



Citation: *JN v Canada Employment Insurance Commission*, 2022 SST 1673

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

Decision

Appellant: J. N.
Representative: P. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (502987) dated August 2, 2022
(issued by Service Canada)

Tribunal member: John Noonan

Type of hearing: Videoconference
Hearing date: September 29, 2022
Hearing participants: Appellant
Appellant's representative

Decision date: October 10, 2022
File number: GE-22-2680

Decision

[1] The appeal is allowed.

Overview

[2] The Appellant, J. N., was upon reconsideration by the Commission, notified that it was unable to pay her Employment Insurance benefits from August 9, 2021 because she was taking a training course on her own initiative and has not proven her availability for work. The Appellant maintained that she continued to be available for work. The Tribunal must decide if the Appellant has proven her availability pursuant to sections 18 and 50 of the Employment Insurance Act (the Act) and sections 9.001 and 9.002 of the Employment Insurance Regulations (the Regulations).

Issues

[3] Issue # 1: Did the Appellant have a desire to return to the labour market as soon as suitable employment is offered?

Issue #2: Was she making reasonable and customary efforts to obtain work?

Issue #3: Did she set personal conditions that might unduly limit her chances of returning to the labour market?

Analysis

[4] The relevant legislative provisions are reproduced at GD4.

[5] There is a presumption that a person enrolled in a course of full-time study is not available for work. This presumption of fact is rebuttable by proof of exceptional circumstances (**Cyrenne 2010 FCA 349**)

[6] This presumption applies to an individual is not available for work when she is taking a full-time course on her own initiative. To rebut this presumption, the Appellant must demonstrate that her main intention is to immediately accept suitable employment as evidenced by job search efforts, that she is prepared to make

whatever arrangements may be required, or that she is prepared to abandon the course. She must demonstrate by her actions that the course is of secondary importance and does not constitute an obstacle to seeking and accepting suitable employment.

[7] A person who attends a full-time course without being referred by an authority designated by the Commission must demonstrate that she is capable of and available for work and unable to obtain suitable employment, and must meet the availability requirements of all claimants who are requesting regular employment insurance benefits. She must continue to seek employment and must show that course requirements have not placed restrictions on her availability which greatly reduce chances of finding employment.

[8] The following factors may be relevant to the determination regarding availability for work:

- (a) the attendance requirements of the course;
- (b) the claimant's willingness to give up her studies to accept employment;
- (c) whether or not the claimant has a history of being employed at irregular hours;
- (d) the existence of "exceptional circumstances" that would enable the claimant to work while taking courses;
- (e) the financial cost of taking the course.

[9] In order to be found available for work, a claimant shall: 1. Have a desire to return to the labour market as soon as suitable employment is offered, 2. Express that desire through efforts to find a suitable employment and 3. Not set personal conditions that might unduly limit their chances of returning to the labour market. All three factors shall be considered in making a decision. **(Faucher A-56-96 & Faucher A-57-96)**

Issue 1: Did the Appellant have a desire to return to the labour market as soon as suitable employment is offered?

[10] In this case, by the Appellant's statements and submissions, she was attending a full time program of studies.

[11] She was not approved by a designated authority as defined by section 25 of the Act to attend this program.

[12] However, as pointed out by the Appellant's representative at her hearing, tacit approval was given by the Commission, whom any reasonable person in the Appellant's situation would and did consider as a designated authority, through its automated system otherwise she would not have received the benefits.

[13] Given that, there is, according to the accepted practice regarding availability when one is in approved training, no requirement to conduct a comprehensive job search while attending.

[14] The Appellant here believed, based on the actions of the Commission in granting benefits, that she was in approved training and not required to carry out a job search while attending. A reasonable assumption given that she had been honest and forthcoming when she indicated she was attending a course of instruction even though she did not have section 25 authorization.

[15] I find that these actions, or lack of, on the part of the Appellant do not need to show, throughout the entire period in question, a sincere desire to return to the labour market as soon as suitable employment is offered.

Issue 2: Was she making reasonable and customary efforts to obtain work?

[16] Moot given the above

Issue 3: Did she set personal conditions that might unduly limit her chances of returning to the labour market?

[17] Moot given the above

[18] This Member supports the Appellant's efforts to complete her education and find suitable employment as a result, I find that she has presented evidence of "exceptional circumstances" that would rebut the presumption of non-availability while attending a full time course. She is therefore eligible to receive benefits from August 9, 2021.

Conclusion

[19] I find that, having given due consideration to all of the circumstances, the Appellant has successfully rebutted the assertion that she was not available for work from August 9, 2021 and as such the appeal regarding availability is allowed.

John Noonan
Member, General Division – Employment Insurance Section