



Citation: *AA v Canada Employment Insurance Commission*, 2022 SST 619

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

Decision

Appellant: A. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (444595) dated December 23, 2021 (issued by Service Canada)

Tribunal member: Charlotte McQuade

Type of hearing: Videoconference

Hearing date: February 22, 2022

Hearing participants: Appellant

Decision date: March 9, 2022

File number: GE-22-266

Decision

[1] The appeal is allowed in part.

[2] A. A. (Claimant) has shown that she was available for work from June 28, 2021 to September 4, 2021.

[3] However, the Claimant hasn't shown that she had good cause for the delay in claiming Employment Insurance (EI) benefits. In other words, the Claimant hasn't given an explanation that the law accepts. This means that the Claimant's claims can't be treated as though it they were made earlier, on June 27, 2021.

[4] Even though the Claimant has proven her availability, since she has not shown good cause for the delay, the Claimant cannot be paid benefits from June 28, 2021 to September 4, 2021.

Overview

[5] In general, to receive EI benefits, you have to make a claim for each week that you didn't work and want to receive benefits.¹ You make claims by submitting reports to the Canada Employment Insurance Commission (Commission) every two weeks. Usually, you make your claims online. There are deadlines for making claims.² A claim for benefits must be made within three weeks after the week for which benefits are claimed. If a claim has not been made for four or more consecutive weeks, the first claim for benefits after that period shall be made within one week after the week for which benefits are claimed.

[6] The Claimant's benefit period began on May 2, 2021 and she completed her claimant reports (renewal claims) for the period from May 2, 2021 to June 26, 2021 in a timely manner. However, the Claimant made no further renewal claims until September 12, 2021, after the deadline to do so. The Commission started the Claimant's claim

¹ See section 49 of the *Employment Insurance Act* (EI Act).

² See section 26 of the *Employment Insurance Regulations*.

again from September 5, 2021. The Claimant wants her renewal claims to be treated as though they were made earlier, on June 27, 2021.

[7] For this to happen, the Claimant has to prove that she had good cause for the delay.

[8] The Commission decided that the Claimant didn't have good cause and refused the Claimant's request. The Commission says that the Claimant doesn't have good cause because her reason for delay was because she was moving and she did not know there was a deadline. The Commission maintains that there was nothing preventing the Claimant from completing her reports on time and she was aware of the need to complete the reports before benefits were received, as she had done that from May 2, 2021 to June 26, 2021. The Commission says a reasonable and prudent person in the Claimant's situation would have attempted to complete the reports in a timely manner.

[9] The Commission also disentitled the Claimant from benefits for the period from June 28, 2021 to September 4, 2021 for reason she had not proven her availability for work. The Commission says that although the Claimant said she had been conducting job search activities from June 28, 2021 to September 4, 2021, she was unable to provide a job search record when requested and was unable to provide documentary proof of the online job applications she said she had made.

[10] The Claimant disagrees. She says that she was preoccupied with many things including the loss of a job she had held for 15 years at a bank, a move from the city to a small town, and assisting her mother with errands and appointments when needed. She says completing the claimant reports just slipped her mind. She was unaware there was a deadline to complete her reports as it was her first time claiming EI benefits and she says she was not given any kind of alert or reminder that she had not filed her claims on time. The Claimant says she should not be penalized for such a mistake, given it was her first EI claim. She also maintains she was available for work and looking for work from June 28, 2021 to September 4, 2021. She says she was applying for jobs but did not know she had to keep track of the dates she applied for jobs.

[11] I must decide whether the Claimant has proven she has good cause for the delay and also whether she has proven that she was available for work from June 28, 2021 to September 4, 2021. 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 had good cause for the delay and that she was available for work. If she cannot show good cause for the delay, then even if she has proven she was available for work, she cannot be paid benefits from June 28, 2021 to September 4, 2021.

Issues

[12] Can the Claimant's claim reports be treated as if they were made on June 27, 2021?

[13] Has the Claimant proven her availability for work from June 28, 2021 to September 4, 2021?

Analysis

Antedate

[14] The Claimant's benefit period began on May 2, 2021 and she completed her claimant reports (renewal claims) for the period from May 2, 2021 to June 26, 2021 in a timely manner. However, she made no further renewal claims until September 12, 2021, after the deadline to do so. The Commission started the Claimant's claim again from September 5, 2021.

