



[TRANSLATION]

Citation: *CG v Canada Employment Insurance Commission*, 2022 SST 1076

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

Decision

Appellant: C. G.
Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (467061) dated March 31, 2022 (issued by Service Canada)

Tribunal member: Sylvie Charron
Type of hearing: Videoconference
Hearing date: August 5, 2022
Hearing participant: Appellant

Decision date: September 12, 2022
File number: GE-22-1590

Decision

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

[2] The Appellant hasn't shown that she was available for work. This means that she can't receive Employment Insurance (EI) benefits.

Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Appellant was disentitled from receiving Employment Insurance (EI) regular benefits as of January 17, 2022, because she 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 Appellant has proven that she was available for work. The Appellant 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 Appellant wasn't available because she mentioned wanting to work only for the public service, her current employer. She also apparently said that she hadn't looked for jobs with other potential employers after going on leave without pay on November 24, 2021.

[6] The Appellant disagrees and says that she always looked for jobs in her area of expertise and even in other related areas.¹ She says that she registered with sites like Job Bank and EducEmplois and checked LinkedIn and other similar websites.

[7] She also says that being unvaccinated doesn't limit her ability to work or her availability.

¹ See GD2-12 and GD3-18.

Matter I have to consider first

I will accept the documents sent in after the hearing

[8] At the hearing, the Appellant testified that she had received a letter inviting her to an interview. It involved a job she had applied for after going on leave without pay. I asked her to send me a copy of the letter. The letter has been received. It is part of the evidence on file and numbered GD6.

Issue

[9] Was the Appellant available for work?

Analysis

[10] Two different sections of the law require the claimant (Appellant) to show that they are available for work. The Commission decided that the Appellant was disentitled under both of these sections. So, she has to meet the criteria of both sections to get benefits.

[11] First, the *Employment Insurance Act* (Act) says that a claimant—the Appellant—has to prove that they are making “reasonable and customary efforts” to find a suitable job.² The *Employment Insurance Regulations* (Regulations) give criteria that help explain what “reasonable and customary efforts” means.³ I will look at those criteria below.

[12] 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.⁴ Case law gives three things a claimant has to prove to show that they are “available” in this sense.⁵ I will look at those factors below.

² See section 50(8) of the *Employment Insurance Act* (Act).

³ See section 9.001 of the *Employment Insurance Regulations* (Regulations).

⁴ See section 18(1)(a) of the Act.

⁵ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

[13] The Commission decided that the Appellant was disentitled from receiving benefits because she wasn't available for work based on these two sections of the law.

[14] I will now consider these two sections myself to determine whether the Appellant was available for work.

Reasonable and customary efforts to find a job

[15] The law sets out criteria for me to consider when deciding whether the Claimant's efforts were reasonable and customary.⁶ I have to look at whether her efforts were sustained and whether they were directed toward finding a suitable job. In other words, the Appellant had to have kept trying to find a suitable job during the entire period under review.

[16] I also have to consider the Appellant'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:⁷

- 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
- applying for jobs
- attending interviews
- doing competency tests

[17] The Commission says that the Appellant didn't do enough to try to find a job. According to the Commission, the Appellant said that she hadn't made any job search

⁶ See section 9.001 of the Regulations.

⁷ See section 9.001 of the Regulations.

efforts after going on leave without pay, and she mentioned wanting to work only for the public service.⁸

[18] The Appellant disagrees. She told the Commission—and reiterated in testimony—that, despite wanting to go back to her position, she had prepared her résumé and a cover letter and registered with online job sites, such as Job Bank, EducEmplois, and LinkedIn. She continued looking for jobs with community support organizations and jobs teaching French as a second language.

[19] The Appellant also says that she applied for jobs and received offers.⁹ So, she assessed employment opportunities and contacted prospective employers.

[20] The Appellant says that her efforts were enough to prove that she was available for work. I agree.

[21] I find that the Appellant made reasonable and customary efforts to find a job based on the criteria listed in section 9.001 of the Regulations.

[22] This means that the Appellant has proven that her efforts to find a job were reasonable and customary.

Capable of and available for work

[23] Case law sets out three factors for me to consider when deciding whether the Appellant was capable of and available for work but unable to find a suitable job. The Appellant has to prove the following three things:¹⁰

- a) She wanted to go back to work as soon as a suitable job was available.
- b) She made efforts to find a suitable job.

⁸ See GD3-18 and GD3-28.

⁹ See GD6.

¹⁰ 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.

[24] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.¹¹

– **Wanting to go back to work**

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

[26] As discussed above in paragraphs 18 and 19, the Appellant has shown, through her job search efforts, that she wanted to go back to work as soon as possible.

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

[27] The Appellant made enough efforts to find a suitable job, as explained earlier.

[28] 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.¹²

[29] The Appellant's efforts to find a new job included searching online, sending letters and her résumé, assessing opportunities, and contacting prospective employers. I explained these reasons above when looking at whether the Appellant made reasonable and customary efforts to find a job.

[30] I find that those efforts were enough to meet the requirements of this second factor because the Appellant was even invited to at least one interview.¹³ When she testified, she said she had received offers that she had to decline because she had to be vaccinated.

¹¹ 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.

¹² 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.

¹³ See GD6.

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

[31] The Appellant set personal conditions that might have unduly limited her chances of going back to work. Specifically, her vaccination status limited her chances of finding a suitable job.

[32] She says she didn't set personal conditions, since being unvaccinated in no way means that she is unwilling to work or unavailable for work.

[33] However, I note that the Appellant had to refuse to participate in a competition because of her vaccination status.¹⁴ As indicated above, she also had to decline offers with the federal government because she wasn't vaccinated.

[34] The Commission says that, without the COVID-19 vaccine, the Appellant's options are limited. Vaccination is a condition of employment in many workplaces because of the pandemic.

[35] I find that being unvaccinated unduly limited the Appellant's chances of finding a suitable job. When she testified, she said she had been back at work since her employer had dropped the vaccination condition. This also shows that her vaccination status did limit her availability for work.

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

[36] Based on my findings on the three factors, I find that the Appellant hasn't shown that she was capable of and available for work but unable to find a suitable job.

Conclusion

[37] The Appellant hasn't shown that she was available for work within the meaning of the law. Because of this, I find that the Appellant can't receive EI benefits.

¹⁴ See GD6.

[38] This means that the appeal is dismissed.

Sylvie Charron

Member, General Division – Employment Insurance Section