



Citation: *OC v Canada Employment Insurance Commission*, 2022 SST 1068

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

Decision

Appellant: O. C.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (462860) dated March 31, 2022 (issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Videoconference

Hearing date: July 29, 2022

Hearing participant: Appellant

Decision date: August 5, 2022

File number: GE-22-1474

Decision

[1] The appeal is dismissed. I find the Claimant has not proven her availability for work.

Overview

[2] Claimants have to be available for work in order to get regular employment insurance (EI) benefits. Availability is an ongoing requirement; claimants have to be searching for a job.

[3] The Commission decided that the Claimant was disentitled from being paid EI benefits while she was taking a paralegal course, and even after the course had ended, as they say she was only willing to work part-time, so has not proven her availability.¹

[4] The Claimant says that while she might not have been able to work full-time while in school, she could work close to full-time hours, and she was actively looking for work while in school, and once her school ended; she was not satisfied just working part-time at her one job.

[5] I must decide whether the Claimant has proven² that she is available for work.

Matter I have to consider first

[6] In their submissions the Commission states they disentitled the Claimant under subsection 50(8) of the *Employment Insurance Act* (Act). Subsection 50(8) of the Act relates to a person failing to prove to the Commission that they were making reasonable and customary efforts to find suitable employment.

[7] In looking through the evidence, I did not see any requests from the Commission to the Claimant to prove her reasonable and customary efforts, or any claims from the

¹ See GD03-53 to GD03-56

² The Claimant has to prove this on a balance of probabilities, which means it is more likely than not.

Commission that if they did, her proof was insufficient. The Commission also states that they did not ask the Claimant to provide a job search.³

[8] So, based on the lack of evidence the Commission asked the Claimant to prove her reasonable and customary efforts to find suitable employment under subsection 50(8) of the Act, and the fact the Commission says they never asked for a job search, they did not disentitle the Claimant under subsection 50(8) of the Act. Therefore, it is not something I need to consider.

Issue

[9] Is the Claimant available for work?

Analysis

[10] The law requires claimants to show that they are available for work.⁴ In order to be paid EI benefits, claimants have to be capable of and available for work and unable to find suitable employment.⁵

[11] In considering whether a student is available pursuant to section 18 of the Act, the Federal Court of Appeal, in 2010, pronounced that there is a presumption that claimants who are attending school full-time are unavailable for work.

[12] The Act was recently changed and the new provisions apply to the Claimant.⁶ As I read the new provisions the presumption of unavailability has been displaced. A full-time student is not presumed to be unavailable, but rather must prove their availability just like any other claimant.

³ GD04-3

⁴ Paragraph 18(1)(a) of the *Employment Insurance Act* provides that a claimant is not entitled to be paid benefits for a working day in a benefit period for which he or she fails to prove that on that day he or she was capable of and available for work and unable to obtain suitable employment.

⁵ Paragraph 18(1)(a) of the *Employment Insurance Act*.

⁶ Subsection 153.161(1) of the *Employment Insurance Act*

[13] In order to be paid EI benefits, claimants have to be capable of and available for work and unable to find suitable employment.⁷ The Claimant has to prove three things to show she is available:

1. A desire to return to the labour market as soon as a suitable job is available
2. That desire expressed through efforts to find a suitable job
3. No personal conditions that might unduly limited her chances of returning to the labour market⁸

[14] I have to consider each of these factors to decide the question of availability,⁹ looking at the attitude and conduct of the Claimant,¹⁰ during the period of the disentitlement; December 27, 2020, onward.

Does the Claimant have a desire to return to the labour market as soon as a suitable job is available?

[15] I find the Claimant has shown she has a desire to return to the labour market as soon as a suitable job is available from December 27, 2020, onward.

[16] I find the fact the Claimant has been working from December 27, 2020, onward, even while in school, was looking for a job that would give her more hours and has recently been looking to get a second job, shows her desire to be in the labour market.

Has the Claimant made efforts to find a suitable job?

[17] I find the Claimant is making sufficient efforts to find a suitable job.

⁷ Paragraph 18(1)(a) of the *Employment Insurance Act*.

⁸ *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

⁹ *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

¹⁰ *Canada (Attorney General v Whiffen*, A-1472-92 and *Carpentier v The Attorney General of Canada*, A-474-97.

[18] The Commission submits the Claimant has only submitted three job applications for the period under review.¹¹

[19] The Claimant says that during the pandemic she was temporarily laid off from her employment in December 2020. She was told the layoff would be about four weeks. She says this is why she said she was not looking for work when she completed her training questionnaire in December 2020,¹² as she assumed she would be back to work shortly, so there was no need to look for another job.

