



Citation: *CE v Canada Employment Insurance Commission*, 2023 SST 634

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: C. E.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (554783) dated November 21, 2022 (issued by Service Canada)

Tribunal member: Katherine Parker

Type of hearing: Teleconference

Hearing date: February 17, 2023

Hearing participant: Appellant

Decision date: February 28, 2023

File number: GE-23-12

Decision

[1] The appeal is dismissed. The Tribunal disagrees with the Claimant.

[2] The Claimant hasn't shown that she was available for work. This means that she can't receive Employment Insurance (EI) benefits.

Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Claimant was disentitled from receiving Employment Insurance (EI) regular benefits as of January 30, 2022, indefinitely. That's when she quit her job. The Commission determined she wasn't available for work.

[4] 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 show a sustained effort to find a job.

[5] On February 1, 2022, the Claimant returned to work part-time after a period of sick leave benefits. She had been working for the same employer as a part-time employee off and on since 2018.

[6] 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 was available for work.

[7] The Claimant said that she liked her employer because it offered her a flexible work schedule when needed, and she could modify her workdays if she had to go to appointments with her uncle or attend to other matters.

[8] The Commission gave its decision to the Claimant and told her that working part-time is a personal choice. This means that she wasn't entitled to EI benefits as she didn't want to work full-time.¹

[9] The Claimant disagreed with the decision and told the Commission that she did want to work full-time.

The Claimant sent documents after the hearing

[10] The Claimant sent a document on the morning of the hearing. I didn't ask for that document, and I didn't receive until after the hearing. It is a letter from a business dated February 17, 2023, confirming it had received her application in June 2022 for the position of Administrative Assistant at an automotive business. I accepted this document because evidence of searching for a job is important. However, I place little weight on it for reasons I will mention below.

[11] At the hearing the Claimant said that she had a text message from a colleague that day saying the workplace was hostile. I took her word for it that she got this text message, but I place little weight on it for reasons that I will mention below.

Issue

[12] Was the Claimant available for work?

Analysis

[13] 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.

[14] 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.² The

¹ See GD3-22.

² See section 50(8) of the *Employment Insurance Act* (Act).

Employment Insurance Regulations (Regulations) give criteria that help explain what “reasonable and customary efforts” mean.³ I will look at those criteria below.

[15] 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.⁴ Case law gives three things a claimant has to prove to show that they are “available” in this sense.⁵ I will look at those factors below.

[16] The Commission decided that the Claimant was disentitled from receiving benefits because she wasn’t available for work based on these two sections of the law.

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

Reasonable and customary efforts to find a job

[18] The law sets out criteria for me to consider when deciding whether the Claimant’s efforts were reasonable and customary.⁶ I have to look at whether her efforts were sustained and whether they were directed toward finding a suitable job. In other words, the Claimant had to keep trying to find a suitable job.

[19] 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:⁷

- networking
- following up with alerts from job banks
- applying for jobs

³ See section 9.001 of the *Employment Insurance Regulations* (Regulations).

⁴ See section 18(1)(a) of the Act.

⁵ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

⁶ See section 9.001 of the Regulations.

⁷ See section 9.001 of the Regulations.

[20] The Commission says that the Claimant didn't do enough to try to find a job and wasn't available because she restricted herself to part-time work which is a personal choice.⁸ The Commission decided this because:

- The Claimant confirmed she only wanted part-time work because she looked after an uncle and needed the work-life balance.⁹
- She said she preferred her part-time schedule because her employer was very flexible, and she could modify her days as she pleased if she had to go to the doctor with her uncle.¹⁰
- Her employer offered her full-time hours, but the claimant didn't want to work for her employer full-time, only part-time because she said it was a hostile work environment.¹¹

[21] The Claimant said she was available, but she had good reasons for not finding a full-time job:

- Initially, the Claimant initially said she was available Monday to Friday and was looking for full-time work. But her schedule wasn't fixed and was unpredictable. I find that the unpredictable schedule would make it difficult to find time to look for a job.¹²
- Then, she told the Commission that she would be able to work Monday to Friday during normal business hours if not for her illness.¹³
- She explained on date that her doctor hadn't cleared her to work yet. It may take another month or so.
- She said she intended to apply for full-time employment without restrictions once she is cleared by her doctor to look for work again.

⁸ See GD4-2.

⁹ See GD3-22 dated October 14, 2022.

¹⁰ See GD3-22 dated October 14, 2022.

¹¹ See GD3-20 dated October 5, 2022.

¹² See GD3-26 dated October 27, 2022.

¹³ See GD3-30 dated November 21, 2022.

- She said that it was just her former employer that she could not work full-time for due to the hostile work environment.
- She says, given her circumstances, she should be entitled to regular benefits to top off her part-time hours while she looks for a full-time job.
- In her appeal record, the Claimant said she wasn't able to find employment because of her location. She said she would take a lower minimum wage to get a job even if it would put her in a less favourable financial situation.¹⁴
- At the hearing, the Claimant said she tried to find a job and had job alerts set up for both part-time and full-time jobs. She received numerous alerts indicating job possibilities. She looked at them but didn't keep any records.

[22] I find the following:

- The Claimant didn't make a sustained effort to find a full-time job.
- She wanted the flexibility of a part-time schedule to manage her personal activities.
- Her family obligations didn't interfere with her availability.¹⁵
- Illness wasn't a reason for not finding a full-time job because she had a doctor's note clearing her to return to work without any restrictions as of February 1, 2022.¹⁶
- The Claimant worked on and off for the same employer since at least 2018 and returned immediately after sick leave on February 1, 2022. She indicated the employer gave her the flexibility to meet her work life-balance goals, and she preferred her part-time schedule.

