



Citation: *BF v Canada Employment Insurance Commission*, 2022 SST 493

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

## Decision

**Appellant:** B. F.  
**Representative:** S. F.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (446437) dated January 17, 2022  
(issued by Service Canada)

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**Tribunal member:** Teresa M. Day

**Type of hearing:** Teleconference

**Hearing date:** April 26, 2022

**Hearing participants:** Appellant  
Appellant's representative

**Decision date:** May 2, 2022

**File number:** GE-22-630

## Decision

[1] The appeal is allowed.

[2] The disentanglement imposed because the Appellant failed to prove she was unemployed must be lifted. The Appellant has rebutted the presumption that she was working full weeks as a self-employed dog walker.

## Overview

[3] The Appellant started a claim for regular EI benefits on September 27, 2020. While she was on claim, she reported earnings from a dog-walking business that she started on February 23, 2021. The Respondent (the Commission) decided that the Appellant was working as a self-employed dog-walker and, therefore, was not considered unemployed. The Commission imposed a retroactive disentanglement on her claim starting from March 1, 2021.

[4] On July 19, 2021, the Appellant contacted the Commission to ask that the disentanglement be lifted because the dog-walking business was just something she was doing to earn some extra money while she was looking for work. The Commission terminated the disentanglement, but maintained that the Appellant could not be paid EI benefits between March 1, 2021 and July 16, 2021 because she was operating a business and was not considered unemployed.

[5] The Appellant asked the Commission to reconsider the disentanglement. She said she was always willing to accept full-time employment. She also explained that the only reason she had said that she considered the dog-walking business to be her main source of income was because she had no other income at the time. The Commission was not persuaded, and maintained the disentanglement on her claim. The Appellant appealed that decision to the Social Security Tribunal (Tribunal).

[6] A claimant who is involved in a business may not be entitled to EI benefits.

[7] The law says you can receive EI benefits for each week you are unemployed.<sup>1</sup> A week of unemployment means any week you don't work a full work week.<sup>2</sup> But if you are self-employed, the law assumes that you work full work weeks in your business.<sup>3</sup> This means you can't receive EI benefits.<sup>4</sup>

[8] However, there is an exception to this presumption if your level of involvement in the business is limited.<sup>5</sup> The exception applies if your level of involvement is so minor in extent that a person wouldn't normally rely on that self-employment as their main means of earning a living.<sup>6</sup>

[9] I must decide if the Appellant's involvement in her dog-walking business between March 1, 2021 and July 16, 2021 (the period of the disentitlement) was so limited that the exception applies.<sup>7</sup> She must prove this on a balance of probabilities, which means she has to show it is more likely than not that her involvement is limited.

[10] I find that the Appellant has rebutted the presumption that she was working full weeks as a self-employed dog walker during the period of the disentitlement. These are the reasons for my decision.

## Issue

[11] Was the Appellant's level of involvement in her business so limited that she wasn't actually working full work weeks as a self-employed dog-walker during the period of the disentitlement?

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<sup>1</sup> Section 9 of the *Employment Insurance Act* (Act) sets out this rule.

<sup>2</sup> See section 11 of the Act.

<sup>3</sup> See section 30(1) of the *Employment Insurance Regulations* (Regulations).

<sup>4</sup> See *Marlowe v Canada*, 2009 FCA 102.

<sup>5</sup> See section 30(2) of the Regulations. It refers to a claimant being involved to "a minor extent" (in other words, their involvement is limited). Also see *Martens v Canada (Attorney General)*, 2008 FCA 240.

<sup>6</sup> See section 30(2) of the Regulations and *Martens v Canada (Attorney General)*, 2008 FCA 240.

<sup>7</sup> See *Canada (Attorney General) v Falardeau*, A-396-85, and *Lemay v Canada Employment Insurance Commission*, A-662-97

## Analysis

[12] The law says there are 6 factors I must consider in order to determine the level of the Appellant's involvement in her business<sup>8</sup>:

- a) How much time did the Appellant spend on her self-employment?
- b) How much has the Appellant invested in her business, and what are those investments (such as money, property, goods, and resources)?
- c) Financially, has the Appellant's self-employment been a success or failure?
- d) Was the Appellant's self-employment meant to be ongoing?
- e) What is the nature of the Appellant's self-employment or business?
- f) Did the Appellant intend to and want to find another job quickly?

