



Citation: *KF v Canada Employment Insurance Commission*, 2022 SST 1553

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

## Decision

**Appellant:** K. F.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (441919) dated December 6, 2021 (issued by Service Canada)

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**Tribunal member:** Gary Conrad

**Type of hearing:** Videoconference

**Hearing date:** June 15, 2022

**Hearing participant:** Appellant

**Decision date:** June 17, 2022

**File number:** GE-22-1310

## Decision

[1] The appeal is allowed.

[2] I find the Claimant has proven that she was available for work so she should not be disentitled from benefits.

## Overview

[3] 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.

[4] The Commission decided that the Claimant was disentitled from being paid EI benefits from October 4, 2020, to December 16, 2020 as she was not available for work while taking her university.<sup>1</sup>

[5] The Claimant says she was absolutely available for work, and even secured a full-time job, as her field or work allowed her to easily work around her schooling.

[6] I must decide whether the Claimant has proven<sup>2</sup> that she was available for work.

## Matter I have to consider first

[7] 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.

[8] 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 Commission that if they did, her proof was insufficient.

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<sup>1</sup> See GD03-69 which upholds GD03-41

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

[9] I further find the Commission did not make any detailed submissions on how the Claimant failed to prove to them that she was making reasonable and customary efforts; the Commission only summarized what the legislation says in regard to subsection 50(8) of the Act and what it says about reasonable and customary efforts.

[10] 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, the Commission did not disentitle the Claimant under subsection 50(8) of the Act. Therefore, it is not something I need to consider.

## **Issue**

[11] Was the Claimant available for work?

## **Analysis**

[12] The law requires claimants to show that they are available for work.<sup>3</sup> In order to be paid EI benefits, claimants have to be capable of and available for work and unable to find suitable employment.<sup>4</sup>

[13] 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.

[14] The Act was recently changed and the new provisions apply to the Claimant.<sup>5</sup> 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.

[15] The Claimant has to prove three things to show she was available:

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<sup>3</sup> 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.

<sup>4</sup> Paragraph 18(1)(a) of the *Employment Insurance Act*.

<sup>5</sup> Subsection 153.161(1) of the *Employment Insurance Act*

1. A desire to return to the labour market as soon as a suitable job was available
2. That desire expressed through efforts to find a suitable job
3. No personal conditions that might have unduly limited her chances of returning to the labour market<sup>6</sup>

[16] I have to consider each of these factors to decide the question of availability,<sup>7</sup> looking at the attitude and conduct of the Claimant,<sup>8</sup> over the period of the disentitlement, October 4, 2020, to December 16, 2020.

Did the Claimant have a desire to return to the labour market as soon as a suitable job was available?

[17] I find the Claimant has shown she had a desire to return to the labour market as soon as a suitable job was available.

[18] The Claimant says she wanted to work and was trying to find a job. She says she was offered a job, which she accepted.

[19] The Claimant says she was offered the job in November 2020, but she could not start it until January 2021, as the police took forever to get her background check done.

[20] The Claimant went to a police station to try and get a background check, but there was no one there since it was in the middle of COVID restrictions. The background checks were all being done online, so the Claimant submitted her information and waited.

[21] She heard nothing for many weeks.

[22] Eventually, she went downtown to police headquarters, also closed due to COVID restrictions, and pounded on the door until someone came to speak to her. She

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<sup>6</sup> *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

<sup>7</sup> *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

<sup>8</sup> *Canada (Attorney General v Whiffen*, A-1472-92 and *Carpentier v The Attorney General of Canada*, A-474-97.

explained the situation to them and they told her to leave and submit the application online.

[23] The Claimant did not give up. She kept hammering on the door until someone else came, listened to her, and took her application for her background check. The Claimant says she finally got her background check back at the end of December 2020.

[24] I find the Claimant's efforts to try and find work, and the fact she accepted a job, shows her desire to work.

[25] I find her efforts to ensure she got the background check completed, no matter what, so she could start at her job, shows a very strong desire to work.

Has the Claimant made efforts to find a suitable job?

[26] The Claimant did make enough efforts to find a job.

[27] I find the Claimant's evidence of a job search shows multiple applications throughout the period of the disentitlement. This proves her efforts were ongoing and that she was undertaking reasonable efforts of searching for work online and applying for positions.<sup>9</sup>

[28] I find the fact she was offered, and accepted a job, shows that her efforts were sufficient, since they resulted in her obtaining employment.<sup>10</sup>

[29] I would also highlight the Claimant's unflagging efforts to get her background check completed in order to be able to start her job as another example of her determined efforts to get a job.

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<sup>9</sup> GD3-48 to GD03-67

<sup>10</sup> GD06 is a T4 for the employer that she says hired her, proof she actually obtained a job.

Did the Claimant set personal conditions that might have unduly limited her chances of returning to the labour market?

[30] I find the Claimant did not set personal conditions that might have unduly limited her chances of returning to the labour market

[31] The Commission says the Claimant could only work outside of her school schedule, which would overly limit her chances of finding work.

[32] The Commission says the fact the Claimant took a leave of absence from her previous job to attend school shows that her schooling limits her availability for work.

[33] I find I disagree with the Commission's submissions.

[34] I accept as fact the Claimant had mandatory classes that she had to attend for her university as the Claimant testified as such.

[35] However, I do not agree that this is something that unduly limited the Claimant's ability to return to the labour market.

[36] In general, it is accepted that the restriction placed on a claimant's availability by having set class times on set days, would unduly limit their chances of returning to the labour market.<sup>11</sup> However, the Claimant's case is distinguishable from the general situation due to the unique working schedule of jobs in her field, and the fact she obtained a job while attending her schooling.

[37] The Claimant says the jobs she was applying to were before and after school care.

[38] The Claimant says the jobs were considered full-time as she would be working Monday to Friday with a split shift, working early in the morning, before her classes, and in the late afternoon, after her afternoon classes were done and before her evening classes started.

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<sup>11</sup> See *Duquet v Canada (Employment and Immigration Commission)*, 2008 FCA 313 which supports this

[39] The Claimant says it was the unique split shift nature of this job that allowed her to work full-time around her schooling. This was not an accommodation for the Claimant, this was the standard schedule of work at this type of job.

[40] I accept the Claimant was applying for full-time work and note that even the Commission agrees, as their worker told the Claimant they agreed the positions she was applying for were full-time.<sup>12</sup>

[41] The Claimant was also hired for one of the positions she applied to which further shows that her schooling did not unduly prevent her from returning to the labour market, as an employer hired her to work full-time while she was going to school.

[42] So, as the Commission agrees the Claimant was applying for full-time work, and she was able to get hired at one of the full-time jobs she was applying for, without any change to her school schedule, it proves that her schooling did not overly limit her from returning to the labour market

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

[43] Considering my findings on each of the three factors together, I find that the Claimant has proven that she was available for work.

## **Conclusion**

[44] The appeal is allowed.

[45] The Claimant has proven that she was available for work.

Gary Conrad  
Member, General Division – Employment Insurance Section

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<sup>12</sup> See the second last paragraph on GD03-68