[TRANSLATION]

Citation: *PJ v Canada Employment Insurance Commission*, 2023 SST 1072

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	P. J.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (0) dated November 16, 2022 (issued by Service Canada)

Tribunal member:	Manon Sauvé
Type of hearing:	Teleconference
Hearing date:	March 17, 2023
Hearing participant:	Appellant
Decision date:	April 6, 2023
File number:	GE-22-3711

Decision

[1] The appeal is dismissed.

[2] The Appellant hasn't shown that he was available for work during the period from March 15, 2021, to June 6, 2021, because he was studying full-time.

Overview

[3] The Appellant applied for Employment Insurance (EI) benefits on March 10, 2021. He told the Commission that he was taking training full-time, from March 12, 2021, to June 11, 2021, to become a financial advisor. He reported devoting all his time to the training.

[4] Later, he devoted his time to becoming a self-employed financial advisor. On September 17, 2021, he told the Commission that he wasn't self-employed anymore.

[5] After investigating, the Commission decided that the Appellant wasn't entitled to benefits for the period from March 12, 2021, to June 11, 2021, because he wasn't available for work. He was studying full-time.

[6] The Appellant disagrees with the Commission. The Commission decided to pay him benefits despite being aware of his situation. He should not have to pay for the Commission's mistakes.

Matter I have to consider first

[7] The Tribunal's General Division initially decided in the Appellant's favour on June 29, 2022. The Commission filed a notice of appeal with the Tribunal's Appeal Division. It argued that the General Division made an error of law when it decided that the Commission hadn't exercised its discretion judicially.

[8] On November 16, 2022, the Tribunal's Appeal Division allowed the appeal on the issue of the Commission's exercise of discretion. It referred the issue of the Appellant's

entitlement to benefits back to the General Division. That is why I am making this decision.

[9] That being said, I don't have to address the Commission's discretion to reconsider a decision, since this issue was resolved at the Appeal Division level.

[10] I note that the Appeal Division's decision deals solely with the issue of the Appellant's availability while taking training.

[11] The Commission did file a notice of appeal only [on] the issue of availability. And the Appeal Division's decision deals only with that issue. A review of the Appeal Division recording confirms that the appeal dealt only with that issue.

[12] As a result, this decision deals with the issue of availability for the period from March 15, 2021, to June 11, 2021, based on the provisions introduced during the pandemic.[1]

Issue

[13] Was the Appellant available for work while taking training?

Analysis

[14] Two different sections of the law require the Appellant to show that he was available for work. The Commission decided that he was disentitled under both of these sections. So, she [*sic*] has to meet the criteria of both sections to get benefits.

[15] First, the *Employment Insurance Act* (Act) says that the Appellant has to prove that he was making "reasonable and customary efforts" to find a suitable job.[2] The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" means.[3] I will look at those criteria below.

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[1] Sections 153.161 and 18(1)(a) of the *Employment Insurance Act* (Act).
[2] See section 50(8) of the Act.
[3] See section 9.001 of the *Employment Insurance Regulations* (Regulations).

[16] Second, the Act says that the Appellant has to prove that she [*sic*] was "capable of and available for work" but unable to find a suitable job.[4] Case law gives three things the Appellant has to prove to show that she [*sic*] was "available" in this sense.[5] I will look at those factors below.

[17] The Commission decided that the Appellant was disentitled from receiving benefits because he wasn't available for work based on these two sections of the law.

[18] In fact, under the temporary measures that the Government of Canada introduced because of the COVID-19 pandemic, the Commission authorized paying benefits, and the Act allowed it to verify claims for benefits[6] later on.

[19] The Federal Court of Appeal has said that claimants who are taking training full-time are presumed to be unavailable for work.[7] This is called "presumption of non-availability." It means we can suppose that students aren't available for work when the evidence shows that they are taking training full-time.

[20] First, I will address the Appellant's argument that he should not have to pay for the Commission's mistakes. I disagree. The Commission didn't make a mistake, since it used its power to verify claims for benefits that were made during the pandemic.

[21] In addition, the Appellant can't receive EI benefits that he isn't entitled to.

[22] I will now look at whether I can presume that the Appellant wasn't available for work because of his studies. Then, I will look at whether he was available based on the two sections of the law on availability.