### Issue 1: Analysis of the 6 factors

#### a) Time Spent

[13] The amount of time the Appellant spent on her dog-walking business shows limited involvement because it was not a significant number of hours at any point during the period of the disentitlement. Her time spent maxed out at less than 15 hours per week – and only for a short period of time.

[14] The Appellant testified that:

- She was working full-time on a horse farm before she was laid off in June 2020 due to the Covid-19 pandemic. Working with horses is her chosen field of work.
- She had also been accepted into the Equine Massage Therapy course at Trios College in London, Ontario, but the course was delayed due to the pandemic.

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<sup>8</sup> Section 30(3) of the Regulations sets out these six factors. This decision paraphrases those six factors for plain language.

- She was looking for work but not having any luck.
- In late-February 2021, she decided to start doing some dog-walking to earn a bit of extra money. She was receiving EI benefits, but it was not enough to cover her expenses.
- She decided on dog-walking because there was no special training involved and it wouldn't take much to let people know she was available to do it. It was also an activity that would be low risk for Covid because it was outside.
- In March 2021, she was spending less than 15 hours per week in total on her business, mainly working on developing her website and putting up posters around her neighbourhood. And she started walking a few dogs.
- In April and May 2021, she was spending between 10-15 hours per week in total on her business, walking some dogs during the week and trying to think of ways to find more clients.
- By June 2021, she topped out at around 15 hours per week in total on her business, but it was "stagnating" because she wasn't getting replies or referrals to increase the number of clients.
- There may have been a week or two in July when she worked 15 hours at dog-walking. But that was exceptional and it never exceeded that during the period of the disentitlement<sup>9</sup>.
- The Commission stopped her EI benefits in March 2021, when she started reporting her earnings on her bi-weekly claimant reports.
- She is 28 years old and living on her own. After her EI benefits stopped, she had no income apart from dog-walking.

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<sup>9</sup> The Appellant's hours weekly hours worked are listed on the Income Reporting Summary attached to her Request for Reconsideration (at GD3-28).

- She only started doing some dog-walking because the Covid-19 pandemic was still going on and she hadn't found a job or started her course. She wanted to "show some initiative" and do something on the side while she looked for work that could actually support her.
- She contacted the Commission in July 2021 because the hours had started to slide again.

[15] I find that the time spent on the business by the Appellant was not commensurate with that of a person who would normally rely on that level of self-employment as their principal means of livelihood. The Appellant is an adult who was working full-time in her field and supporting herself from her employment prior to being laid off due to the pandemic. Spending less than 15 hours per week is not a level of time spent on self-employment that is commensurate with a principal means of livelihood.

#### **b) Investments**

[16] The amount of money and resources the Appellant invested in her dog-walking business shows extremely limited involvement because her expenditures were nominal.

[17] The Appellant's Profit and Loss Statement for the 5-month period of March 7 to August 14, 2021<sup>10</sup> shows total business expenses of \$5,676.11, all of which were operating expenses. There were no significant cash outlays involved in the start-up of the business.

[18] I find that the Appellant's investment in the business was not commensurate with that of a person who would normally rely on that level of self-employment as their means of livelihood.

#### **c) Financial Success**

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<sup>10</sup> At GD3-27.

[19] The financial results of the Appellant's self-employment as a dog-walker also show limited involvement because she had nominal income from the business.

[20] The Appellant's Profit and Loss Statement for the 5-month period March 7 to August 14, 2021<sup>11</sup> shows net income of \$3,629.69 and profit of \$654.20.

[21] I find that the financial success of the Appellant's self-employment was not commensurate with that of a person who would normally rely on that level of self-employment as their principal means of livelihood.

