



Citation: *SA v Canada Employment Insurance Commission*, 2022 SST 1491

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

Decision

Appellant: S. A.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (435497) dated September 28, 2021 (issued by Service Canada)

Tribunal member: Solange Losier

Type of hearing: Videoconference

Hearing date: February 16, 2022

Hearing participant: Appellant

Decision date: February 28, 2022

File number: GE-21-2331

Decision

[1] The appeal is allowed in part. The Claimant has shown that she was available for work from February 16, 2022. This means that she is not disentitled from receiving Employment Insurance (EI) benefits. So, the Claimant may be entitled to benefits.

Overview

[2] The Canada Employment Insurance Commission (Commission) decided that the Claimant was disentitled from receiving Employment Insurance (EI) regular benefits from May 24, 2021 because she was not available for work.¹

[3] 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 and they cannot impose any personal conditions that might unduly limit their chances of getting 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 available for work.

[5] The Commission says that the Claimant was not available because she has restricted her availability for work that it is unlikely she will be able to find an employer that could accommodate her limited hours of availability for work.²

[6] The Claimant disagrees and states that the Commission did not give consideration to all the facts of her case.³

¹ See initial decision dated June 23, 2021 at GD3-15 to GD3-16 and reconsideration decision dated September 28, 2021 at GD3-26 to GD3-27.

² See Commission`s submissions at GD4-1 to GD4-6.

³ See Claimant`s notice of appeal forms at GD2-1 to GD2-9.

Matters I have to consider first

Second adjournment request was denied

[7] This case was previously adjourned because the Claimant was planning to secure legal representation.⁴ That did not happen. The Claimant asked for a second adjournment, but that request was denied because her circumstances were not exceptional.⁵

Documents submitted after the hearing

[8] At the hearing, the Claimant testified that she made efforts to find employment but that she would need some time to compile the information into a list. I asked the Claimant to submit a copy of her job list after the hearing because this information was relevant to her case.

[9] The Claimant submitted several detailed documents including a job list, several resumes, copies of job applications, various emails she sent seeking assistance, as well as other job related resources.⁶ The Tribunal sent a copy of these documents to the Commission with an opportunity to reply. No reply has been received as of the deadline or today's date.⁷

[10] I wrote the Claimant a letter after the hearing to advise that no further documentation was required as a decision would follow.⁸ The Claimant then submitted additional post hearing documents relating to her job searching efforts.⁹ I allowed the post hearing documents because they were relevant and added them to the file. A copy was shared with the Commission.

⁴ See GD1; GD7; GD8; GD9; GD10.

⁵ See GD11; GD12.

⁶ See post-hearing documents submitted by the Claimant at GD17-1 to GD17-136; GD17A-1 to GD17A-2.

⁷ See opportunity to reply letter sent to the Commission at GD18-1 to GD18-2. The Commission's deadline to reply was February 24, 2022.

⁸ See letter dated February 17, 2022 at GD19-1 to GD19-2.

⁹ See GD20-1 to GD20-3; GD21-1 and GD22-1.

Issue

[11] Was the Claimant available for work from May 24, 2021?

Analysis

[12] 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.

[13] 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.¹⁰ The *Employment Insurance Regulations* (Regulations) give criteria that help explain what “reasonable and customary efforts” mean.¹¹ I will look at those criteria below.

[14] 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.¹² Case law gives three things a claimant has to prove to show that they are “available” in this sense.¹³ I will look at those factors below.

[15] The Commission decided that the Claimant was disentitled from receiving benefits because she was available for work based on these two sections of the law.

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

Reasonable and customary efforts to find a job

[17] The law sets out criteria for me to consider when deciding whether the Claimant’s efforts were reasonable and customary.¹⁴ I have to look at whether her efforts were

¹⁰ See section 50(8) of the *Employment Insurance Act* (Act).

¹¹ See section 9.001 of the *Employment Insurance Regulations* (Regulations).

