



Citation: *KT v Canada Employment Insurance Commission*, 2022 SST 1381

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

## Decision

**Appellant:** K. T.

**Respondent:** Canada Employment Insurance Commission  
**Representative:** Dani Grandmaître

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (0) dated October 7, 2022 (issued  
by Service Canada)

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**Tribunal member:** Catherine Shaw

**Type of hearing:** Videoconference  
**Hearing date:** December 12, 2022  
**Hearing participant:** Respondent's representative

**Decision date:** December 14, 2022  
**File number:** GE-22-3356

## Decision

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

[2] The Claimant hasn't shown that she was available for work from January 12 to April 30, 2021. This means that she can't receive Employment Insurance (EI) benefits.

## Overview

[3] The Claimant starting attending university full-time in January 2021. She applied for, and received, EI benefits. In September 2021, she started school again and renewed her claim for EI benefits.

[4] The Canada Employment Insurance Commission (Commission) reviewed all of the Claimant's EI benefits when she re-activated her claim. It decided that she wasn't available for work while she was in school full-time, from January to April 2021, and then from September 2021. This meant she had to repay some of the EI benefits she had already received.

[5] 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.

[6] 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 was available for work.

[7] The Commission says that the Claimant wasn't available because she was attending school full-time and wouldn't leave school to accept a job.

[8] The Claimant disagrees and states that she reported that she was attending school on her EI claims. The Commission told her that she was entitled to benefits. It paid her benefits for months before it decided she had to repay the benefits she had received. If she was not eligible for these benefits, the Commission should not have paid her.

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

### **The Claimant wasn't at the hearing**

[9] The Claimant wasn't at the hearing. A hearing can go ahead without the Claimant if the Claimant got the notice of hearing.<sup>1</sup>

[10] I think that the Claimant got the notice of hearing because it was sent to her email address and there is no evidence that it wasn't delivered. The Claimant also received a reminder about the hearing by email several days before the hearing, and the Tribunal left a voice mail for her on the day of the hearing.

[11] So, the hearing took place when it was scheduled, but without the Claimant.

### **I will consider only the Claimant's availability for work**

[12] This appeal has been returned from the Appeal Division of the Tribunal for me to consider only the question of the Claimant's availability for work from January 12 to April 30, 2021.

[13] To give some context, the Claimant originally appealed the Commission's decision about her availability to the General Division of the Tribunal in February 2022. The General Division member decided that the Claimant hadn't shown she was available for work from September 1, 2021. It also decided that the Commission hadn't properly reconsidered the Claimant's availability from January 12 to April 30, 2021. Meaning it hadn't acted judicially when it chose to review the Claimant's entitlement to benefits after paying her benefits during this period. So, she was still payable EI benefits from January 12 to April 30, 2021, even though she may not have been available during this period.

[14] The Commission appealed this decision to the Appeal Division. The Appeal Division member said the General Division had made several errors when it decided that the Commission hadn't made its decision to reconsider the Claimant's benefits judicially. The Appeal Division found that the Commission had made its decision

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<sup>1</sup> See section 58 of the *Social Security Tribunal Rules of Procedure*.

judicially when it found the Claimant wasn't available for work. But, the Appeal Division couldn't make a decision about the Claimant's availability because the Claimant wasn't given a chance to address her availability fully at the hearing. So, the Appeal Division member returned this appeal to the General Division to reconsider whether the Claimant was available for work from January 12 to April 30, 2021.

## Issue

[15] Was the Claimant available for work?

## Analysis

[16] Two different sections of the law require claimants to show that they are available for work. However, the Commission decided that the Claimant was disentitled under only one of these sections.

[17] The *Employment Insurance Act* (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>2</sup> Case law gives three things a claimant has to prove to show that they are "available" in this sense.<sup>3</sup> I will look at those factors below.

### Capable of and available for work

[18] 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>4</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.

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<sup>2</sup> See section 18(1)(a) of the *Employment Insurance Act* (Act).

<sup>3</sup> See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

<sup>4</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.

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

[19] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.<sup>5</sup>

– **Wanting to go back to work**

[20] The Claimant hasn't shown that she wanted to go back to work as soon as a suitable job was available.

[21] The Claimant started a full-time school program on January 12, 2021. She stated on her training questionnaires that she was available for work only for limited hours on Sundays because of her course schedule and her obligations as a student athlete.

[22] The Claimant provided a screenshot of text messages with her former employer. In these messages, the Claimant states that she will be available for work at the end of April. This is when her school semester was planned to finish.

[23] The Claimant told Commission officers that she was looking for work but that she was not able to accept a job while she was in school from January to April 2021. She also said that she wouldn't leave school to take a job.

[24] The Claimant's statements and her communications with her former employer indicate that she was not looking to start a job while she was in school. Rather, any job search efforts she made were directed at finding work after her school semester ended in April 2021. By not looking for work that she could immediately accept, I find the Claimant hasn't shown that she wanted to go back to work as soon as a suitable job was available from January 12 to April 30, 2021.

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

[25] The Claimant hasn't made enough effort to find a suitable job.

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<sup>5</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.

[26] The Claimant stated that she was looking for work but didn't give detailed information about her job search efforts. She texted her former employer to try and secure a job after her school year ended, but hasn't addressed what efforts she made to find work while in school from January to April 2021.

[27] Given the evidence before me, I find the Claimant hasn't made enough effort to meet the requirements of this second factor. This is because she didn't search for available jobs or apply for any jobs, except with her former employer. The Claimant made little or no effort to find a suitable job that she could accept from January to April 2021.

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

[28] The Claimant did set personal conditions that might have unduly limited her chances of going back to work.

[29] The Commission says the Claimant's course schedule prevented her from working regular hours. The Claimant also stated consistently on her training questionnaires and in conversations with Commission officers that she would not leave her school program to accept a job.

[30] Availability must be demonstrated during regular hours for every working day and cannot be restricted to irregular hours resulting from a course schedule that significantly limits availability.<sup>6</sup>

[31] I agree with the Commission that the Claimant's course schedule was a serious restriction on her availability. From January to April 2021, the Claimant was attending classes full-time on weekdays from Monday to Thursday. She clearly stated on her training questionnaires that she was only available for work on Sunday afternoons. And she told Commission officers that she would not have left her school program to take a job. Her priority was finishing school.

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<sup>6</sup> See *Attorney General of Canada v Bertrand*, A-613-81.

[32] So, I find the Claimant's school attendance was a personal condition that might have overly limited her chances of returning to work from January 12 to April 30, 2021.

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

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

## **Conclusion**

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

[35] This means that the appeal is dismissed.

Catherine Shaw

Member, General Division – Employment Insurance Section