#### **d) On-going Self-employment**

[22] The Appellant's intentions with respect to her dog-walking business show limited involvement because she always intended to return to full-time employment in her field.

[23] The Appellant testified that:

- She graduated from high school in 2012.
- For the next 6 years, she struggled with a number of serious health issues, including endometriosis and a benign brain tumour. During this time, she was extremely ill, "in and out of hospital", participated in numerous clinical drug trials, and underwent 2 major surgeries with prolonged periods of recovery.
- As a result of these complex health problems, she was only able to work part-time, on and off, at a local Tim Horton's.
- When she finally started feeling, she was able to pursue a career in her chosen field. In 2019, she found full-time employment working with horses.
- She worked at the horse farm for just over 1 year before being laid off due to Covid.

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<sup>11</sup> At GD3-27.

- During that time, she was accepted into the Equine Massage Therapy program at Trios College in London, Ontario.
- Unfortunately, her college program was also postponed due to Covid.
- She looked for work, but jobs were scarce due to Covid. She had a couple of job interviews, but nothing came of them. So she decided to “show some initiative” and start doing some dog-walking to keep busy and earn some extra money while she continued her job search.
- It was always her intention to pursue her chosen career of working with horses. She is still looking for work in her field and waiting for the Equine Massage Therapy course to be offered again when Covid allows for it.
- She was never going to abandon her career plans just to become a self-employed dog-walker. At most, it was something she thought she might keep going on the side, perhaps on nights and weekends.
- She denies that she ever told the Commission’s agents that she meant for dog-walking to be her main source of income. When she answered that question, she was just saying that dog-walking was her only source of income at the time.

[24] I find that the Appellant’s self-employment as a dog-walker was not intended to be on-going or at the level required to sustain a full-time business. I therefore find that her engagement in her dog-walking business was not commensurate with that of a person who would normally rely on that level of self-employment as their principal means of livelihood.

#### **e) Nature of the Business**

[25] The nature of the Appellant’s self-employment as a dog-walker was spontaneous and uncommitted. This shows limited involvement in the business.

[26] She testified that the idea “came to her” as a way to show some initiative and earn some extra money while she waited to find work and for her course to start. She



knew she didn't need any prior experience and wouldn't have to spend any money to get started. She already had everything she needed, namely a car and a cellphone, so she quickly came up with a name, designed her own webpage, and printed some posters that she put up in her neighbourhood.

[27] While the Appellant may ultimately have elected to be available for dog-walking after hours or on weekends once she returned to work in her field, I accept her testimony that she never intended to earn her living as a dog-walker. I acknowledge the Commission's concerns about the Appellant apparently having changed her answers after the negative decision on her claim. But I give greatest weight to the Appellant's testimony at the hearing. This is because the particulars about the nature of her dog-walking self-employment and what she was doing to find work were provided through active adjudication during the hearing. The Appellant expressed frustration about how the Commission recorded her answers during the telephone interviews<sup>12</sup>, and testified that she had difficulty explaining her situation to the Commission. I accept the Appellant's explanation for why her testimony at the hearing differed from her statements to the Commission.

[28] I therefore find that the nature of the Appellant's self-employment as a dog-walker was not commensurate with that of a person who would normally rely on that level of self-employment as their principal means of livelihood.

**f) Intention and Willingness to find another job**

[29] I next considered whether the Appellant engaged in a *bona fide* job search during the period of the disentitlement.

[30] She testified that:

- She was looking for work the whole time she was doing the dog-walking.

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<sup>12</sup> At GD3-18 and GD3-20.

- She was applying for both full-time and part-time positions – and would have done anything because she had to support herself and pay her expenses.
- There weren't a lot of jobs to apply for because of Covid, but she still managed to get invited to a few job interviews. Unfortunately, nothing came of them.
- She denies telling the Commission that she was not looking for work because she wanted to rely on dog-walking as her main source of income. It was apparent to her that dog-walking would only be a little bit of extra money on the side.

[31] After the hearing, the Appellant provided a summary with some of the details of her job search activities (GD5)<sup>13</sup>.