¹² See section 18(1)(a) of the Act.

¹³ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

¹⁴ See section 9.001 of the Regulations.

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.

[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 activities are the following:¹⁵

- preparing a résumé or cover letter
- registering for job-search tools or with online job banks or employment agencies
- attending job-search workshops or job fairs
- applying for jobs
- attending interviews

[19] The Claimant testified that she looked and applied for jobs online, she registered with various employment and career centres, updated several resumes and cover letters, attended job fairs online, purchased work appropriate clothing and assistive aids, upgraded her technical skills and had several job interviews. The Claimant has provided supporting documents to show all of her job seeking efforts.¹⁶

[20] The Commission agrees that the Claimant has made efforts to find work, including applying for jobs and obtaining a visual aid to help her access public transportation.¹⁷

[21] I find that the Claimant has proven that her efforts to find a job were reasonable and customary.¹⁸ The Claimant has shown that her efforts have been sustained throughout the entire disentitlement period, from May 24, 2022. She has made a variety of efforts to try to secure suitable employment. This means that she is not disentitled to EI benefits under this section.¹⁹

¹⁵ See section 9.001 of the Regulations.

¹⁶ See GD15-1 to GD15-6; GD15A-1 to GD15A-4; GD16-1 to GD16-3; GD17-1 to G17-136; GD17A-1 to GD17A-2; GD20-1 to GD20-3; GD21-1 to GD22-1.

¹⁷ See GD4-2.

¹⁸ See section 9.001 of the Regulations.

¹⁹ See section 50(8) of the Act.

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:²⁰

- 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 did not 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.²¹

– Wanting to go back to work

[24] The Claimant testified that she wants to go back work. The Claimant' desire to work is not disputed by the Commission because they noted that the Claimant has continually expressed a desire to return to full-time work.²²

[25] Accordingly, I find that the Claimant has shown that she wanted to go back to work as soon as a suitable job was available.

– Making efforts 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.²³

²⁰ 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.

²¹ 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.

²² See GD4-2.

²³ 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.

[27] The Claimant's efforts to find a new job included the following:

- a) Looking for jobs online
- b) Applying for jobs
- c) Registering with an employment and career centre
- d) Updated her resume and cover letter
- e) Participated in job fairs online,
- f) Purchasing work appropriate clothing, assistive aids
- g) Completing technical training to upgrade her skills
- h) Attending interviews

[28] I find that the Claimant has made enough effort to find a suitable job. Those efforts were enough to meet the requirements of this second factor because she has made a variety of ongoing efforts and tried her best to secure employment.

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

[29] I do not find that the Claimant's visual disability is a personal condition that she imposed, or that it limits her chances of going back to work. I acknowledge that the Claimant has made significant efforts to obtain assistive devices, some at her own expense to help her perform job related tasks. I also accept that there are many suitable jobs that she is able to do based on her skill set and previous work experience.

[30] I do not find that the Claimant's requirement to work near home is a personal condition that limits her chances of going back to work. The Claimant was previously unable to use public transportation because of her visual disability as she cannot see the bus numbers, particularly at night. Meanwhile, the Claimant has since confirmed support from "TransHelp" from the region which provides door-to-door accessible transportation service within the region when the Claimant finds employment. This eliminates her previous concern about taking buses at night and getting lost.

[31] However, I do find that the Claimant imposed a personal condition from May 23, 2021 that may have limited her chances of going back to work because she was only available for certain hours of the day.

[32] The Claimant told the Commission on several occasions that she was only available to work from 8am to 2:30pm because she did not have childcare arranged for her son.²⁴

[33] At the hearing, the Claimant is now stating that she could work any hours if she found remote work. She explained that she had worked remotely for her former employer during the pandemic. For example, on days that she had to go to the office, she brought her 10 year old son to work. She also created a part-time online business teaching from home.

