Citation: *AS v Canada Employment Insurance Commission*, 2022 SST 1730

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	A. S.
Representative:	H. S.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (501350) dated July 20, 2022 (issued by Service Canada)

Tribunal member:	John Noonan
Type of hearing:	Videoconference
Hearing date:	November 28, 2022
Hearing participants:	Appellant Appellant's representative
Decision date:	December 5, 2022
File number:	GE-22-2571

Decision

[1] The appeal dismissed.

Overview

[2] The Appellant, A. S., a worker / student in, AB, was upon reconsideration by the Commission, notified that it was unable to pay him Employment Insurance benefits from January 2, 2022 through to June 27, 2022 because he is taking a training course on his own initiative and has not proven his availability for work. The Appellant's representative maintains that high school is not training. and due to his son, the Appellant, having 500 hours of insurable employment he was entitled to receive benefits. The Tribunal must decide if the Appellant has proven his 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: Was the Appellant available for work?

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

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

Analysis

[4] The relevant legislative provisions are reproduced at GD-4.

[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 who is not available for work when he is taking a full-time course on his own initiative. To rebut this presumption, the Appellant must demonstrate that his main intention is to immediately accept suitable

employment as evidenced by job search efforts, that he is prepared to make whatever arrangements may be required, or that he is prepared to abandon the course. He must demonstrate by his 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 he 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. He must continue to seek employment and must show that course requirements have not placed restrictions on his 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 his 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: Was the Appellant available for work?

[10] No.

[11] The Appellant established a claim for employment insurance benefits effective January 2, 2022 (GD3-3-18).

[12] The Appellant, when asked on his application, "*Are you taking or will you be taking a course or training program?*" he answered "no".

[13] However, in this case, by the Appellant's statements and submissions, he was in fact attending a full time program of studies, high school, since September 7, 2021.

[14] He was not approved by a designated authority to attend this program.

[15] As per his submissions the Appellant is available upon completion of his daily course schedule as well as on weekends.

[16] I find that the Appellant has not, as per the requirements of the Act, shown that he was available for full time employment.

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

[17] No.

[18] There is no evidence before me of any job search activity from January 2, 2022 through to June 27, 2022.

[19] This was confirmed at the hearing.

[20] The Appellant's lack of a credible job search since his high school term began could not be considered a reasonable and customary job search as per section 9.001 of the Regulations.

[21] There is no evidence before me that the Appellant, in good faith, contacted prospective employers over the period involved with the goal of obtaining full time

employment therefore his lack of efforts cannot be considered a reasonable or customary job search.

[22] I find that the Appellant has, throughout the entire period of this process, not shown that he was making reasonable and customary efforts to obtain suitable employment.

[23] I find that these actions, or lack thereof, on the part of the Appellant do not show, effective January 2, 2022, a sincere desire to return to the labour market as soon as suitable employment is offered.

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

[24] Yes.

[25] The Appellant states that he would not abandon his course to accept employment and based on his lack of reasonable job search activity and the fact he was in high school, I find this to be consistent with the facts before me.

[26] This condition combined with the Appellant's initial statement to Service Canada that he was only available outside his required course schedule must be seen as placing serious restrictions on his availability. **(Duquet 2008 FCA 313) (Gauthier 2006 FCA 40).**

[27] I find that the Appellant in this case was not following a course of instruction approved by an authority designated by the Commission. He was taking the course as a result of his personal decision to attend this program and thus be more eligible for further training or full time employment in the future.

[28] If the claimant was not available for employment because of personal reasons, then it cannot be good cause to refuse suitable employment (**Bertrand A-613-81).**

[29] While this Member supports the Appellant's efforts to complete his education and find suitable employment as a result, I find that he has failed to present evidence of

“exceptional circumstances” that would rebut the presumption of non-availability while attending a full time course. He is therefore not eligible to receive benefits.

[30] By itself, a mere statement of availability by the claimant is not enough to discharge the burden of proof. **CUBs 18828 and 33717**

[31] The Commission has the authority to review a claimant’s availability, and impose a retroactive or current disentitlement, if it is determined that his (or her) availability for work, as required by the legislation and established jurisprudence, has not been proven. If a claimant makes a statement or provides information that brings his (or her) availability while attending a non-referred course of instruction into question, the Commission can, pursuant to subsection 50(8) of the Act, “require the claimant to prove that the claimant is making reasonable and customary efforts to obtain suitable employment.”

[32] The Appellant / claimant here, when he indicated he was in high school for 42 hours per week during , what is considered to be “normal working hours”, brought his availability into question prompting the Commission to require proof of availability. No such proof has been shown.

[33] The Appellant’s Representative’s assertion that high school is not training is by mere inference, incorrect. Training is defined as “**the action of teaching a person particular skills or types of behaviour”** which is the goal of, not only high schools but all educational institutes at all levels.

[34] I can find no court decision that distinguishes high school from any other form of training / schooling as it relates to the Employment Insurance Act and Regulations.

[35] Having the required number of insurable hours of employment in one’s qualifying period is but one of the requirements which must be met in order to be eligible to receive benefits. Among the others is the requirement to prove that the claimant is available for and actively seeking full time employment. It has been shown here that the Appellant has not been able to establish that he met that requirement.

Conclusion

[36] I find that, having given due consideration to all of the circumstances, the Appellant has not successfully rebutted the assertion that he was not available for work and as such the appeal regarding availability is dismissed

John Noonan

Member, General Division – Employment Insurance Section