



Citation: *JS v Canada Employment Insurance Commission*, 2022 SST 214

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: J. S.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (441473) dated December 2, 2021 (issued by Service Canada)

Tribunal member: Leanne Bourassa

Type of hearing: Teleconference

Hearing date: February 3, 2022

Hearing participants: Appellant

Decision date: February 17, 2022

File number: GE-22-79

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] J. S., the Claimant, is employed part-time as a school bus driver. On September 28, 2021 she applied for EI benefits when her ability to pick up extra hours had been reduced. The Canada Employment Insurance Commission (Commission) decided that the Claimant was disentitled from receiving Employment Insurance (EI) regular benefits as of September 19, 2021 because she wasn't available for work and was limiting herself to employment with her usual school board. 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 has not been limiting her search to full-time work within her current school board or part-time work that worked around her bus driving schedule.

[6] The Claimant disagrees and states that she has always been available for full-time work, but that she should not have to accept something that would not have the benefits and advantages that she had with the school board. If she could find something with equivalent or better benefits full-time, she would leave her part-time job.

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 was 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

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.

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

- registering for job-search tools or with online job banks or employment agencies
- networking
- contacting employers who may be hiring
- applying for jobs

[15] The Commission says that the Claimant didn't do enough to try to find a job. They asked her to describe her job search efforts and she only said she was checking the Job Bank.

[16] The Commission also says that Labour Market information shows that there were opportunities available to the Claimant but that her personal conditions make opportunities non-existent for her. They say she was limiting her job search to her current employer and that she was satisfied with part-time employment. She has not proven that she was seeking employment outside of her current employment.

[17] The Claimant disagrees. She was looking for jobs outside of the school board, but did not want to give up the bus driving job and lose the benefits that came with it. The Claimant says that her efforts were enough to prove that she was available for work.

[18] I find that the Claimant did not prove that she was making reasonable and customary efforts to find a suitable job.

[19] The Claimant did not keep a detailed list of any job search activities. She mentioned to the Commission that she would cover the sick leave of school secretaries

⁶ See section 9.001 of the Regulations.

at the school board. She would also have picked up extra hours as a school bus driver if they had been available. I do not consider this to be evidence of job search activity because the Claimant would be waiting to be called in by her current employer, not actively seeking opportunities.

[20] At the hearing the Claimant testified that she was looking for jobs all over the peninsula and outside of the school board. Her efforts included checking the job boards for the area and with her union every week. She had a resume prepared and was talking to employers who might be hiring. She was looking at retail jobs further away from her home. She had approached the local Tim Hortons, the lottery booth at the mall and a local restaurant. However, she does not say that she actually applied for any available jobs.

[21] I find the Claimant's testimony to be credible because what she told me was consistent with what she had said previously to the Commission. I was able to challenge her statements and she was direct and clear with her answers.

[22] The Claimant says that she was looking for full-time work that was equivalent or better than what she currently had with her part-time job. The problem is that I do not see any evidence of this. The few job inquires she talks about were positions that she would consider to supplement her existing part-time job.

[23] The Claimant has also said that no one is hiring. This could have been supported by showing that she had contacted multiple employers since September 2021. As it is, she has only described three or four job inquires she has made, and those for part-time jobs that could accommodate her schedule driving the bus. This does not show that she had looked for other jobs but was unable to find one.

[24] Unfortunately, I find that she hasn't proven that her efforts to find a job were reasonable and customary.

Capable of and available for work

[25] 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.

[26] 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

[27] The Claimant has shown that she wanted to go back to work as soon as a suitable job was available.

[28] I note that the Claimant never fully stopped working. Her application for benefits was made because the hours she had been working for the school board had been affected by the COVID-19 pandemic. While before the pandemic she could be filling more hours with bus driving through field trips, these extra hours were not available.

[29] The Claimant also explained that she had earned her bus driving license to secure a job with the school board. She had originally wanted a job as a secretary in a school and would fill in when the secretaries were out. She began driving the bus when there were no permanent secretary jobs available so she could keep benefits and be in line for a secretary job when one became available.

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.

[30] I find that the Claimant's actions show that she did not stop working, but was just subject to a reduction in hours because of the pandemic. She was still committed to working and would have worked more hours had they been available to her. She had long terms goals related to her career and was making choices that she believed would advance those employment goals.

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

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

[32] 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

[33] The Claimant's efforts to find a new job included talking to employers about part-time work around her current schedule, looking at job banks and trying to take extra hours with her current employer. I explained these reasons above when looking at whether the Claimant has made reasonable and customary efforts to find a job.

[34] Those efforts weren't enough to meet the requirements of this second factor because the evidence shows she was only looking at part-time jobs that could supplement her current job. She has not shown that she was looking for full-time employment that could match what she was earning driving the bus part-time.

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

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

[36] The Claimant says she hasn't done this because she was looking for jobs that would help get her to full time hours, while keeping her bus driving job part-time. She argues that she should not have to leave her union job with pension and benefits to take another full-time job.

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.

[37] The Commission says the Claimant restricted her availability for other employment to outside of business hours of 9 am to 4 pm on weekdays. She also imposes restrictions about an acceptable wage and mandatory employer benefits, both of which reduce the number of jobs available.

[38] While I don't believe the Claimant was restricting her search to jobs within her school board, I do find that she limited her search to part-time jobs that that would supplement her part-time job, or with equivalent or better conditions than her current job gave her.

[39] The Claimant says that she was available for a full-time job and would have left the school board for a full-time job with similar conditions. However, from her testimony I do not see that she was actually looking for such a job.

[40] The Claimant described talking to employers about possible job openings, saying that they were not able to accommodate her hours. This shows she was committed to her part-time job.

[41] She also argues that she should not be required to take a full-time job that provides less advantageous circumstances than her current job. That is true, but the evidence does not show that she was even seeking out or applying for any jobs that would compare to her current job for salary or benefits.

[42] I understand why the Claimant wanted to keep her part-time job and her status with her union. She believed she had opportunities in the near future to get a job as a secretary if she stayed employed with the school board. However, to qualify for EI benefits, you have to show you are available for work as soon as a suitable job is available. If the Claimant is committed to hanging on with her current employer for a possibility in the future, she is choosing to restrict her availability in the short term. This will disqualify her from receiving EI benefits.

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

[43] 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

[44] 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.

[45] This means that the appeal is dismissed.

Leanne Bourassa
Member, General Division – Employment Insurance Section