[20] The Claimant says that it took a little longer than four weeks to start working again, but when she did, she was getting so few hours that she started looking for another job.

[21] Unfortunately, with the pandemic restrictions in place, only essential businesses were open and since her only work experience was in retail, she says her employment opportunities were severely limited

[22] In October 2021, she left her retail job as she had been offered a different retail job that she says paid much better than her previous one and was giving her more hours.

[23] The Claimant says that she is also looking for another part-time job to complement her current one, as she really likes her current retail job due to its compensation structure, so does not want to leave it.

[24] The Claimant says she supplied copies of all the jobs she has applied for from December 27, 2020, onward, and argues the Commission totally ignored the fact she was trying to find work that would give her more hours.

[25] The Claimant's submissions show that she has applied for six jobs through the period of the disentitlement.¹³

¹¹ GD04-4

¹² GD03-9

¹³ GD02-33 to GD03-45 and GD05-11 to GD05-18

[26] While six applications in a period spanning December 27, 2020, onward does initially stand out as rather low, I can accept the pandemic restrictions significantly reduced the Claimant's employment opportunities due to the limitations of what businesses could be open and their capacity, as it is common knowledge these restrictions existed.

[27] I also note that despite the obstacles facing her with the pandemic restrictions, the Claimant did manage to find a retail job starting in October 2021.

[28] Finally, I would note that applications in themselves are not the only metric with which to judge efforts to find employment, as it is all the efforts made by the Claimant that render the complete picture of her job search.

[29] So, when I consider all her efforts of looking online for work, evaluating the opportunities she comes across, creating and sending out resumes, applying for jobs, and attending interviews, the Claimant has shown she is making sufficient efforts to find suitable employment for the entire period of the disentitlement.

Has the Claimant set personal conditions that might unduly limit her chances of returning to the labour market?

[30] The Claimant has set personal conditions that might unduly limit her chances of returning to the labour market. Those personal conditions being her schooling, restricting her availability to focus on studying for her paralegal exam, and her restriction of only being willing to accept a job that works around her current retail position.

[31] The Commission submits that the Claimant has told them she is only available outside her courses and could not work full-time with her course load, and could not full-time even after her schooling was finished, as she was preparing for her licensing exam to be a paralegal.

[32] The Commission submits the Claimant restricting her availability around her school schedule means she is not available and she has no history of working full-time while attending school.

[33] I find the Claimant's schooling was a personal condition that overly limited her chances of returning to the labour market.

[34] The Claimant provided her class schedule. She had class on Monday, Tuesday, Friday and work co-op on Wednesday and Thursday. She says this schedule was consistent until her school ended on April 16, 2021.¹⁴

[35] I note there is a comment in the notes from the Commission saying the Claimant said she graduated on June 23, 2021;¹⁵ however, I find the Claimant's schooling ended on April 16, 2021, as the Claimant said in her application her courses ended on April 16, 2021,¹⁶ her school schedule says classes end on April 16, 2021,¹⁷ and her work placement does not go past April 16, 2021.¹⁸

[36] The Claimant says she spent approximately 15 to 22 hours a week on her work placement as part of her school and her schedule shows 10.5 hours of school Monday to Friday.¹⁹

[37] I note that the Claimant has class on Saturday but what I am looking at is her availability during working days which is Monday to Friday,²⁰ so the hours she spends in a class on the weekend is not relevant to the determination of her availability for Monday to Friday, neither is it relevant that she said she could work on Saturday and Sunday.

[38] The Claimant testified she was not able to work full-time while in school and told the Commission she could not work full-time in school²¹ and said the same in her submissions.²²

¹⁴ GD02-30 and GD02-31

¹⁵ GD03-46

¹⁶ GD03-8

¹⁷ GD02-30

¹⁸ GD03-31

¹⁹ GD02-30

²⁰ Section 32 of the *Employment Insurance Act*

²¹ GD03-17 and GD03-46

²² GD03-22

[39] Despite all the times she has said she could not work full-time while in school, she also argues that she could have worked full-time as she has a history of working full-time while attending school.

[40] She says she was in a full-time retail position when she started her schooling and kept at it until early December 2020, when she went part-time, as an incident happened at her work that made the Claimant no longer want to work for that employer.

