



Citation: *BL v Canada Employment Insurance Commission*, 2022 SST 999

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

## Decision

**Appellant:** B. L. (preferred name A. L.)

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (430141) dated August 5, 2021  
(issued by Service Canada)

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**Tribunal member:** Angela Ryan Bourgeois

**Type of hearing:** Videoconference

**Hearing date:** May 19, 2022

**Hearing participant:** Appellant

**Decision date:** July 18, 2022

**File number:** GE-22-555

## Decision

[1] The appeal is allowed in part. The Claimant has proven her availability under the law as of August 3, 2021, but not as of May 17, 2021. This means that the Claimant is disentitled from receiving employment insurance (EI) benefits from May 17, 2021, to August 2, 2021. The disentitlement ends on August 2, 2021.

## Overview

[2] A claimant has to be available for work to get EI benefits. Availability is an ongoing requirement. This means that a claimant has to be searching for a job.

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant was disentitled from receiving EI benefits as of May 17, 2021, because she wasn't available for work.

[4] The Claimant appealed that decision to the Social Security Tribunal.<sup>1</sup> The General Division decided that the Claimant hadn't proven her availability.

[5] The Claimant appealed the General Division's decision to the Tribunal's Appeal Division. The Appeal Division allowed the appeal because the General Division based its decision on an important error of fact. It sent the matter back to the General Division.

[6] So now, as a different member of the General Division, 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.

[7] The Commission says that the Claimant wasn't available because she left her job to prepare for university.<sup>2</sup>

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<sup>1</sup> The reconsideration decision is on page GD3A-48.

<sup>2</sup> See page GD3A-25.

[8] The Claimant says that her course didn't affect her ability to find or work at a job. She says she always worked and went to school at the same time.

## Issue

[9] Was the Claimant available for work from May 17, 2021?

## Analysis

### What the law says about availability

[10] A claimant has to prove that they are "capable of and available for work" but aren't able to find a suitable job.<sup>3</sup>

[11] A temporary section of the *Employment Insurance Act* (EI Act) confirms that the availability requirements apply to students.<sup>4</sup>

[12] Before that section became law, the Federal Court of Appeal said that claimants who are in school full-time are presumed to be unavailable for work.<sup>5</sup>

[13] The presumption doesn't apply to the Claimant.

[14] I find that while the temporary section of law applies, the presumption doesn't apply. This is because the temporary section makes it clear that students have to prove their availability, whether or not they can rebut the presumption of non-availability.

[15] For the time after the temporary section ended, the presumption still didn't apply to the Claimant.

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<sup>3</sup> See section 18(1)(a) of the *Employment Insurance Act* (EI Act).

<sup>4</sup> Section 153.161 of the EI Act reads: 153.161 (1) For the purposes of applying paragraph 18(1)(a), a claimant who attends a course, program of instruction or training to which the claimant is not referred under paragraphs 25(1)(a) or (b) is not entitled to be paid benefits for any working day in a benefit period for which the claimant is unable to prove that on that day they were capable of and available for work. (2) The Commission may, at any point after benefits are paid to a claimant, verify that the claimant referred to in subsection (1) is entitled to those benefits by requiring proof that they were capable of and available for work on any working day of their benefit period.

<sup>5</sup> See *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.

[16] The presumption only applies to claimants taking full-time studies. It isn't clear why the Claimant reported that her course was full-time on her training questionnaire. But with respect to the presumption, I find the Claimant's training was not full time. I find this because she took only two courses at once and spent at most 10 hours a week on her studies.<sup>6</sup>

[17] A claimant who wants to prove their availability has to prove the following three things:

- a) They had a desire to return to work as soon as a suitable job was available.
- b) They made efforts to find a suitable job.
- c) They didn't set personal conditions that could have unduly limited their chances of going back to work.<sup>7</sup>

[18] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.<sup>8</sup>

[19] Sometimes I have to consider whether the Claimant was making reasonable and customary efforts to find a job.<sup>9</sup> I don't have to do that in this case because the Commission didn't ask the Claimant to prove this.

– **A desire to return to suitable employment**

[20] The Claimant has shown that she wanted to go back to work as soon as a suitable job was available, but only as of August 3, 2021.

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<sup>6</sup> As per the Claimant's testimony, and the training questionnaire shows that she only took two courses between July and September 2021.

