and GD3-27.

and the result of your contact." The Claimant checked off his acknowledgment that he had read the statement. The fact the Claimant acknowledged his responsibility to keep a job search with specific information, on three occasions and did not do so makes me doubt the reliability of the job search information he subsequently provided in his testimony and his post-hearing documentation. While the Claimant may have applied to these jobs at some point, he had been laid off on March 26, 2020. So, it is unclear whether some of these jobs may have been applied prior to his starting school.

[66] The Commission's notes of October 8, 2021 reflect an increased job search at that point. The notes say the Claimant said he was actively searching for full-time suitable employment now. He explained online sites he was registered with and gave information about a variety of jobs he had applied to.

[67] I find it is more likely than not that the Claimant's job search for the period from October 5, 2020 to September 22, 2021 was as he told the Commission on September 29, 2021[26] and I accept that information. The Claimant's job search involved awaiting recall to his existing employer and making six job applications, of which only four of them were jobs he actually could do without a license. He also attended an interview in Dubai.

[68] The Claimant has not provided sufficient proof to suggest I should prefer his subsequent information. He did not record the dates of application. His testimony reflected an uncertainty as to the dates. He has provided no confirmation that the applications were made or when. Further, there are inconsistencies with all the information he has provided about the job search. I note, for example, the Claimant has noted on his post-hearing job search list that he applied to five jobs at Air Canada between October 5, 2020 to September 22, 2021. He testified that he applied to only three positions at Air Canada in May 2021. Yet he told the Commission that he applied to one job at Air Canada on September 23, 2021 and he was hoping to apply later on to things at Air Canada.[27]

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[26] GD3-31.
[27] GD3-31.

[69] I acknowledge it was a pandemic and there may have been less jobs to apply to. However, only four job applications and one interview during the period of over 11 months does not show an active sustained job search. The Claimant was awaiting recall. However, there was no assurance of when that would occur until May or June 2021 that he was told by his union to expect a call back. He was recalled in July 2021. While it may have been reasonable for the Claimant to wait a month or two after layoff to begin actively job searching, a passive job search over a period of many months while awaiting recall does not show an intent to return to the labour market as soon as a suitable job was available.

[70] Even after recall, it does not appear that the Claimant was actively seeking full-time work. He testified that he was working 40 hours biweekly after being recalled, which reflects only part-time hours. Even Claimants who are working are obligated to continue to seek suitable work As above, the Claimant's job search until October 5, 2020 to September 22, 2021 did not reflect an active effort to find full-time work.

[71] The Claimant has not shown that he had an intent to return to the labour market as soon as a suitable job was available.

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

[72] The Claimant hasn't made enough efforts to find a suitable job.

[73] Subsection 9.001 of the Regulations describes what efforts to find suitable employment are considered to be reasonable and customary efforts.[28]

[74] These activities include: 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,

[28] See section 9.001 of the Regulations.

contacting employers who may be hiring, submitting job applications, attending interviews and undergoing evaluations of competencies.

[75] 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.[29]

[76] As above, the Claimant's efforts to find a new job included awaiting recall to his existing employer, making six job applications, of which only four of them were jobs he actually could do. He also attended an interview in Dubai.

[77] The Commission says the Claimant did not make any true, sustained efforts to find suitable employment until October 2021, after the period of disentitlement.

[78] The Claimant's efforts weren't enough to meet the requirements of this second factor because they do not show that the Claimant was engaged in an active job search. There is more the Claimant could have done to find a suitable job. He could have registered with more online job sites. He could have sent out resumes to prospective employers. He could have applied for more jobs.

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

[79] The Claimant has set personal conditions that might have unduly limited his chances of going back to work.

[80] The Claimant says he has not done this. He says he would have worked full-time around his school schedule. He says if a full-time job conflicted with his courses, he would have tried to rearrange his schedule and if that was not possible, he would have dropped the program. As above, I have found the Claimant's intention was to accept work around his schooling and not to rearrange his schedule or drop the program if a job conflicted with his schooling.

[29] 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.

[81] The Commission says the Federal Court of Appeal has confirmed that a claimant who restricts his availability and is only available for employment outside of his course schedule has not proven availability for work. [30]

[82] I find the Claimant set a personal condition of only being available to work around his schooling. I agree with the Commission's statement of the law. The Claimant's classes occurred on most weekdays. As above, while the program was largely online and recorded, there still was a substantial amount of required attendance with at least one course per term along with all the quizzes, test and exams associated with each course. Although the Claimant may have been able to work in the evening at his airport job, many employers operate on a typical 9 a.m. to 5 p.m. schedule. The Claimant's restrictions to work outside his school hours was eliminating a pool of potential employers offering full-time work that operated on a typical 9 a.m. to 5 p.m. schedule.

[83] I find that the Claimant set a personal restriction that was unduly limiting his chances of returning to the labour market.

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

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

Conclusion

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

[86] This means that the appeal is dismissed.

Charlotte McQuade

Member, General Division – Employment Insurance Section

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[30] The Commission refers to *Duquet v. Canada (AG),* 2008 FCA 313 and *Canada (AG) v. Gauthier*, 2006 FCA 40.