Citation: *RC v Canada Employment Insurance Commission*, 2022 SST 1009

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant (Claimant):	R. C.
Respondent (Commission):	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (453151) dated February 8, 2022 (issued by Service Canada)

Tribunal member:	Gerry McCarthy
Type of hearing:	Teleconference
Hearing date:	April 21, 2022
Hearing participants:	Appellant Witness
Decision date:	April 22, 2022
File number:	GE-22-800

Decision

[1] The appeal is allowed.

[2] The Claimant has shown that she was available for work while in school. This means that she isn't disentitled from receiving Employment Insurance (EI) benefits. So, the Claimant may be entitled to benefits.

Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant was disentitled from receiving EI regular benefits from September 6, 2021, to April 8, 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 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 was available for work.

[5] The Commission says the Claimant wasn't available because she was in school full-time.

[6] The Claimant disagrees. The Claimant says she was available for work while in school and made efforts to contact potential employers about jobs.

Issue

[7] Was the Claimant available for work while in school?

Analysis

[8] 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.

[9] 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 *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" mean.[2] I will look at those criteria below.

[10] 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] I will look at those factors below.

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

[12] In addition, the Federal Court of Appeal has said that claimants who are in school full-time are presumed to be unavailable for work.[5] This is called "presumption of non-availability." It means we can suppose that students aren't available for work when the evidence shows that they are in school full-time.

[13] I will start by looking at whether I can presume that the Claimant wasn't available for work. Then, I will look at whether she was available based on the two sections of the law on availability.

Presuming full-time students aren't available for work

[14] The presumption that students aren't available for work applies only to full-time students.

The Claimant doesn't dispute that she is a full-time student

[15] The Claimant agrees that she is a full-time student, and I see no evidence that shows otherwise. So, I accept that the Claimant is in school full-time.

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[1] See section 50(8) of the *Employment Insurance Act* (Act).
[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] See *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.

[16] The presumption applies to the Claimant.

The Claimant is a full-time student

[17] The Claimant is a full-time student. But the presumption that full-time students aren't available for work can be rebutted (that is, shown to not apply). If the presumption were rebutted, it would not apply.

[18] There are two ways the Claimant can rebut the presumption. She can show that she has a history of working full-time while also in school.[6] Or, she can show that there are exceptional circumstances in her case.[7]

[19] The Claimant says that while attending high school (before she started university in September 2021) she performed volunteer work at "X." The Claimant further says she volunteered organizing community basketball games while attending high school.

[20] The Commission says the Claimant failed to rebut the presumption of non-availability while attending a full-time course, because she was only willing to work around her course schedule.

[21] I find the Claimant has previously demonstrated a history of performing extra-curricular activities outside school. Specifically, the Claimant's volunteer work at the hospital while attending school would show exceptional circumstances that must be taken into account.

[22] In short, the Claimant has rebutted the presumption that she is unavailable for work.

The presumption is rebutted

[23] Rebutting the presumption means only that the Claimant isn't presumed to be unavailable. I still have to look at the two sections of the law that apply in this case and decide whether the Claimant is actually available.

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[6] See *Canada (Attorney General) v Rideout*, 2004 FCA 304.
[7] See *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.

Reasonable and customary efforts to find a job

[24] The first section of the law that I am going to consider says that claimants have to prove that their efforts to find a job were reasonable and customary.[8]

[25] The law sets out criteria for me to consider when deciding whether the Claimant's efforts were reasonable and customary.[9] 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.

[26] 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 are the following:[10]

- assessing employment opportunities
- contacting employers who may be hiring
- applying for jobs

[27] The Commission says the Claimant didn't so enough to try to find a job. Specifically, the Commission says the Claimant didn't provide a job-search which supported she was actively seeking employment

[28] The Claimant disagrees. The Claimant says she prepared a resume, assessed employment opportunities, and submitted applications to numerous employers, including: "X," "X," "X," "X," and "X." The Claimant says her efforts were enough to prove that she was available for work.

[29] I find the Claimant was making reasonable and customary efforts to find a job for the following reasons:

[30] First: The Claimant provided details on the employers she contacted about jobs. For example, the Claimant provided the names of doctors she approached about prospective jobs at "X Regional Hospital" (including Dr. Brake, Dr. Lobo, and Dr.

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[8] See section 50(8) of the Act.
[9] See section 9.001 of the Regulations.
[10] See section 9.001 of the Regulations.

Kagedan”). I realize the Commission maintained the Claimant hadn’t provided a job-search which supported she was actively seeking work. However, I accept as credible the job-search details provided by the Claimant because her statements were detailed, forthright, and supported by a Witness.

[31] Second: The Claimant testified she assessed employment opportunities and re-contacted potential employers about jobs. I accept as credible the Claimant’s testimony on this matter, because her statements were detailed, forthright, and supported by Witness statements.

[32] The Claimant has proven that her efforts to find a job were reasonable and customary.

Capable of and available for work

[33] I also have to consider whether the Claimant was capable of and available for work but unable to find a suitable job.[11] Case law sets out three factors for me to consider when deciding this. The Claimant has to prove the following three things:[12]

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

[34] When I consider each of these factors, I have to look at the Claimant’s attitude and conduct.[13]

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[11] See section 18(1)(a) of the Act.
[12] 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.
[13] 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.

Wanting to go back to work

[35] The Claimant has shown that she wanted to go back to work as soon as a suitable job was available, because she provided a detailed job-search. I realize the Commission submitted the Claimant hadn't provided a job-search that supported her intention to return to the workforce as soon as possible. Nevertheless, the Claimant has now provided a detailed job-search that shows she wanted to go back to work.

Making efforts to find a suitable job

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

[37] 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.[14]

[38] The Claimant's efforts to find a new job included preparing a resume, assessing employment opportunities, and applying for specific jobs. I explained these reasons above when looking at whether the Claimant has made reasonable and customary efforts to find a job.

[39] Those efforts were enough to meet the requirements of this second factor, because the Claimant provided specific names of employers she contacted (and re-contacted) about employment.

Unduly limiting chances of going back to work

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

[41] The Claimant says she hasn't done this because she was available Monday and Tuesday evenings, all day Wednesday, Thursday and Friday evenings, and weekends. The Claimant further testified that some of her classes were online which allowed more flexibility for work.

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[14] 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.

[42] The Commission says the Claimant was in class all day Monday, Tuesday, Thursday and Friday.

[43] I find the Claimant didn't unduly limit her chances of going back to work for the following reasons:

[44] First: Some of the Claimant's classes were online which classes allowed further flexibility for the Claimant to attend work during the day. I realize some of the Claimant's labs during the day were mandatory. Still, the Claimant was available evenings, all day Wednesday and weekends.

[45] Second: I accept as credible the Claimant's statement that she would adjust her class schedule in order to work, because her statements were plausible and forthright.

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

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

Conclusion

[47] The Claimant has shown that she was available for work within the meaning of the law. Because of this, I find that the Claimant isn't disentitled from receiving benefits. So, the Claimant may be entitled to benefits.

[48] This means that the appeal is allowed.

Gerry McCarthy

Member, General Division – Employment Insurance Section