



Citation: *DP v Canada Employment Insurance Commission*, 2022 SST 1198

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

Decision

Appellant: D. P.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (438688) dated November 12, 2021 (issued by Service Canada)

Tribunal member: Linda Bell

Type of hearing: Questions and answers

Decision date: November 8, 2022

File number: GE-22-2903

Decision

[1] I am allowing the appeal, in part.

[2] The Appellant (Claimant) has shown he meets the availability requirements for EI benefits from March 25, 2021, to April 16, 2021, and from April 20, 2021, to April 23, 2021.

[3] The Claimant doesn't meet the availability requirements for EI benefits on April 19, 2021. This means he is disentitled from EI benefits for April 19, 2021.

Overview

[4] The Canada Employment Insurance Commission (Commission) decided the Claimant was disentitled from receiving EI benefits between January 6, 2021, and April 23, 2021. This is because he was taking a full-time training course and had not shown he was available for work.

[5] The Claimant submitted an appeal to the Social Security Tribunal's (Tribunal) General Division (appeal GE-21-2394). The General Division Member assigned to that appeal found the Claimant had proven his availability for work during the entire period of disentitlement. The Commission appealed that decision to the Tribunal's Appeal Division.

[6] The Member of the Appeal Division allowed the Commission's appeal. She determined the Claimant was not available for work between January 6, 2021, and March 25, 2021. She returned the matter to the General Division with the following direction.

The Claimant's availability between March 25, 2021, and April 24, 2021, is indeterminate at this point. I am returning this matter to the General Division so that it may address this outstanding issue.

[7] Upon review of the AD decision, I scheduled the hearing to proceed by way of written question and answer. I provided each party an opportunity to make submissions on the specific issues directed by the Appeal Division.

[8] The Claimant responded to my questions on October 27, 2022. The Commission submitted their supplementary representations on November 1, 2022.

Issues

[9] Was the Claimant available for work from March 25, 2021, to April 24, 2021?

Analysis

[10] The law states that for the purpose of section 18 of the *Employment Insurance Act* (Act), a working day is any day of the week except Saturday and Sunday.¹

[11] So, I must consider whether the Claimant has shown he was capable of and available for work and unable to find suitable employment for every working day from Thursday, March 25, 2021, to Friday, April 23, 2021.²

[12] The Claimant has to prove three things to show he was available under this section:

- a) A desire to return to the labour market as soon as a suitable job is available
- b) That desire is expressed through efforts to find a suitable job
- c) No personal conditions that might unduly limit their chances of returning to the labour market³

[13] I have to consider each of these factors to decide the question of availability.⁴ I also have to look at the attitude and conduct of the Claimant.⁵

¹ See section 32 of the *Employment Insurance Regulations* (Regulations).

² Paragraph 18(1)(a) of the Act.

³ *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

⁴ *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

⁵ *Canada (Attorney General v Whiffen*, A-1472-92 and *Carpentier v The Attorney General of Canada*, A-474-97.

– **Desire to return to work**

[14] I find the Claimant has shown he had a desire to return to the labour market as soon as a suitable job was available. He says by March he was desperate for work as he had almost exhausted his savings.

– **Efforts to find a suitable job**

[15] The Claimant says he made efforts to find a suitable job since March 2021. Specifically, he provides six job postings and states he applied for “a lot more” when he dropped off his resume in person. He says he dropped off approximately two resumes each day up to fifteen.

[16] The Regulations list nine job-search activities I have to consider. Some examples of those activities are

- looking for jobs listed on-line
- updating your resume
- cold calling or networking
- applying for a job.⁶

[17] I recognize that there is no formula to determine a reasonable period to allow a claimant to explore job opportunities. This means I must consider specific circumstances on a case-by-case basis.⁷

[18] In this case, the economic effects caused by the global COVID-19 pandemic and public health orders in the Claimant’s region are such circumstances that should be a consideration when determining the reasonable period to explore suitable job opportunities.

[19] After consideration of the totality of the evidence, as set out above, I find that the Claimant’s efforts were enough to meet the requirements of this second factor. The

⁶ See section 9.001 of the Regulations.

⁷ See section 10.4.1.4 of the Digest of Benefit Entitlement Principles.

Claimant was applying for suitable jobs based on his experience, between March 26, 2021, and April 23, 2021. His efforts were successful as he was able to work during this period doing cleaning and labour jobs.

– **Unduly limiting his chances of returning to the labour market**

[20] I find the Claimant's study permit and exam schedule didn't unduly limit his chances of working from March 25, 2021, to April 16, 2021, and from April 20, 2021, to April 23, 2021. This is because his courses had finished and his exams during those dates were during the evening or on the weekend. However, his exam schedule did limit his chances of working on Monday, April 19, 2021.

[21] I don't agree with the Commission when it says there are not regular working hours for which the Claimant must not be available for work. Additionally, the Commission points out that the Claimant has indicated that he "was able to work any day during regular/irregular hours other than my exam time which was in the afternoon."

[22] As set out above, the law states that for the purpose of section 18 of the Act (availability), a working day is any day of the week except Saturday and Sunday.⁸

[23] The Federal Court of Appeal established that a claimant has to be available during regular hours for every working day of the week.⁹ In her decision regarding this appeal, the Appeal Division Member determined that ultimately, a claimant has to be available during regular hours for every working day of the week.¹⁰

[24] The Claimant submitted documents showing his exam schedule between April 12, 2021, and April 22, 2021. He also provided documents explaining his study permit didn't limit the number of hours he could work during school breaks. He explained that his class lectures ended March 26, 2021, followed by a revision session, which wasn't mandatory to attend, and then a week for study break. He says he was available for full-time work between March 26, 2021, and April 25, 2021.

⁸ See section 32 of the Regulations.

⁹ See *Canada (Attorney General) v Bertrand*, 1982 FCA 423.

¹⁰ See paragraph 37 in *Canada Employment Insurance Commission v D.P.*, AD-22-45.

[25] I find the Claimant has shown he was available for work, without unduly limiting his chances of returning to the labour market for the periods from March 25, 2021, to April 16, 2021, and from April 20, 2021, to April 23, 2021. He has shown he was available to work during regular hours for every working day of the week. He has also shown his study permit didn't restrict the number of hours he could work during school breaks.

[26] The Claimant admits that he was not available to work on Monday, April 19, 2021, during his exam from 8:30 a.m. to 11:30 a.m. I find this was a restriction unduly limiting his chances of returning to the labour market on this specific day.

[27] After careful consideration of the evidence, as set out above, I find the Claimant's exam schedule didn't unduly limit his chances of going back to work from March 25, 2021, to April 16, 2021, and from April 20, 2021, to April 23, 2021.

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

[28] After considering my findings on each of the three factors together, I find the Claimant has shown he was capable of and available for work from March 25, 2021, to April 16, 2021, and from April 20, 2021, to April 23, 2021. This means the Claimant is not disentitled from receiving regular EI benefits during these periods.

[29] The Claimant was not available to work during regular hours on Monday, April 19, 2021, because he had to write an exam that morning. This means he is disentitled from receiving regular EI benefits on April 19, 2021.

Conclusion

[30] The appeal is allowed, in part.

Linda Bell
Member, General Division – Employment Insurance Section