<sup>7</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>8</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.

<sup>9</sup> See section 50(1) and section 50(8) of the EI Act.

[21] Before then, the Claimant's statements show that she wasn't interested in returning to work. She wanted to collect EI benefits and concentrate on her course.<sup>10</sup> In her training questionnaire completed on July 10, 2021, she wrote that without the obligations of the workplace she could dive into her studies with a clear head.<sup>11</sup> This shows that she didn't have a desire to return to work then.

[22] However, I find that she had a desire to return to the workplace as of August 3, 2021. This is when she learned about the availability requirements under the EI Act. Before then, the Claimant didn't realize that she had to be actively and genuinely looking for a job to qualify for EI benefits. This isn't surprising given her young age (22 years old at the time of the hearing).

[23] I am satisfied that when the Claimant realized the requirements of the EI Act, she actively started to look for work, proving a real desire to find a job. I discuss her efforts to find a job below.

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

[24] The Claimant made enough efforts to find a suitable job as of August 3, 2021, but not before then.

[25] I find that before the Claimant knew of the availability requirements under the EI Act she wasn't looking for a job. I base my finding on the Claimant's statement in her July 2021 training questionnaire that she wasn't looking for work and wanted to finish her schooling before returning to the workforce.<sup>12</sup>

[26] The Claimant says it isn't fair to consider this statement because it isn't what she thinks and she didn't understand what she was supposed to do then. She testified that she had been looking for work since May 2021.

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<sup>10</sup> See supplementary record of claims dated August 3, 2021 (GD3A-31) and August 5, 2021 (GD3A-47). See also the Claimant's training questionnaire on page GD3A-23.

<sup>11</sup> See page GD3A-23.

<sup>12</sup> See page GD3A-23.

[27] But I put more weight on the statement she made at the time than to what she said at the hearing a year later. The statement she made closer to the time in question is more reliable.

[28] Further, even though she didn't know she had to be looking for a job, she still has to meet the availability requirements to get EI benefits.

[29] But I am satisfied that she started to make genuine efforts to find a job from August 3, 2021, onwards. This is when she learned of the availability requirements.<sup>13</sup> Also, the Claimant has provided a job search showing that she started applying for jobs in August 2021.<sup>14</sup>

[30] The Claimant's job search shows that she made regular and consistent efforts to find a job. She had an interview, but didn't get the position. She looked for jobs online. She had a LinkedIn account. She updated her resume. These efforts are enough to prove that she was actively looking for a job.

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

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

[32] I find the Claimant's course work was not a personal condition that unduly limited her chances of getting back to work.

[33] First, none of her courses had classes (online or otherwise). The courses were done by correspondence. The work was assigned on a Monday and she had two weeks to submit it. She learned by reading material and watching videos, for example, Ted Talks.

[34] Secondly, the time she spent on her courses wasn't unduly limiting. She spent about ten hours a week (two hours a day, five days a week) on her course work. This wouldn't have affected her availability because it was her choice when she completed

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<sup>13</sup> See page GD3A-47.

<sup>14</sup> See pages GD3A-50 and RGD3-3 (from October 2021 onwards).

her work. She could have just as easily completed the work in the evening or on weekends had she found a suitable job.

[35] In her training questionnaire, the Claimant reported spending more than 10 hours a week on her studies. I prefer the Claimant's testimony about the time she spent on her studies to what she wrote the training questionnaire. The training questionnaire was completed only days after she started the courses, so it's probable that she didn't know how much time she would be spending on her courses. Further, and more importantly, her testimony is in line with the personal schedule she provided to the Commission in August 2021 that shows she set aside two hours a day to work on her course.<sup>15</sup>

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

[36] Based on my findings on the three factors, I find that the Claimant has shown that she was capable of and available for work but unable to find a suitable job as of August 3, 2021.

## **Conclusion**

[37] The Claimant has shown that she was available for work within the meaning of the law as of August 3, 2021.

[38] She is disentitled for not proving her availability from May 17, 2021, to August 2, 2021. The disentitlement for availability ends on August 2, 2021.

[39] The appeal is allowed, in part.

Angela Ryan Bourgeois  
Member, General Division – Employment Insurance Section

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<sup>15</sup> See schedule starting on page GD3A-32.