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[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] Sections 153.161(1) and (2), which apply to claimants who are taking training.
[7] See *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.

Presuming full-time students aren't available for work

[23] The presumption that students aren't available for work applies only to full-time students.

[24] The Appellant reported studying full-time. In fact, he devoted all his time to his studies.

[25] The presumption that full-time students aren't available for work can be rebutted. If the presumption were rebutted, it would not apply.

[26] There are two ways the Appellant can rebut the presumption. He can show that he has a history of working full-time while also taking training.[8] Or, he can show that there are exceptional circumstances in his case.[9]

[27] I note that the Appellant applied for EI benefits on March 10, 2021. The Commission established a benefit period effective March 7, 2021.

[28] On his application for benefits, in the course or training program section,[10] the Appellant reported spending over 25 hours per week on his studies. And that he was participating in a program sponsored by his employer. But, he didn't have an authorization number.

[29] He took training with the AMF[11] to become a financial security advisor. The training ran from March 15, 2021, to June 6, 2021.

[30] The Appellant said that he hadn't looked for a job during that period.[12] When he testified, he confirmed that he hadn't looked for a job.

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[8] See *Canada (Attorney General) v Rideout*, 2004 FCA 304.
[9] See *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.
[10] GD3-14.
[11] Autorité des marchés financiers [Financial markets authority].
[12] GD-30 [*sic*] and GD3-31.

[31] The Appellant says that he has previously worked while in school. He also could have worked during his training. Concerning exceptional circumstances, he cited the COVID-19 pandemic.

[32] I find that the Appellant hasn't rebutted the presumption that he was unavailable while taking training full-time. He hasn't shown that he could work during his training. Saying he could work while taking training isn't enough. He made the choice to take training full-time and not to look for a job.

[33] Concerning the pandemic, I find that it created special circumstances for all workers. The Appellant hasn't shown that there are exceptional circumstances in his case.

[34] Not rebutting the presumption means only that the Appellant is presumed to be unavailable. I still have to look at the two sections of the law that apply in this case and decide whether the Appellant was actually available.

Reasonable and customary efforts to find a job

[35] The first section of the law that I am going to consider says that the Appellant has to prove that his efforts to find a job were reasonable and customary.[13]

[36] The law sets out criteria for me to consider when deciding whether the Appellant's efforts were reasonable and customary.[14] I have to look at whether his efforts were sustained and whether they were directed toward finding a suitable job. In other words, the Appellant has to have kept trying to find a suitable job.

[13] See section 50(8) of the Act.
[14] See section 9.001 of the Regulations.

[37] I also have to consider the Appellant's efforts to find a job. The Regulations list nine job search activities I have to consider. Some examples of those are the following:[15]

- assessing employment opportunities
- registering for job search tools or with online job banks or employment agencies
- contacting employers who may be hiring
- applying for jobs

[38] I note that the Appellant didn't make efforts to find a job. Because of this, he hasn't shown that he was making reasonable and customary efforts to find a job.

Capable of and available for work

[39] I also have to consider whether the Appellant was capable of and available for work but unable to find a suitable job.[16] Case law sets out three factors for me to consider when deciding this. The Appellant has to prove the following three things:[17]

a) He wanted to go back to work as soon as a suitable job was available.

b) He made efforts to find a suitable job.

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

[15] See section 9.001 of the Regulations.
[16] See section 18(1)(a) of the Act.
[17] 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.

– **Wanting to go back to work**

[40] I find that the Appellant hasn't shown that he wanted to go back to work as soon as a suitable job was available. He prioritized his full-time training.

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

[41] The Appellant said that he hadn't looked for a job. He wanted to devote his time to his training.

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

[42] The Appellant unduly limited his chances of going back to work by taking training that required over 25 hours per week. He could not be available for a suitable job.

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

[43] Based on my findings on the three factors, I find that the Appellant hasn't shown that he was capable of and available for work but unable to find a suitable job.

Conclusion

[44] The Appellant hasn't shown that he was available for work within the meaning of the law. Because of this, I find that the Appellant isn't entitled to benefits for the period from March 15, 2021, to June 6, 2021.

[45] This means that the appeal is dismissed.

Manon Sauvé

Member, General Division – Employment Insurance Section