[15] The Claimant wants her claims for EI benefits to be treated as though they were made earlier, on June 27, 2021. This is called antedating (or, backdating) the claims.

[16] To get a claim antedated, the Claimant has to prove that she had good cause for the delay during the entire period of the delay.³ 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 had good cause for the delay.

³ See *Paquette v Canada (Attorney General)*, 2006 FCA 309; and section 10(5) of the EI Act.

[17] And, to show good cause, the Claimant has to prove that she acted as a reasonable and prudent person would have acted in similar circumstances.⁴ In other words, she has to show that she acted reasonably and carefully just as anyone else would have if they were in a similar situation.

[18] The Claimant also has to show that she took reasonably prompt steps to understand her entitlement to benefits and obligations under the law.⁵ This means that the Claimant has to show that she tried to learn about her rights and responsibilities as soon as possible and as best she could. If the Claimant didn't take these steps, then she must show that there were exceptional circumstances that explain why she didn't do so.⁶

[19] The Claimant has to show that she acted this way for the entire period of the delay. That period is from the day she wants her claim antedated to until the day she actually made the claim. So, for the Claimant, the period of the delay is from June 27, 2021 to September 12, 2021.

[20] The Claimant says that she had good cause for the delay because she was preoccupied and overwhelmed with many things including loss of a job she had held for 15 years, a move, and assisting her mother with errands and taking her to appointments when necessary. She says she was dealing with many things and she forgot to complete the reports. She did not know there was a deadline to complete the reports.

[21] The Claimant testified that in May 2021 she had to move away from Toronto, where she had grown up, to a small town four and a half hours away. She was busy dealing with the move and it was a very emotional transition. She felt overwhelmed.

[22] The Claimant explained that with all these things on her mind, completing the claimant reports just slipped her mind. She was unaware there was a deadline to

⁴ See *Canada (Attorney General) v Burke*, 2012 FCA 139.

⁵ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

⁶ See *Canada (Attorney General) v Somwaru*, 2010 FCA 336; and *Canada (Attorney General) v Kaler*, 2011 FCA 266.

complete her reports as it was her first time claiming benefits and she was not given any kind of alert or reminder that she had not filed her claims on time. She says if she had been aware there was a deadline, she would not have missed the deadline. She would have put a reminder in her phone. The Claimant says she has never missed a deadline when she knows there is a deadline. The Claimant says she should not be penalized for such a mistake, given it was her first EI claim. She says she did not see the reminder about the three week deadline to file the claimant reports in the statement contained in the biweekly online reports⁷ she had previously completed for the period from May 2, 2021 to June 26, 2021. She also did not see anything in her online Service Canada account, as she had not created one at that time.

[23] The Claimant explained that she did not realize that completing the reports was a priority as she was not aware there was a deadline. She was dealing with the many other things she had to do first. She was not checking her bank account so did not even realize she was not being paid until she tried to submit the next online report on September 12, 2021 and was not able to. She then checked her bank account and saw she had not been paid. So, this prompted her to contact the Commission.

[24] The Commission says that the Claimant hasn't shown good cause for the delay because her reasons for the delay were that she was moving and she did not know there was a deadline.

[25] The Commission says a reasonable and prudent person in a similar situation as the Claimant's would have attempted to complete the reports in a timely manner. The Commission points out that the Claimant had completed her reports in a timely manner from May 2, 2021 to June 26, 2021, which shows that she was aware that reports needed to be completed before benefits are received.

[26] The Commission says the Claimant did not do what a reasonable person in her situation would have done to satisfy herself as to her rights and obligations under the Act. The Commission says the Claimant cannot rely alone on her ignorance of the law

⁷ GD3-12.

to show good cause because a claimant is generally expected to take positive steps to ascertain her entitlement under the Act.

[27] The Commission says there was nothing preventing the Claimant from completing the claimant reports. The Commission says the move should not have prevented her from completing her reports for the entire period of the delay. As well, the Claimant provided a medical note showing she was able to work without medical restrictions, and she said she spent a minimal amount of time spent assisting her mother.

[28] I find the Claimant's reasons for delay are that she was preoccupied with many personal issues, including the recent loss of a job, a move and assisting her mother when needed. She did not know there was a deadline to complete the reports so she prioritized the other matters she was dealing with over completion of the reports.