[41] I asked the Claimant about her training questionnaire²³ where she stated that she had been working about twenty hours a week while studying for 25 hours a week from December 2019 to December 2020, as that seems to contradict her statement she had a history of full-time work while in school.

[42] The Claimant said that 20 hours a week represented an average of her hours worked per week, as while she was in a full-time position she was not getting full-time hours.

[43] I find the Claimant has not demonstrated a history of working full-time while in school, as an average of 20 hours a week is not full-time. While it may have only been an average, so some weeks she may have worked more hours, the Claimant testified that she was not getting full-time hours at work, so regardless, no week was full-time hours.

[44] I find, that as the Claimant has not demonstrated she has history of being able to work full-time while in schooling, she has not shown she is an exception to the consist line of cases from the courts that supports a claimant being available only around their school schedule means they are restricting their availability and so are not considered available.²⁴

²³ GD03-10

²⁴ *Horton v Canada (Attorney General)*, 2020 FC 743. para 35

[45] This means that for the period of December 27, 2020, to April 16, 2021, the Claimant's personal condition, schooling, overly limited her chances of returning to the labour market.

[46] However, despite being out of school after April 16, 2021, she still told the Commission that she could not work full-time as she was studying for her paralegal exam and could not work full-time until after her paralegal exam was over.²⁵

[47] In her testimony the Claimant she said she could work any day, any shift, when she was out of school, as she could do her studying whenever she was not working.

[48] I asked the Claimant about this contradiction in what she told the Commission and her testimony.

[49] She said it was a misunderstanding by the Commission. The Claimant says she was not working full-time when she was out of school as she was not getting many hours at her retail job. She could have worked more hours, but the hours were just not there due to a major slow down in business from the pandemic. The lack of hours is why she was searching for another job.

[50] The Claimant says that once she got a different retail job in October 2021 and left her previous retail job, she was still not working full-time, as while she was more available, senior employees would get primary consideration for available hours. Once they were satisfied then the Claimant would be given hours.

[51] The Claimant testified that when the Commission made the decision to disentitle her on March 1, 2022, she decided to put aside her paralegal exam as she was too stressed to focus on it.

[52] The Claimant says that she is looking for another job that would be able to work around the new retail job she started in October 2021, since she is not getting all the hours she wants.

²⁵ GD03-46

[53] I accept that the Claimant stopped studying for her paralegal exam on March 1, 2022, when the Commission issued their decision to disentitle her,²⁶ as I find it plausible that she found the situation so stressful she could not focus on studying.

[54] However, I do not find the Claimant's testimony credible that there was a misunderstanding when she told the Commission she could only work part-time even after her schooling was over. I choose to place greater weight on her statements to the Commission that she could not work full-time as she was studying for her paralegal exam.

[55] I note that the only jobs the Claimant applied to from when her schooling ended to when she stopped studying for her paralegal exam, so from April 17, 2021, to March 1, 2022, are part-time.²⁷ I find this supports her statements to the Commission that she could only work part-time even when school was over because she was studying for her paralegal exam.

[56] I find the Claimant's personal condition of restricting her availability to part-time, in order to focus on studying for her paralegal exam, is a personal condition that would unduly limit her chances of returning to the labour market.

[57] While it may seem odd to say this, since she secured a part-time job in October 2021, the EI program is not a wage subsidy program to help a person who is not making enough at their job due to an inability, or lack of desire, to find a position with more hours because they are limiting their availability.

[58] I find that even after March 1, 2022, when the Claimant had stopped studying for her paralegal exam, she still has a personal condition that is unduly limiting her chances of returning to the labour market as she is trying to find a job that will work around the retail job she started on October 14, 2021.

²⁶ GD03-18

²⁷ GD02-43 and GD02-33

[59] The fact she does not want to leave her retail job would significantly reduce her job opportunities as that means any full-time job is out of the question and she can only apply for jobs that work around her retail job.

[60] So, even though the Claimant has been out of school from April 17, 2021, onward, I find the Claimant still has personal conditions that overly limit her chances of returning to the labour market. Those conditions being from April 17, 2021, to March 1, 2022, a restriction in her availability to part-time due to studying for her paralegal exam and from October 15, 2021, onward only looking for a job that works around her current retail job.

Is the Claimant capable of and available for work and unable to find suitable employment?

[61] Considering my findings on each of the three factors together, I find that the Claimant is not available for work from December 27, 2020, onward

Conclusion

[62] The appeal is dismissed. The Claimant has not proven that she is available for work.

Gary Conrad
Member, General Division – Employment Insurance Section