



Citation: *MP v Canada Employment Insurance Commission*, 2022 SST 803

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

**Decision**

**Appellant:** M. P.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (454328) dated January 18, 2022  
(issued by Service Canada)

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**Tribunal member:** Solange Losier  
**Type of hearing:** Teleconference  
**Hearing date:** May 18, 2022  
**Hearing participant:** Appellant  
**Decision date:** May 30, 2022  
**File number:** GE-22-809

## Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

[2] The Claimant has not shown that she was available for work. This means that she cannot receive Employment Insurance (EI) regular benefits.

## Overview

[3] The Claimant worked as a Registered Practical Nurse (RPN) at a long-term care home. She applied for EI regular benefits after she was suspended from her job.<sup>1</sup>

[4] The Canada Employment Insurance Commission (Commission) decided that the Claimant was not entitled to receive EI regular benefits from November 7, 2021 because they say she was not available for work.<sup>2</sup>

[5] The Commission says that the Claimant was not available because she did not make enough efforts to find suitable employment and did not provide a job search record.<sup>3</sup> As well, they say she has not made any job applications.

[6] The Claimant disagrees and states that she was available for work.<sup>4</sup> She says that she made efforts to find work. As well, she said that her back condition, religious beliefs and vaccinations affect her ability to find suitable work.

[7] 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 available for work.

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<sup>1</sup> See application for benefits at GD3-3 to GD3-19.

<sup>2</sup> See initial decision at GD3-22 to GD3-23 and reconsideration decision at GD3-31 to GD3-32.

<sup>3</sup> See Commission's representations at GD4-1 to GD4-6.

<sup>4</sup> See notice of appeal at GD2-1 to GD2-13.

## **Matters I have to consider first**

### **There is a related Tribunal file**

[8] This matter was heard with a related Tribunal file because it involved the same Claimant.<sup>5</sup> However, separate decisions were issued because the legal issues were different in each file.

### **The Claimant asked for an adjournment**

[9] Prior to the hearing, the Claimant wrote to the Tribunal and asked to adjourn her case to a future date.<sup>6</sup> She explained that she needed more time to prepare for both cases.

[10] I denied the Claimant's request for an adjournment for a few reasons.<sup>7</sup> First, she had enough time to prepare for both cases because the notice of hearing was sent to the Claimant on March 24, 2022, which was approximately two month's before the scheduled hearing date.<sup>8</sup> Second, her adjournment request could have been made earlier because the Tribunal had already booked time to hear both cases on the scheduled date.

[11] Lastly, I note that the Claimant provided a written statement outlining her arguments in advance of the hearing.<sup>9</sup>

### **Documents submitted after the hearing**

[12] At the hearing, the Claimant said there was a Tribunal case at the General Division of this Tribunal that she wanted to submit to support her position on her

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<sup>5</sup> See Tribunal file GE-22-693.

<sup>6</sup> See Claimant's adjournment request at GD7-1.

<sup>7</sup> See GD8-1 to GD8-3.

<sup>8</sup> See notice of hearing at GD1-1 to GD1-3.

<sup>9</sup> See GD9-1 to GD9-19 and GD10-1 to GD10-14.

availability.<sup>10</sup> In that particular case, the Tribunal Member had decided that that the Claimant was available for work and entitled to EI benefits.

[13] I allowed the Claimant to submit the case because was relevant to the issue of availability for work. The case was shared with the Commission, however they did not provide any comments about the case as-of the date of this decision.

[14] First, I acknowledge that cases from the Tribunal are only persuasive and not binding on me. Second, I reviewed the case submitted by the Claimant, but I was not persuaded by it because it was appealed by the Commission and overturned by the Appeal Division of this Tribunal.<sup>11</sup>

[15] When the Appeal Division of this Tribunal reviewed the case, they said that the General Division made an error because the evidence had shown that the Claimant had in fact limited his job search efforts. Ultimately, the Appeal Division decided that the Claimant was not available for work and unable to find a suitable job.

## Issue

[16] Was the Claimant available for work from November 7, 2021?<sup>12</sup>

## Analysis

[17] 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.

[18] 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.<sup>13</sup>

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<sup>10</sup> See *PS v Canada Employment Insurance Commission*, 2021 SST 921 at GD11-7 to GD11-11.

<sup>11</sup> See *Canada Employment Insurance Commission v PS*, 2022 SST 180.