[29] I find that the Claimant hasn't proven that she had good cause for the delay. Not knowing there was a deadline to complete the claimant reports is insufficient, alone, to show good cause for the delay. The Claimant has to show she acted as a reasonable and prudent person would have done in her circumstances. The Claimant has not done that. Although this was the Claimant's first time claiming EI benefits, she made no enquiries with the Commission about the deadline to file claimant reports and more significantly she did not carefully read the confirmation statement at the end of the prior claimant reports she had completed, which reminded of the three week deadline to file the reports.⁸

[30] I find a reasonable and prudent person, completing claimant reports for the first time, on their first EI claim, would have carefully reviewed the information provided in the claimant reports so they were able to comply with their obligations. That information made clear the deadline for filing claimant reports. By not reviewing that information, the Claimant did not act as a reasonable and prudent person would have done in her circumstances.

⁸ GD3-12 and GD3-15.

[31] I also find the Claimant did not take reasonably prompt steps to understand her obligations under the law. It took her approximately seven weeks after the report for the week of June 27, 2021 was due for the Claimant to contact the Commission to try to file her claimant reports. Taking seven weeks to make an enquiry is not acting in a reasonably prompt manner.

[32] I have considered whether there were exceptional circumstances that explain why the Claimant did not take reasonably prompt steps to understand her obligations under the law.

[33] The Claimant was dealing with many significant personal matters such as the recent loss of a job, a move to a small town, and assisting her mother when required. However, I cannot find that these circumstances, even considered cumulatively, were such that the Claimant was unable to comply with her filing obligations, or that she was unable to take reasonably prompt steps to understand her obligations. I reach this conclusion because the Claimant was able to complete her claimant reports for the period from May 2, 2021 to June 26, 2021, while she was dealing with all these same issues.

[34] There is also no evidence that the Claimant's medical condition prevented her from taking reasonably prompt steps from understanding her obligations under the Act. The Claimant has provided a medical report dated October 27, 2021 that says she was able to work full-time since her termination from her employer. An ability to work indicates that the Claimant would have had the ability to make an enquiry about her obligations. As well, the Claimant completed her claimant reports from May 2, 2021 to June 26, 2021 with her medical condition.

[35] So, the Claimant has not shown that there were exceptional circumstances that excused her from taking reasonably prompt steps from understanding her obligations under the Act.

[36] The Claimant has not shown good cause for the delay so her renewal claims cannot be backdated to start on June 27, 2021.

[37] Since I have decided the Claimant's renewal claims cannot be backdated to start on June 27, 2021, it is not necessary for me, therefore, to also decide whether the Claimant has proven her availability for work for the period from June 28, 2021 to September 4, 2021. Even if she has proven her availability, she cannot be paid for a period in which her claims were not filed. However, for the sake of completeness, I will also address the issue of availability.

Availability

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

[39] 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.⁹ The *Employment Insurance Regulations* (EI Regulations) give criteria that help explain what "reasonable and customary efforts" mean.¹⁰

[40] 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.¹¹ Case law gives three things a claimant has to prove to show that they are "available" in this sense.¹² I will look at those factors below.

Reasonable and customary efforts

[41] The Commission says in its submissions that it has disentitled the Claimant because she failed to prove that she was making reasonable and customary efforts to find a job. The Commission says, although the Claimant stated she was conducting job search activities, she was unable to provide a job search record when requested. She also was unable to provide proof of any online applications.

⁹ See section 50(8) of the *Employment Insurance Act* (Act).

¹⁰ See section 9.001 of the *Employment Insurance Regulations* (Regulations).

¹¹ See section 18(1)(a) of the Act.

¹² See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

[42] The Act says that 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.¹³ However, in order for the Commission 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.¹⁴

[43] The Claimant was asked about her job search and she described that to the Commission. She was unable to provide a job search record.¹⁵ However, I see no evidence that the Commission explained to the Claimant what reasonable and customary efforts were or told her that she would be disentitled if she failed to provide proof of those efforts. I am also not satisfied that the Claimant actually was disentitled by the Commission for failing to provide proof that she was making reasonable and customary efforts to find a job. The initial decision of October 28, 2021 says the Claimant was disentitled from June 28, 2021 because she was not capable of working, which meant she had not proven her availability for work.¹⁶ It does not refer to a disentitlement for failure to provide proof of reasonable and customary efforts. The reconsideration decision of December 23, 2021 modifies the initial decision about availability by terminating the disentitlement as of September 4, 2021.¹⁷ It says nothing either about disentitling the Claimant for failing to provide proof of reasonable and customary efforts to find a job.

