



Citation: *MT v Canada Employment Insurance Commission*, 2022 SST 647

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

Decision

Appellant: M. T.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (447829) dated January 13, 2022 (issued by Service Canada)

Tribunal member: Catherine Shaw

Type of hearing: Teleconference

Hearing date: April 8, 2022

Hearing participant: Appellant

Decision date: April 14, 2022

File number: GE-22-571

Decision

[1] The appeal is allowed in part

[2] The Claimant has shown that he is available for work as of April 20, 2022. This means that he isn't disentitled from receiving Employment Insurance (EI) benefits from that date. He remains disentitled from September 7, 2021, to April 19, 2021, because he has not proven that he is available for work while in school.

Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant is disentitled from receiving EI regular benefits as of September 7, 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 he is 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 is available for work.

[5] The Commission says that the Claimant isn't available because he was in school and was only willing to accept work around his course schedule.

[6] The Claimant agrees that he wasn't available for work while he was in school full-time from September 7, 2021, to December 10, 2021. But, he is taking fewer courses now and says that he is available for part-time work until his school finishes on April 20, 2022.

Matters I have to consider first

The Claimant agrees he wasn't available before December 11, 2021

[7] The Commission decided that the Claimant wasn't available for work starting September 7, 2021, because he was attending school. At the hearing, the Claimant clarified that he is only disputing his availability for work as of December 11, 2021. This is when he stopped attending school full-time. He reduced the number of classes he is taking in the semester starting January 2022, and he is now in school part-time..

[8] Because the Claimant is only disputing the Commission's decision about his availability as of December 11, 2021, I will only consider his availability from this date.

Post hearing documents

[9] At the hearing, I asked the Claimant details about his job search. He told me what he recalled and said there may be more information that he didn't have during the hearing. He said that he would check and provide any additional details of his job search if he could find it. I asked him to provide this evidence by April 11, 2022. The Claimant didn't send any further documents as of the date of this decision. So, I have considered the evidence already on record and the Claimant's testimony in making this decision.

Issue

[10] Is the Claimant available for work as of December 11, 2021?

Analysis

[11] Two different sections of the law require claimants to show that they are available for work.

[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

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

Employment Insurance Regulations (Regulations) give criteria that help explain what “reasonable and customary efforts” mean.²

[13] 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

The Claimant is only disentitled under one section of the law

[14] The Commission submitted that the Claimant was disentitled from receiving benefits because he isn’t available for work based on these two sections of the law.

[15] But, the Commission didn’t require the Claimant to prove that he made reasonable and customary efforts. When the Commission decided that the Claimant was disentitled, it didn’t discuss his job search efforts or ask him to prove that his efforts met certain criteria.⁵ Rather, its focus was on the Claimant’s attendance at school.

[16] The Commission must reconsider an issue before the Tribunal can make a decision about it.⁶ In this case, there’s no evidence that the Commission looked at whether the Claimant’s efforts to find work were reasonable and customary.

[17] I would be exceeding my jurisdiction if I considered whether the Claimant had made reasonable and customary efforts to find a suitable job. So, I will only look at whether the Claimant was capable of and available for work and unable to find suitable employment.

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 Some criteria help explain what “reasonable and customary efforts” means. These are set out in section 9.002 of the Act.

⁶ Section 113 of the Act says that I can’t decide a issue if it has never been reconsidered by the Commission under section 112 of the Act

Capable of and available for work

[18] 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.⁷ The Claimant has to prove the following:⁸

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

[19] 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

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

[21] The Claimant was working a part-time job while in school. But, his hours have been minimal since December 2021. He spoke with his employer and they said they couldn't schedule him for any more hours, so he has increased his efforts to find another part time job.

[22] The Claimant said that he has applied for six part-time jobs since December 11, 2021. He finds job opportunities online or through friends. He also goes into retail stores and asks about job openings.

[23] I think the Claimant's attitude and conduct in applying for jobs shows that he wanted to go back to work as soon as a suitable job was available.

⁷ See section 18(1)(a) of the 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.

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.

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

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

[25] The Claimant said at the hearing that he had an updated resume and he searched online for job postings on a regular basis. He also visited retail stores and inquired about jobs. He found out about some jobs through his friends and applied for them, as well. He has applied for six jobs since December 11, 2021.

[26] I believe the Claimant was looking for work. He made reasonable efforts to find a job. I find that he has met this factor.

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

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

[28] The Commission says the Claimant set a personal condition because he was only willing to accept employment around his course schedule.

[29] The Claimant said at the hearing that he was looking for part-time work that he could do around his course schedule until his school ends on April 20, 2022. After April 20th, he will take full-time or part-time jobs.

[30] The Claimant confirmed that the jobs he applied for were all part-time jobs, though they may offer full-time hours on his breaks from school.

[31] Availability must be demonstrated during regular hours for every working day and cannot be restricted to irregular hours resulting from a course schedule that significantly limits availability.¹⁰

[32] I think the Claimant's school obligations are a personal condition that might have unduly limited his chances of going back to work. The Claimant was only looking for

¹⁰ See *Attorney General of Canada v Bertrand*, A-613-81.

work that could be done around his course schedule. By limiting his availability during weekdays, he significantly reduced the jobs that he could have applied for or accepted.

[33] But, I accept the Claimant's statements that he will drop this condition when his school finishes on April 20, 2022. Once his school finishes, I find the Claimant will not have any personal conditions that unduly limit his chances of going back to work.

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

[34] Based on my findings on the three factors, I find that the Claimant has shown that he is capable of and available for work but unable to find a suitable job.

[35] I know that the Claimant said he is available for work. But this isn't enough to prove availability within the meaning of the law. By limiting his availability to jobs that he could work around her school schedule, the Claimant set a personal condition that unduly limited his chances of going back to work until April 20, 2022.

Conclusion

[36] The Claimant has shown that he is available for work within the meaning of the law starting April 20, 2022. Because of this, I find that the Claimant isn't disentitled from receiving benefits as of that date.

[37] The Claimant was not available for work from September 7, 2021, to April 19, 2022. So, he can't receive EI benefits during this period.

[38] This means that the appeal is allowed in part.

Catherine Shaw
Member, General Division – Employment Insurance Section