[TRANSLATION]

Citation: *CG v Canada Employment Insurance Commission*, 2022 SST 1406

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 (453469) dated January 31, 2022 (issued by Service Canada)

Tribunal member:	Manon Sauvé
Type of hearing:	Videoconference
Hearing date:	September 7, 2022
Hearing participant:	Appellant
Decision date:	September 27, 2022
File number	GE-22-1470

Decision

[1] The appeal is dismissed. The Claimant hasn't shown that he was available for work. This means that he can't receive Employment Insurance (EI) benefits.

Overview

[2] During the summer, the Claimant worked in forestry. He enrolled in CEGEP for the fall 2021 term. He took two courses from September 1, 2021, to December 20, 2021.

[3] On October 30, 2021, he applied for EI regular benefits. He said that he was looking for a job with flexible hours. He was prepared to work 35 to 40 hours/week.

[4] Following an investigation, the Commission refused to pay EI benefits because he didn't show that he was available for work. He didn't do enough to find a job and he limited his availability because of his studies.

[5] The Claimant disagrees with the Commission. He is available for full-time work, since he studies part-time. Also, he made efforts to find a job.

Issue

[6] Is the Claimant available for work?

Analysis

[7] 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, he has to meet the criteria of both to get benefits.

[8] 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

[1] See section 50(8) of the *Employment Insurance Act* (Act).

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

[9] 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.

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

[11] 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 taking training full-time.

[12] I will start by looking at whether I can presume that the Claimant wasn't available for work because of his full-time studies. Then, I will look at whether he was available based on the two sections of the law on availability.

Presuming full-time students aren't available for work

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

[14] I understand that the Claimant was registered for two courses in the fall 2021 term. The Claimant testified that a full-time student must be registered for at least four courses at CEGEP to be considered [*sic*] time. So, the presumption doesn't apply to the Claimant.

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[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.

[15] However, this means only that the Claimant isn't presumed to be unavailable for work, since he is studying. 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.

Reasonable and customary efforts to find a job

[16] 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 are reasonable and customary.[6]

[17] The law sets out criteria for me to consider when deciding whether the Claimant's efforts are reasonable and customary.[7] I have to look at whether his efforts are sustained and whether they are directed toward finding a suitable job. In other words, the Claimant has to have kept trying to find a suitable job.

[18] 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:[8]

- assessing employment opportunities
- registering for job-search tools or with online job banks or employment agencies
- networking
- contacting employers who may be hiring
- applying for jobs
- attending interviews

[6] See section 50(8) of the Act.
[7] See section 9.001 of the Regulations.
[8] See section 9.001 of the Regulations.

[19] The Commission says that the Claimant hasn't shown that he did enough to find a job. In November 2021, there were a dozen labourer jobs. Only one was offering more than $20/hour.

[20] Moreover, he changed his version of the facts in his notice of appeal when he said that he had carried out several job searches.

[21] The Claimant, on the other hand, maintains that he has been constantly looking for a job. He submitted his résumé to several employers. He started looking for a job as soon as his summer job ended. He provided the business cards of the companies he visited.

[22] I see that the Claimant changed his statements about looking for a job. On November 26, 2021, he told the Commission that he had talked with a friend of his father who works for a lumber company, but there weren't any positions. He also could have worked as a welder, but he didn't think he had the skills.

[23] As part of his reconsideration request in December 2021, he said that he didn't mention all of his job-search activities. He reported only the most important ones. He also said that, since December 2021, he has looked for a job on several occasions.

[24] I am of the view that the Claimant carried out sufficient job searches from December 2021 onward. In making my finding, I have considered the Claimant's initial statements and his subsequent statements.

[25] I give less weight to the Claimant's subsequent statements. He was aware of the consequences of not providing evidence of his efforts to find a job. If it is true that he had started searching in September 2021, he would have provided the Commission with the evidence. He can't claim that he reported the most important jobs in November 2021, when he has to prove that he was trying to find a job. Moreover, the Claimant's explanations for not having reported all his efforts to find a job aren't credible.

[26] At the same time, it is true that the initial statements are important. However, in the decision that the Commission cited,[9] that was a statutory declaration—in other words, an oath. That isn't the case here, since this is about information that the Commission collected.

[27] Nevertheless, I have to let the Claimant explain the contradictions or changes in information provided to meet the criteria in the Act. That is what I have done, and I find that the explanations aren't credible.[10]

[28] In the circumstances, I find that, starting from when he was able to show evidence for it (that is, starting from December 2021), the Claimant made significant efforts to find a job. In his notice of appeal, he provided a list of employers and a credible description.[11]

Capable of and available for work

[29] I also have to consider whether the Claimant is capable of and available for work but unable to find a suitable job. Case law sets out three factors for me to consider when deciding this.[12] The Claimant has to prove the following three things:[13]

a) He wanted to go back to work as soon as a suitable job was available.

b) He has made efforts to find a suitable job.

c) He hasn't set personal conditions that might unduly (in other words, overly) limit his chances of going back to work.

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[9] *Lévesque v Canada*, 1994, A-557-96.
[10] *Oberde Bellefleur OP Clinique dentaire O. Bellefleur (Employer) v Canada (Attorney General)*, 2008 FCA 13 (CanLII).
[11] GD2-15 *et seq*.
[12] See section 18(1)(a) of the Act.
[13] 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.

[30] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.[14]

– **Wanting to go back to work**

[31] The Claimant hasn't shown that he wanted to go back to work as soon as a suitable job was available. To meet the criteria of the Act, he changed the version of the facts that he told the Commission about his efforts and willingness to find a job.

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

[32] The Claimant didn't make enough efforts to find a suitable job.

[33] 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.[15]

[34] As I explained above, the Claimant made some efforts to find a job during the fall 2021 term. I find that his efforts weren't enough for that period. In fact, I have found that he carried out his job-search efforts mainly starting in December 2021.

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

[35] The Claimant has set personal conditions that might unduly limit his chances of going back to work.

[36] I have found that the Claimant isn't a full-time student and that this means that the presumption doesn't apply to his case.

[37] I have found that the Claimant said that he was taking two courses at CEGEP during the fall 2021 term. You have to take four courses to be considered full-time. So, he wasn't enrolled full-time. However, he still has to show that he didn't limit his chances of going back to work.

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[14] See *Canada (Attorney General) v Whiffen*, A-1472-92; and *Carpentier v Canada (Attorney General)*, A-474-97.
[15] 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.

[38] Having considered the evidence on file, his testimony, and his arguments, I have come to the conclusion that the Claimant limited his chances of going back to work.

[39] At his hearing, he admitted himself that he would not give up his studies for a full-time job that didn't align with his interests. I understand that he is studying natural sciences and that he wants to work in a related field. However, the purpose of EI isn't to allow people to further their education and to help them financially.

[40] You have to be available each working day of the week. You can't cite particular reasons for being less available or for having the rules apply differently.[16]

[41] The Claimant said that he could not give up his studies unless the job was in line with his interests in the environment, among other things. He has the right to make that choice, and that is entirely commendable. But he can't make all EI insureds take responsibility for his choice. Benefits are paid on a temporary basis to individuals who are unemployed and who make an effort every working day to find a job. They must not restrict themselves to certain types of jobs or to certain hours to meet their personal needs.

[42] In addition, the explanations that the Claimant provided during his testimony haven't satisfied me that he didn't limit his availability because of his classes and personal career choices.

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

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

Conclusion

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

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[16] *Canada (Attorney General) v Gagnon*, 2005 FCA 321 (CanLII).

[45] This means that the appeal is dismissed.

Manon Sauvé

Member, General Division – Employment Insurance Section