<sup>12</sup> This is the date that Claimant was indefinitely disentitled to EI benefits; see GD3-22 to GD3-23 and GD3-31 to GD3-32.

<sup>13</sup> See section 50(8) of the *Employment Insurance Act (Act)*.

[19] The *Employment Insurance Regulations* (Regulations) give criteria that help explain what “reasonable and customary efforts” mean.<sup>14</sup> I will look at those criteria below.

[20] 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.<sup>15</sup> Case law gives three things a claimant has to prove to show that they are “available” in this sense.<sup>16</sup> I will look at those factors below.

[21] The Commission decided that the Claimant was disentitled from receiving EI benefits because she was not available for work based on these two sections of the law.<sup>17</sup>

### **Reasonable and customary efforts to find a job**

[22] The law sets out criteria for me to consider when deciding whether the Claimant’s efforts were reasonable and customary.<sup>18</sup> I have to look at whether her efforts were 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.

[23] 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:<sup>19</sup>

- preparing a résumé or cover letter
- registering for job-search tools or with online job banks or employment agencies
- contacting employers who may be hiring
- applying for jobs
- attending interviews

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<sup>14</sup> See section 9.001 of the *Employment Insurance Regulations* (Regulations).

<sup>15</sup> See section 18(1)(a) of the Act.

<sup>16</sup> See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

<sup>17</sup> See initial decision at GD3-22 to GD3-23 and reconsideration decision at GD3-31 to GD3-32.

<sup>18</sup> See section 9.001 of the Regulations.

<sup>19</sup> See section 9.001 of the Regulations.

[24] I find that the Claimant has not proven that her efforts to find a job were reasonable and customary for the following reasons. This means that she is not entitled to EI benefits under this section.<sup>20</sup>

[25] In my view, the Claimant's efforts were not sustained or ongoing from November 7, 2021. 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 and applying for suitable jobs.

[26] I acknowledge that the Claimant made some efforts to find work, such as looking at jobs online, registering for job alerts, and submitting her resume to job agencies.<sup>21</sup> However, these efforts were not reasonable and customary because she did not actively make any job applications, broaden her job search and seek out suitable opportunities.

[27] Also, the Claimant's evidence on whether she actually applied for any jobs was inconsistent. For example, on December 3, 2021, she told the Commission that she has not looked for any other employment since she was suspended from her job on November 3, 2021.<sup>22</sup> Then, on January 7, 2022, she told the Commission that she has not applied for any jobs, but updated her resume with a job agency.<sup>23</sup> In her written statement to the Tribunal, she wrote that English was not her first language, so she may have been misunderstood by the Commission.<sup>24</sup>

[28] I was not persuaded by the Claimant's suggestion that the Commission misunderstood her. The Commission's notes were sufficiently detailed and included some of the job seeking efforts made by the Claimant.<sup>25</sup> If the Claimant had in fact applied for jobs, it is more likely than not, that the Commission would have noted that in their records. In this case, two different Commission agents on different dates reported

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<sup>20</sup> See section 50(8) of the Act.

<sup>21</sup> This is consistent with some of the job efforts listed in 9.0001 of the Regulations.

<sup>22</sup> See supplementary record of claim at GD3-21.

<sup>23</sup> See supplementary record of claim at GD3-28 and GD3-29.

<sup>24</sup> See GD3-18.

<sup>25</sup> See supplementary record of claim at GD3-21 and supplementary record of claim at GD3-28 and GD3-29

that the Claimant said she did not apply for any jobs. I preferred this evidence because I find it more reliable. At the hearing, I asked her whether she had applied for any jobs and she said she “has not applied for any jobs”, which is consistent with her statements to the Commission.

[29] However, the Claimant did testify and say she had two job interviews or a few phone calls from agencies and long-term care homes. She was not considered for the positions because she was not vaccinated from covid19. When I asked her for more information about the employers she spoke with, she was could not provide any specific details and said she was unprepared for that question.

[30] I asked the Claimant if she kept a job list of her efforts. The Claimant said yes because the Indeed website shows 24 places she applied to. I looked at document she submitted. It shows that she was randomly receiving job alerts for jobs at long-term care homes.<sup>26</sup> It does not show that she actively applying for any of the job alerts she received. With the exception of one email that is labelled “job offer” on March 9, 2022.<sup>27</sup> This may have been the job she said she was offered, but they could not take her because she was not vaccinated from covid19.

