



Citation: *FN v Canada Employment Insurance Commission*, 2022 SST 1761

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

Decision

Appellant: F. N.
Representative: H. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (472461) dated May 17, 2022
(issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Videoconference
Hearing date: September 15, 2022
Hearing participants: Appellant
Appellant's representative

Decision date: September 19, 2022
File number: GE-22-2031

Decision

[1] The appeal is dismissed.

[2] I find the Claimant has not proven that she is available for work. This means she is 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 March 29, 2019, as they determined she was not available for work because she could only work certain hours due to needing to care for her daughter.¹

[5] I must decide whether the Claimant has proven² that she is available for work.

Matters I have to consider first

50(8) Disentitlement

[6] In the opening to their submissions the Commission initially 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.

[7] Further along in their submissions the Commission states that they did not, in fact, disentitle the Claimant from benefits under section 50(8) of the Act.³

[8] I find I accept the Commission's submission that they did not disentitle the Claimant under section 50(8) of the Act. I note their initial decision never mentions a

¹ GD04-3

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

³ GD04-3

disentitlement under 50(8), it only says the Claimant is not available due to attending a course.⁴

[9] So, as the Commission submits, and I agree, that they did not disentitle the Claimant under section 50(8) it is not something I need to consider.

Post-hearing document

[10] The Claimant sent in a post-hearing document,⁵ which I accepted and considered in making my decision, as it provided further information on whether she has personal conditions that are overly limiting her chances of returning to the labour market, a key part of the availability test.

Issue

[11] Is the Claimant available for work?

Analysis

[12] The law requires claimants to show that they are available for work.⁶ In order to be paid EI benefits, claimants have to be capable of and available for work and unable to find suitable employment.⁷

[13] As the Claimant was taking schooling, that means she was a student, and according to the Federal Court of Appeal there is a presumption that claimants who are attending school full-time are presumed to be unavailable for work.⁸ I am going to start by looking at whether the presumption applies to the Claimant. Then, I will look at whether the Claimant is available.

⁴ GD03-31

⁵ GD05

⁶ 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.

⁷ Paragraph 18(1)(a) of the *Employment Insurance Act*.

⁸ *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.

[14] The Commission submits the Claimant is not a full-time student, as her schooling was only part-time, so the presumption would not apply to her.

[15] I find I agree with the submission of the Commission. The information from the Claimant's schooling says she her class was only three hours long.⁹ I find that even if she attended class Monday to Friday that would only be 15 hours of schooling per which, which is part-time hours.

[16] So, since the presumption applies only to full-time students, and the Claimant is not a full-time student, the presumption does not apply to her.

[17] However, this only means that the Claimant is not presumed to be unavailable. I must still look at the whether the Claimant is in fact available under the law.

Capable of and Available for work

[18] In order to be paid EI benefits, the Claimant has to be capable of and available for work and unable to find suitable employment.¹⁰ The Claimant has to prove three things to show she is available:

1. A desire to return to the labour market as soon as a suitable job is available
2. That desire expressed through efforts to find a suitable job
3. No personal conditions that might unduly limit her chances of returning to the labour market¹¹

[19] I have to consider each of these factors to decide the question of availability,¹² looking at the attitude and conduct of the Claimant.¹³

⁹ GD03-35

¹⁰ Paragraph 18(1)(a) of the *Employment Insurance Act*.

¹¹ *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

¹² *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

¹³ *Canada (Attorney General v Whiffen*, A-1472-92 and *Carpentier v The Attorney General of Canada*, A-474-97.

Does the Claimant have a desire to return to the labour market as soon as a suitable job is available?

[20] The Claimant says she is trying to find work, but it is difficult due to her limited English skills and lack of childcare. She was also taking schooling to improve her English and to improve her resume writing skills for the Canadian job market.

[21] The Commission submits they agree the Claimant has a desire to return to the labour market.¹⁴

[22] I find that as the Claimant says she wants to work, and the Commission agrees, I accept as fact the Claimant has a desire to return to the labour market as soon as suitable employment is offered.

Has the Claimant made efforts to find a suitable job?

[23] The Claimant says that she is looking for work. She has attended job fairs at her school, is attending resume workshops at her school, is looking online for work, has found several jobs to apply for, and even got an interview, but was unsuccessful in getting the job.

[24] The Commission submits they agree that the Claimant is making sufficient efforts to find a suitable job.¹⁵

[25] I find that as the Claimant says she was making efforts to find work, and the Commission agrees these efforts are sufficient, I accept as fact that the Claimant was making sufficient efforts to find suitable employment.

Has the Claimant set personal conditions that might unduly limit her chances of returning to the labour market?

[26] Yes, the Claimant has set personal conditions that might overly limit her chances of returning to the labour market. Those conditions being the limited hours she can work

¹⁴ GD04-3

¹⁵ GD04-3

due to needing to care for her child, and her decision to avoid jobs that require dealing with people in English.

[27] The Commission says the evidence shows that the Claimant has a personal condition, her childcare obligations, that overly limit her chances of returning to work.¹⁶

[28] The Commission says that due to this limitation the Claimant has only found four jobs to apply for over an eight month period, and has even said that it is hard for her to find work with the limited hours she can work.¹⁷

[29] The Claimant says the hours she can work are limited due to caring for her child. She needs to be there to care for her child before and after school, so she is looking for work between the hours of 9:30 am to 2:30 pm.

[30] The Claimant says she considered working jobs at a later hours, such as a midnight shift, and she actually applied for a midnight shift position, but her husband was worried about her working at such a late hour, so she did not actively pursue the position.¹⁸

[31] The Claimant also says that due to her limited English skills she is not applying to jobs that would require her to interact with people in English.

[32] She says that it has been hard to find jobs she can do with her limited English skills and that work within the hours she is available.

[33] I find the Claimant does have personal conditions that overly limit her chances of returning to the labour market, those personal conditions are her decision to avoid jobs that would require her to interact with people in English, and her child care obligations.

[34] I find that the Claimant only looking for jobs that do not require her to interact with people in English, and that allow her to work within the hours she says she is available due to her childcare obligations, would severely reduce the jobs she could apply for. I

¹⁶ GD04-3

¹⁷ GD04-3

¹⁸ GD05-1

find having such a small pool of possible jobs to apply for would overly limit her chances of returning to the labour market.

[35] I find this is further shown by the Claimant's own testimony that it is very hard to find jobs that meet her requirements and that in an eight month period she was only able to find four jobs that worked with her personal conditions.

[36] I can understand the Claimant needing to care for her children as that is what is expected of parents, and I can understand her not wanting to work night shifts as she considers them dangerous. I can also understand her concerns with needing to interact with people in English due to her limited English skills.

[37] However, while I can understand the Claimant's reasoning behind why she has placed restrictions on her availability, the fact remains that since her personal conditions overly limit her chances of returning to the labour market she cannot meet this factor.

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

[38] Considering my findings on each of the three factors together, I find that the Claimant has not proven she is available for work.

Conclusion

[39] The appeal is dismissed.

[40] The Claimant has not proven that she is capable of and available for work so the disentitlement issued by the Commission is upheld.

Gary Conrad
Member, General Division – Employment Insurance Section