



Citation: *RB v Canada Employment Insurance Commission*, 2022 SST 1351

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

## Decision

**Appellant (Claimant):** R. B.  
**Representative:** K. B.

**Respondent (Commission):** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (452400) dated February 4, 2022  
(issued by Service Canada)

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**Tribunal member:** Gerry McCarthy

**Type of hearing:** Teleconference  
**Hearing date:** April 12, 2022  
**Hearing participants:** Appellant's representative  
Interpreter

**Decision date:** April 13, 2022  
**File number:** GE-22-793

## Decision

[1] The appeal is allowed.

[2] The Claimant has shown that she available for work. 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 Employment Insurance (EI) regular benefits from October 5, 2020, to June 30, 2021, 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 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.

[5] The Commission says the Claimant wasn't available, because her initial statement was that she was not actively seeking work due to a fear of contracting Covid-19.

[6] The Claimant's representative disagrees and submits that the Claimant tried to find work and wanted a job starting October 5, 2020.

## Matter I have to consider first

### The Claimant wasn't at the hearing

[7] 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> I think that the Claimant got the notice of hearing because the Claimant's representative confirmed the Claimant did receive her notice of hearing. However, the Claimant's representative explained that the Claimant

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<sup>1</sup> Section 12 of the *Social Security Tribunal Regulations* sets out this rule.

couldn't attend the hearing because she suffered from anxiety about attending. The Claimant's representative confirmed the hearing could proceed without the Claimant. So, the hearing took place when it was scheduled, but without the Claimant.

## Issue

[8] Was the Claimant available for work?

## Analysis

[9] 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.

[10] 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.<sup>2</sup> The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" mean.<sup>3</sup> I will look at those criteria below.

[11] 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.<sup>4</sup> Case law gives three things a claimant has to prove to show that they are "available" in this sense.<sup>5</sup> I will look at those factors below.

[12] 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.

[13] I will now consider these two sections myself to determine whether the Claimant was available for work.

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<sup>2</sup> See section 50(8) of the *Employment Insurance Act* (Act).

<sup>3</sup> See section 9.001 of the *Employment Insurance Regulations* (Regulations).

<sup>4</sup> See section 18(1)(a) of the Act.

<sup>5</sup> See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

## **Reasonable and customary efforts to find a job**

[14] The law sets out criteria for me to consider when deciding whether the Claimant's efforts were reasonable and customary.<sup>6</sup> 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.

[15] 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 activities are the following:<sup>7</sup>

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

[16] The Commission says the Claimant didn't do enough to try to find a job. Specifically, the Commission says the Claimant's initial statement was that she was not actively seeking work due to a fear of contracting Covid-19

[17] The Claimant's representative disagrees. The Claimant's representative says the Claimant's efforts were enough to prove that she was available for work.

[18] I find the Claimant made reasonable and customary efforts to find work for the following reasons:

[19] First: The Claimant's representative persuaded me that the Claimant tried to find a job starting October 5, 2020. Specifically, the Claimant's representative explained that the Claimant looked for maintenance jobs (and other work) but could not find an employer that would hire her for a position. I realize the Commission submitted that the Claimant's initial statement was that she was not actively seeking work due to a fear of contracting Covid-19. However, the Claimant's representative indicated the Claimant couldn't speak English and her initial statements were misinterpreted.

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<sup>6</sup> See section 9.001 of the Regulations.

<sup>7</sup> See section 9.001 of the Regulations.

[20] Second: I'm further persuaded the Claimant was making efforts to find work, because she eventually secured a maintenance job in October 2021. Furthermore, the Claimant was fully vaccinated by the start of June 2021. I realize the Commission submitted they did not disentitle the Claimant because she was not vaccinated, but because she stated she wasn't looking for work. However, I wish to emphasize that I'm persuaded that even though the Claimant wasn't vaccinated until June 2021 she was still making efforts to find work starting October 5, 2020.

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

### **Capable of and available for work**

[22] 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>8</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.
- c) She didn't set personal conditions that might have unduly (in other words, overly) limited her chances of going back to work.

[23] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.<sup>9</sup>

### **Wanting to go back to work**

[24] The Claimant has shown that she wanted to go back to work as soon as a suitable job was available. Specifically, the Claimant's representative submitted that the Claimant wanted to work starting October 5, 2020, and tried to find a job. I recognize the

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<sup>8</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>9</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.

Commission interpreted the Claimant's initial statement to mean she was only available for work once she was fully vaccinated. Nevertheless, I accept the submission from the Claimant's representative that the Claimant wanted to go back to work even though she was initially unvaccinated. I accept this submission because it was plausible. Furthermore, the Claimant eventually secured a job in October 2021.

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

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

[26] 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.<sup>10</sup>

[27] The Claimant's efforts to find a new job included searching for maintenance jobs and work in general. I explained these reasons above when looking at whether the Claimant has made reasonable and customary efforts to find a job.

[28] Those efforts were enough to meet the requirements of this second factor, because the submissions from the Claimant's representative persuaded me the Claimant looked for work but couldn't find a job.

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

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

[30] The Claimant's representative submits the Claimant hasn't done this because even though she was initially unvaccinated she still wanted to work.

[31] The Commission says the Claimant stated she wanted to go back to work once vaccinated.

[32] I find the Claimant didn't unduly limit her chances of going back to work, because her representative submitted the Claimant wanted to work despite being initially

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<sup>10</sup> 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.

unvaccinated. The submissions from the Claimant's representative persuaded me on this matter, because his statements were plausible and the Claimant eventually secured a job in October 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 has shown that she was capable of and available for work but unable to find a suitable job.

**Conclusion**

[34] 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 EI benefits. So, the Claimant may be entitled to benefits.

[35] This means that the appeal is allowed

*Gerry McCarthy*

Member, General Division – Employment Insurance Section