[32] The Commission provided its representations in response (GD6), and submitted that her job search efforts did not indicate a sincere desire to return to the labour market as soon as a suitable offer of employment was received<sup>14</sup>.

[33] I disagree with the Commission on this point.

[34] The Appellant's job search efforts support that she was actively looking for work (both in her field and elsewhere), and willing to accept full-time employment outside of her self-employment as a dog-walker.

[35] I acknowledge the Commission's concerns about the Appellant's credibility. They point out that at the start of her claim, the Appellant said she was seeking work outside of her self-employment. But when she was contacted later on, she said she

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<sup>13</sup> **Note:** the issue on this appeal is **not** whether the Appellant has proven she was available for work. The Appellant has only provided this overview of her job search efforts for purposes of showing her intention and willingness to find another job while dog-walking on the side.

<sup>14</sup> As set out in footnote 13 above, this language relates to the test for availability. The Appellant has not provided the overview in response to a query regarding her availability, but rather to demonstrate her intention and willingness to find work outside of her self-employment.

would not accept full-time employment because she was heavily involved in her business<sup>15</sup>. I understand why this would give the Commission pause.

[36] But again, I give greatest weight to the Appellant's testimony at the hearing. This is because the particulars about what she was doing to find work were provided through active adjudication during the hearing. The Appellant expressed frustration about how the Commission recorded her answers on this issue during the telephone interviews<sup>16</sup>. She pointed to the self-employment questionnaire that she herself completed on-line on August 16, 2021<sup>17</sup>. This supports her testimony. She also testified that she had difficulty explaining her situation to the Commission, and was trying to relay that dog-walking was her only source of income at the time. I accept the Appellant's explanation for why her testimony at the hearing differed from her statements to the Commission.

[37] I therefore find that her job search efforts were demonstrative of an individual who was unemployed and not working a full working week in their self-employment.

## **Issue 2: What was the Appellant's level of involvement in her business?**

[38] The Appellant's level of involvement in her self-employment as a dog-walker was so limited that the exception applies.

[39] I have considered all 6 factors, and all of them suggest that her involvement was not commensurate with that of a person who would normally rely on that level of self-employment as their principal means of livelihood.

[40] Two of the 6 factors are especially important. Case law says that how much time you spend on the work and whether you intend to or want to find another job quickly are important factors to consider.<sup>18</sup> As per my analysis under Issue 1 above, both of these factors support a conclusion that Appellant's self-employment was not commensurate with that of a person who would normally rely on that level of self-employment as their

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<sup>15</sup> See the Commission's representations at GD4-7.

<sup>16</sup> At GD3-18 and GD3-20.

<sup>17</sup> At GD3-6 to GD3-11.

<sup>18</sup> See *Charbonneau v Canada (Attorney General)*, 2004 FCA 61.

principal means of livelihood. The Appellant spent less than 15 hours per week on self-employment over a 5-month period, and her job search activities were directed towards full-time positions. Both of these things show she was unemployed.

[41] I therefore find that the Appellant has rebutted the presumption that she was working full working weeks during the period of the disentitlement. I further find that she has proven she was unemployed from March 1, 2021 to July 16, 2021.

[42] This means she may receive EI benefits during the period of the disentitlement because these were weeks when she was unemployed.

## **Conclusion**

[43] To succeed on her appeal<sup>19</sup>, the Appellant had to prove that she was unemployed during the period of the disentitlement imposed on her claim, namely from March 1, 2021 to July 16, 2021.

[44] She has proven that her involvement in business as a dog-walker was to such a limited extent that a person would not normally rely on this self-employment as a principal means of livelihood. As a result, the exception to the prohibition against receipt of EI benefits while self-employed applies to her.

[45] This means that the disentitlement imposed on her claim for failing to prove she was unemployed between March 1, 2021 and July 16, 2021 must be lifted.

[46] The appeal is allowed.

**Teresa M. Day**  
**Member, General Division – Employment Insurance Section**

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<sup>19</sup> Or, said differently, to be entitled to receive EI benefits from March 1, 2021 to July 16, 2021.