[34] I agree with the Claimant that remote work is a possibility and is suitable employment based on her skills and experience. However, I note that some of the retail positions she applied for could not accommodate her request to work from home, or the hours she was available (TJ Maxx and Walmart), which clearly limited her chances of going back to work. I also cannot ignore that she told the Commission her hours of availability for work were limited to when her child was in school.²⁵ She also told them that finding childcare and paying for it were barriers in securing employment.

[35] The Claimant now says that her circumstances have changed in relation to childcare. She has since connected with a social worker who provided her with some childcare options for after school care, as well as applying for a childcare subsidy to help pay for it. She has also spoken to two neighbours who agreed that they could watch her child on occasion if she found a job that requires her to work outside of her home.

²⁴ See Claimant's written statement at GD3-23 and supplementary record of claim dated September 28, 2021 at GD3-25.

²⁵ See supplementary record of claim dated June 22, 2021 at GD3-13; supplementary record of claim dated June 23, 2021 at GD3-14 and supplementary record of claim dated September 28, 2021 at GD3-25.

[36] I asked the Claimant when she started making these childcare arrangements. She could not recall the exact date, but said there was an email in the file. I identified an email dated December 6, 2021 that she sent to the Tribunal that suggests she had and was going to start finding childcare arrangements.²⁶

[37] In that email to the Tribunal, the Claimant wrote that her current challenges are fewer because she has since obtained a Canadian National Institute for the Blind (CNIB) card which allows her to travel for free on the buses, as well as being eligible for TransHelp which provides door to door transportation service.²⁷ At that time, she said that she was waiting for a TransHelp access card and that she intended to contact the childcare subsidy and a childcare after school program that picks up kids from school.

[38] So I have to decide when the Claimant started making efforts to secure childcare and removed this personal condition. This is important because if she can show that she has or can secure childcare, she would be able to work outside of her home, or remotely and would not be limited to the hours her son is in school. She must show that she was making some effort to do this.

[39] First, the Claimant could not provide an exact date that she started making efforts to find childcare or when she actually secured childcare.

[40] Second, there are some emails that show she was actively making efforts around November 22 to November 24, 2021 to find childcare supports.²⁸

[41] Third, the December 6, 2021 email from the Claimant says she spoke to her Ontario Works caseworker a few months prior about a childcare subsidy, but was then told that they were not eligible for the subsidy because her son was 10 years old.²⁹ In that email, she stated that she will contact her social worker about a childcare subsidy and childcare services. She also became aware of an after school martial arts program

²⁶ See email dated December 6, 2021 at GD5-1 to GD5-2.

²⁷ See email dated December 6, 2021 at GD5-1 to GD5-2.

²⁸ See GD17-117 to GD17-120;

²⁹ The Claimant said that the subsidy is only available for kids up to 4 years old.

that could pick up her son from school as an option. More recently, she sent an inquiry on February 16, 2022 about other childcare services.³⁰

[42] I find that the Claimant has now proven that she has childcare arrangements in place if she got a job. In my view, she only started making active efforts to find childcare around and after December 6, 2021.

[43] I am satisfied that she if she got a job, whether it was remote, work in an office or hybrid, she has made arrangements for her son to be in childcare while she works. This means that I have decided to remove the disentitlement to benefits from February 16, 2022.

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

[44] Based on my findings on the three factors, I find that the Claimant has not shown that she was capable of and available for work but unable to find a suitable job from May 24, 2021 to February 15, 2022 because she did not have childcare arrangements in place.

[45] However, I am satisfied that she had removed this personal condition and made childcare arrangements from February 16, 2022. This means that she became available for work from February 16, 2022.

Conclusion

[46] The Claimant has shown that she was available for work within the meaning of the law from February 16, 2022. Because of this, I find that the Claimant is not disentitled from receiving EI benefits from this date only.

[47] This means that the appeal is allowed in part.

Solange Losier
Member, General Division – Employment Insurance Section

³⁰ See GD17A-1.