[44] I find the Commission did not disentitle the Claimant because she had failed to provide proof of reasonable and customary efforts to find suitable employment but rather because she had not proven her availability for work. I find the Claimant is not, therefore, disentitled for that reason.

¹³ See section 50(1) of the Act.

¹⁴ 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.

¹⁵ GD3-32.

¹⁶ GD3-26.

¹⁷ GD3-34

Capable of and available for work

The parties agree the Claimant was capable of work

[45] Claimants must be capable of work to receive regular EI benefits.

[46] “Capable of work” refers to a claimant’s ability to perform the functions of the claimant’s regular or usual employment or some other suitable employment.¹⁸

[47] The Commission initially decided the Claimant had not proven her availability for work as she was not capable of work.¹⁹

[48] The Claimant provided a medical report dated October 27, 2021 from her doctor which said that the Claimant was able to work on a full-time basis since the loss of her job.²⁰

[49] The Commission now agrees the Claimant was capable of work during the period of disentitlement and had no medical restrictions.

[50] I find the Claimant was capable of work from June 28, 2021 to September 4, 2021.

Available for work

[51] 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.²¹

- 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.

¹⁸ See *Condon v. Umpire* (September 29, 1983), Doc. No. A-165-83 (Fed. C.A.)

¹⁹ GD3-26.

²⁰ GD3-30.

²¹ 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.

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

[52] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.²²

- **Wanting to go back to work**

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

[54] The Claimant's testimony and what the Commission says the Claimant told them about her intentions to go back to work are different. The Commission's notes provide that the Claimant said she was job searching by dropping in stores in the local town in May and June but she was not job searching at all in July and August. However, the Claimant testified that after her layoff, finding a job was her first priority and she was actively job searching from June 28, 2021 to September 4, 2021.

Information in the Commission's notes

[55] The Claimant spoke to the Commission on October 25, 2021. She was asked about her job search in May and June. The notes provide that the Claimant said she was living in her friend's cottage out of town where there was very little reception and the only place she could apply for work was in a small town near her. The notes provide that the Claimant said she drove to town some days and she dropped into the grocery store, bakery and deli to see if they need help. She said she did this often in May and June but during the months of July and August, she was caring for her sick mother and driving her to medical appointments. As well, her own depression was really bad during July and August so she couldn't accept work. She said she had recovered enough to work part time and may be able to work full time if was in a place that didn't trigger her anxiety. The notes say the Claimant advised she hadn't applied for any jobs or had any

²² 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.

interviews since she was laid off in February. The only thing she had done was to stop in the little town outside of where she lives and asks if they need anyone.²³

[56] The Claimant spoke to the Commission's reconsideration agent on December 23, 2021. The notes provide that the Claimant was asked for a job search and she said she did not know that she was supposed to keep track of her job search. She confirmed that during the summer she had been seeking employment in the local area, although she had no record of where she applied or had enquired about jobs. The Claimant said she had been networking for jobs, trying to create her Linked In profile and had been working with X to improve her resume. She said she also had been applying for jobs through the Job Bank, but had not been tracking, or keeping a written record of her job search.²⁴ The Claimant provided the reconsideration agent with some names of the employers where she applied for jobs between September, 2021 and November 2021.²⁵

What the Claimant said at the hearing

[57] The Claimant testified that her last day of work was April 26, 2020. She says she started to look for work the very next day by searching online through Indeed and the City of Toronto website. She also spoke to her colleagues and prior contacts in the law industry to let her know if anything came up. The Claimant explained that she could not afford to live in Toronto so she moved in with her boyfriend in a small town about four and half hours from Toronto.

[58] The Claimant said going back to work was her number one goal. She says she had no restrictions and would have dropped everything to work as this was her priority. The Claimant related that she has been working solid for 22 years and was not comfortable not working. The Claimant explained that, after layoff, her employer arranged for her to work with a career development company (X) to help link her with jobs. She worked with a career coach by email, phone and zoom. She received help updating her resume. In July 2021, she worked on updating her "Linked In" profile. She

²³ GD3-22.