[31] I was not persuaded that the Claimant was looking for suitable work. While she is a qualified RPN and has worked in healthcare for over 30 years, she admitted that she was not considered for some RPN jobs because she was not vaccinated from covid19. She said that she considered applying to other “survival” type jobs, such as cleaning or food services, but failed to make any applications for these types of jobs.

[32] The Claimant also argued that her back condition and religious beliefs limit her ability to find suitable work.<sup>28</sup>

[33] I was not persuaded by the Claimant’s argument on this issue or that there is no suitable work available for her. First, the Claimant provided no supporting medical evidence to prove that her health and physical capabilities made her employment as an

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<sup>26</sup> See GD9-1 to GD9-15.

<sup>27</sup> See GD9-9.

<sup>28</sup> See section 9.0002(1) of the Regulations.

RPN unsuitable, or any other type of work unsuitable. Second, the Claimant has not proven that her religious beliefs are incompatible with the hours of work as an RPN, or any other type of job. Lastly, she has not proven that the nature of the work as an RPN, or any other type of job is contrary to her religious beliefs.

[34] I acknowledge the Claimant's assertion that many RPN jobs required vaccination from covid19, however there were other jobs she could have applied for, but she failed to do so. Therefore, her efforts were not reasonable or customary.

### **Capable of and available for work**

[35] 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:<sup>29</sup>

- 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 has not set personal conditions that might have unduly (in other words, overly) limited her chances of going back to work.

[36] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.<sup>30</sup>

#### **– Wanting to go back to work**

[37] I find that the Claimant has not shown that she wanted to go back to work as soon as a suitable job was available. The Claimant says she wants to find work, but I do not find her efforts demonstrate a sincere desire to return to work. The court has said

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<sup>29</sup> 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.

<sup>30</sup> 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.



that the desire to return to work must be sincere, demonstrated by the attitude and the conduct of the Claimant.<sup>31</sup>

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

[38] 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.<sup>32</sup>

[39] The Claimant's efforts to find a new job included looking at jobs online, registering for job alerts, and submitting her resume to job agencies I explained these reasons above when looking at whether the Claimant has made reasonable and customary efforts to find a job.

[40] I find that the Claimant has not made enough effort to find a suitable job. Those efforts were not enough to meet the requirements of this second factor because she admitted that she did not actively apply for any jobs. Even if she gave her resume to a job agency, it is not enough. She could not provide enough detail about the interviews or phone conversations she had with employers. The Claimant was receiving job alerts, she could have applied to some of those jobs. She could have also broadened her job seeking opportunities and looked for other types of jobs.

[41] No matter how little chance of success a Claimant may feel a job search would have, the *Act* is designed so that only those who are genuinely unemployed and actively seeking work will receive EI benefits.<sup>33</sup>

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

[42] I find that the Claimant has set personal conditions that might have unduly limited her chances of going back to work.

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<sup>31</sup> *Canada (Attorney General) v Whiffen*, A-147-92

<sup>32</sup> 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.

<sup>33</sup> *Canada (Attorney General) v Cornelissen-O'Neill*, A-652-93.

[43] The Claimant worked as an RPN. She testified that many of the available RPN jobs required covid19 vaccination. She admitted that she was offered a full-time temporary RPN job, but since she was not vaccinated for covid19 they would not accept her because it was a condition of her employment. In my view, her decision to remain unvaccinated was a personal condition imposed that limited her chances of going back to work as an RPN.

[44] The Claimant also restricted herself to looking for work as an RPN only, even though she knew that most of those jobs required vaccination for covid19. She did not broaden her job search or apply for other jobs that did not require vaccination for covid19. Even though she considered applying for cleaning or food services jobs, she did not take any steps to apply for any other these other jobs.

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

[45] Based on my findings on the three factors, I find that the Claimant has not shown that she was capable of and available for work but unable to find a suitable job.

[46] I acknowledge the Claimant's other arguments about the safety and efficacy of covid19 vaccination, but this does not excuse her being available for work or from making reasonable and customary efforts to find suitable employment.

## **Conclusion**

[47] The Claimant has not shown that she was available for work within the meaning of the law. Because of this, I find that the Claimant cannot receive EI benefits.

[48] This means that the appeal is dismissed

Solange Losier  
Member, General Division – Employment Insurance Section