¹⁴ See GD2-3 dated December 1, 2022.

¹⁵ See section 9.002(1)(b) of the Regulations, the hours of work aren't incompatible with the claimant's family obligations or religious beliefs.

¹⁶ See GD3-18.

- The unpredictability of her part-time schedule made her unavailable for work every day during the week. Availability must be proven on a day-to-day basis.
- The Claimant's normal workweek was part-time, so she was employed to her full capability and not available for other work. She confirmed she wasn't looking for a part-time job because, as she said, she had one.
- The Claimant was offered full-time hours by her employer, but she didn't want them because full-time would interfere with her work-life balance and she said it was a hostile environment.

[23] The Claimant didn't meet the criteria to prove that she was making reasonable and customary efforts to find a job.¹⁷ The Claimant hasn't proven that her efforts to find a job were reasonable and customary.

Capable of and available for work

[24] 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:¹⁸

- 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 didn't set personal conditions that might have unduly (in other words, overly) limited her chances of going back to work.

[25] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.¹⁹

¹⁷ Section 9.001 of the Regulations establishes strict criteria defining what constitutes reasonable and customary efforts for a claimant's job search under section 50(8) of the Act

¹⁸ 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.

¹⁹ 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.

– **Wanting to go back to work**

[26] The Claimant hasn't shown that she wanted to go back to work as soon as a suitable job was available.

[27] The Claimant was offered full-time employment by her employer which she didn't want. She said she didn't accept full-time employment from her employer because she said it was a hostile work environment.

[28] On the other hand, the Claimant said she appreciated the flexibility her employer offered and had been working for the same employer on and off since 2018. She returned after prolonged leaves. She didn't show any effort to find a new employer while she was on leaves of absence.

[29] At the hearing, the Claimant provided reasons for saying it was a hostile environment such as the employer being on vacation frequently and refusing to take phone calls from clients. The employer would not allow her to take doctor's appointments on days she was working and made her come into the office with a sore throat.

[30] At the hearing, the Claimant said she had a text message from a former colleague that said the workplace was hostile, extremely negative, and unprofessional. I don't place a lot of weight on this text message for the following reasons:

- The Claimant solicited this text from her former colleague, A. on the day of the hearing, February 17, 2023.
- A. had quit that workplace after working there for a few months, around August 2022, six months before the text was sent.
- The Claimant and A. had only worked together for a few months. I would have expected the Claimant to have comments from colleagues who had worked there much longer.
- The Claimant did not provide this information earlier to the Commission.

[31] I find that the Claimant didn't show that the workplace was unsuitable for her to add another 13 hours to her schedule. She was willing to take a lower-paying job to get full-time work and she hadn't been working full-time for several years.²⁰ If she wanted to work, a full-time job was available to her.

[32] The examples of hostility provided to me at the hearing are examples of management decisions. The Claimant returned to the same employer repeatedly, and appreciated the flexible work schedule. I find that, on the balance of probabilities, she wasn't working in a hostile work environment although she may not have liked the way it was managed. She was working there and continued to work there.

– **Making efforts to find a suitable job**

[33] The Claimant hasn't made enough efforts to find a suitable job.

[34] I have considered the list of job-search activities given above in deciding this second factor. For this factor, the list is for guidance only.²¹

[35] The Claimant's efforts to find a new job included updating her LinkedIn profile and setting up job alerts at a job bank. She received a lot of job notifications. The Claimant said she didn't keep any documentation of these notices which I take to mean she had no intention of following up on them.

[36] The Claimant said she applied for jobs but didn't keep track of them. She provided a letter from one business which I received after the hearing. Evidence of job search is important, so I accepted it. However, I find it not to be a credible letter for the following reasons, and I place little weight on it:

- The letter is dated February 17, 2023, the date of the hearing.
- The Claimant sent it to the Tribunal at 7:34 a.m., the morning of the hearing from her personal email.

²⁰ See GD2-3.

²¹ 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.

- The letter doesn't have letterhead and the signatory doesn't identify her position at the business.
- The Claimant asked for this letter because she didn't keep track of any job applications and wasn't able to provide the Commission with any documentation.

[37] Those efforts weren't enough to meet the requirements of this second factor because the Claimant's attitude did not show an effort to find a full-time job because she didn't keep track of applications, job alerts, contacts for networking, and didn't follow up on applications.

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

[38] The Claimant has set personal conditions that limited her chances of going back to work. The Claimant had several different reasons for not finding other full-time employment, including:

- the desire for work-life balance
- a lack of jobs because of her location
- illness due to COVID in July 2021

[39] The Commission says that the Claimant didn't look for another job because she preferred the part-time job with her employer. She wanted the flexibility to look after her uncle and attend doctor's appointments. She said that if she worked full-time, she wouldn't have time to enjoy life. She regularly told her employer she didn't need to work full-time.²²

[40] The Claimant's doctor had cleared her to return to work as of February 1, 2022, and I received no evidence of a medical note limiting her availability after that. So I find that illness as a limitation to availability isn't proven.

²² See GD3-20.

[41] I find that the Commission was correct in finding that the Claimant preferred her part-time job to a full-time job.

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

[42] Based on my findings on the three factors, I find that the Claimant was capable of work but for personal reasons she didn't accept suitable employment when it was offered by her employer.

Conclusion

[43] The Claimant hasn't shown that she was available for work within the meaning of the law. Because of this, I find that the Claimant can't receive EI benefits.

[44] This means that the appeal is dismissed.

Katherine Parker
Member, General Division—Employment Insurance Section