²⁴ GD3-32.

²⁵ GD3-32.

says she also engaged in interview coaching sessions. She watched some seminars and videos on the agency's website on interviewing and how to improve her resume.

[59] The Claimant related that, after moving, initially she was job searching by dropping off resumes. From June 28, 2021 to September 4, 2021 she says she dropped her resume off at a bank, a chartered accountant office, a public health location, a coffee shop, a gourmet deli and grocery store, the liquor store and a wellness centre. Her boyfriend, who had lived in the town for 30 years, also spread the word that she was looking for work. The Claimant said she dropped off her resumes as she was also trying to meet people and she thought face to face job searching in the small town would be more impactful.

[60] The Claimant says, at the same time, she was networking with her former colleagues at the bank by phone and through social media to try to find work. She also made online applications through the Job Bank but she did not record the dates of application, just the job title and job id. She thought Service Canada would be able to track her applications through the website. She did not know until she spoke to the Commission's reconsideration agent that this was not the case. The Claimant related that she also looked for jobs and submitted jobs online through Indeed and the City of Toronto website and Linked in. She said she was applying for jobs online that were located between the small town she was living in and Kingston, Ontario.

[61] The Claimant said from June 28, 2021 to September 4, 2021 her routine was to job search online for a few hours in the morning to find jobs to apply to and then in the evening, she would send out resumes. The Claimant said that with every application, she had to tweak her resume. She says she was spending about two to four hours a day job searching.

[62] The Claimant testified about jobs she had applied to from May, 2021 to the end of the year. She was unsure of the dates of applications as she had not kept those. She said she applied to multiple jobs at Queens University including an administrative and financial assistant role, departmental and financial support role, an HR support job and an event planner role. The Claimant says she thinks she made about six applications to

Queen's University and she thinks these were in the period from June 28, 2021 to September 4, 2021. The Claimant says she also applied at the Academy of Learning College in Kingston for an event planner role. She applied at St. Lawrence College for an administrative officer job and an administrative assistant job. She also recalls applying for some event planner jobs. The Claimant says she made these applications through the Job Bank, Ontario Jobs and Indeed. She confirmed she has no documentary record showing the dates of her online job applications or the responses from the employers for the period of disentitlement. The only responses she got were from the Academy of Learning in November, 2021. She says once the reconsideration agent made clear to her she needed to record the dates of application and that the Job Bank didn't track the dates, she started to keep track of the dates.

[63] The Claimant takes issue with the notes the Commission's first agent took.²⁶ She says when she spoke to that agent, it may have been a day where she had been feeling low and she might have used the word "depressed". However, she says the agent was digging for certain words out of her and she felt like she was leading her in a certain way. The agent suggested the Claimant should be receiving medical benefits. The Claimant says she told the agent that she did not think she was suitable for medical benefits as she had the same depression and was on medication even when she had previously been working. The Claimant says she explained that she was just feeling overwhelmed with the move. The Claimant does not recall saying she could not accept work in July or August because of her depression. The Claimant says she feels this notes of this conversation were exaggerated from what she said. She does not recall telling this agent she could only take part-time work. She says that she talked about her depression but never said she was not able to work. The Claimant it was uncomfortable conversation and she felt her disclosure of the fact she had depression was used against her. The agent asked to get a medical note saying she could work so the Claimant provided that. The Claimant says it also was an exaggeration for the agent to say she was caring for her mother. She told her that her mom needed a little help.

²⁶ GD3-22 to GD3-24.

[64] The Claimant points out that the comments in the notes about her having no internet are also incorrect. She says she said the reception was not great in all areas of their house but they did have phone signal in some areas and they did have internet. As well, their neighbour would allow her to use the phone and internet. The Claimant says she made a comment about the internet to the agent and it was blown out of proportion by the agent. The Claimant says she told the agent she was applying by dropping off her resumes. The Claimant was not sure if she told the agent she was applying online as well but she is sure she told her she was using multiple avenues to find a job. The Claimant explained that in a small town, things don't operate online so this is why she was dropping off resumes.

So, did the Claimant want to go back to work as soon as a suitable job was available?

[65] Yes. I find she did. I am satisfied the Claimant's intention was to go back to work as soon as a suitable job was available and she was making efforts to find work from June 28, 2021 to September 4, 2021.

[66] The Claimant raised objections to the content of the notes of the first agent she spoke to. She said the conversation was difficult. I find it more likely than not that there may have been either a misunderstanding or miscommunication between the Claimant and the agent as to Claimant's intentions and ability to work. I accept the Claimant's evidence, given under oath, that finding a job was a top priority and she was actively looking for work. I find the Claimant was job searching by working with a career counselling agency to update her resume and her "Linked In" profile. She also had interview coaching sessions and was watching various videos related to job searching. As well, the Claimant was dropping off resumes at local businesses and networking during the period of disentitlement.

[67] I do not accept, however, that the Claimant was applying for jobs online from June 28, 2021 to September 4, 2021. Although she has given evidence of online job applications she made, there is no documentary evidence showing when these applications were made. She said that the applications to Queen's University were

during this period. However, the reconsideration agent's notes say she applied to those jobs between September and November 2021. So, I am not satisfied the online applications were made during the period from June 28, 2021 to September 4, 2021. I find it more likely than not that the Claimant's online job applications began after September 4, 2021.

[68] However, even without online job applications, the Claimant was conducting an active job search, using various methods to find a job. I am satisfied that she wanted to go back to work as soon as a suitable job was available.

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

[69] The Claimant has made enough efforts to find a suitable job.

[70] Subsection 9.001 of the Regulations describes what efforts to find suitable employment are considered to be reasonable and customary efforts. 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, contacting employers who may be hiring, submitting job applications, attending interviews and undergoing evaluations of competencies.

[71] 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.²⁷

[72] The Commission says the Claimant originally stated that she would look for work in the town near her, and that she had not applied for any jobs apart from that. She also said she would only accept employment that did not trigger her anxiety. She was asked to provide evidence of her job search efforts but could only verbally provide information from September 2021. She provided no evidence of an online job search.

²⁷ 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.

[73] As above, I have found the Claimant's efforts to find a new job during the period of disentitlement included working with a career counselling agency to update her resume and her "Linked In" profile, engaging in interview coaching sessions and watching various videos related to job searching. She also was dropping off resumes at local businesses and networking during the period of disentitlement. Although the Claimant was not applying for jobs online, there is no legislative requirement that she be applying for jobs online.

[74] The Claimant's efforts are enough to meet the requirements of this second factor because they show she was she engaged in a number of the activities considered to be reasonable and customary efforts to find a job.

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

[75] The Claimant didn't set personal conditions that might have unduly limited her chances of going back to work.

[76] The Claimant says she hasn't done this. She says she set no restrictions on accepting work. She says she would have dropped everything to accept a job.

[77] The Commission says the Claimant stated that she would look for work in the town near her, and that she had not applied for any jobs apart from that. She also said she would only accept employment that did not trigger her anxiety.

[78] I find that the Claimant did not set any personal conditions that might have unduly limited her chances of going back to work. As above, I find there was a miscommunication or misunderstanding between the Claimant and the initial agent she spoke to about how the Claimant's mental health impacted her ability to work. The Claimant testified she never told the agent she could not work or could only accept part-time work. The Claimant said she had worked despite her depression in the past. I find it more likely than not that the Claimant would have accepted employment, despite her condition and she did not put impose any restrictions on the type of employment she would have taken because of her medical condition.

[79] As above, the Claimant was applying for work in the town, but I don't accept that she had set a restriction to only look for work there. She also was networking with former colleagues at the bank she had worked for in Toronto and colleagues in the law industry and also was working with the career counselling agency to find work.

[80] I find the Claimant has not set personal restrictions that unduly limited her chances of returning to the labour market.

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

[81] Based on my findings on the three factors, I find that the Claimant has shown that she was capable of and available for work but unable to find a suitable job from June 28, 2021 to September 4, 2021.

Conclusion

[82] The appeal is allowed in part.

[83] I find that the Claimant has shown that she was capable of and available for work but unable to find a suitable job from June 28, 2021 to September 4, 2021.

[84] However, the Claimant hasn't proven that she had good cause for the delay in making her claims for benefits throughout the entire period of the delay. This means that her claims can't be treated as though they were made earlier, on June 27, 2021.

[85] The result is that she cannot be paid benefits from June 28, 2021 to September 4, 2021.

Charlotte McQuade
Member, General Division – Employment Insurance Section