



Citation: *RB v Canada Employment Insurance Commission*, 2023 SST 738

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

Decision

Appellant: R. B.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (560323) dated December 14, 2022 (issued by Service Canada)

Tribunal member: Glenn Betteridge

Type of hearing: Teleconference

Hearing date: January 25, 2023

Hearing participant: Appellant

Decision date: February 3, 2023

File number: GE-22-4265

Decision

[1] I am dismissing R. B.'s appeal.

[2] She hasn't shown she was available for work from October 3, 2022 until October 28, 2022.

[3] This means that she can't receive Employment Insurance (EI) regular benefits for this period of time.

[4] This is what the Canada Employment Insurance Commission (Commission) decided. So, I agree with its decision.

[5] This is an unfortunate outcome for the Claimant. She may have been eligible for the EI sickness benefit in October 2022—if she hadn't switched her application to regular benefits. I have no power to look at that. But the Claimant and the Commission might want to take another look at her eligibility for the sickness benefit.

Overview

[6] A person has to be available for work to get EI regular benefits. This means the person has to be searching for a job on an ongoing basis.

[7] The Commission decided R. B. (the Claimant) couldn't get Employment Insurance (EI) regular benefits from October 3 until October 28, 2022 because she wasn't available for work.

[8] The Commission says she repeatedly told the Commission she wasn't looking for work from October 3 until October 31, 2022.

[9] She says she has been waiting for EI benefits for five months. She also says she applied for jobs, but none are available as of right now.

[10] I must decide whether the Claimant has proven that it's more like than not she was available for work.

Issue

[11] Was the Claimant available for work?

Analysis

[12] Two different sections of the law require claimants to show they are available for work.

- The *Employment Insurance Act* (EI Act) says that a claimant has to prove that they are making “reasonable and customary efforts” to find a suitable job.¹ The law gives examples to help explain what “reasonable and customary efforts” means.²
- The EI 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.³ Legal cases give three things a claimant has to prove to show that they are “available” in this sense:⁴
 - wanting to go back to work as soon as a suitable job was available
 - making efforts to find a suitable job
 - not setting personal conditions that might unduly (in other words, overly) limit her chances of going back to work

[13] The Commission decided the Claimant was disentitled under both of these sections. To get benefits she has to prove she was available under both sections.

[14] First, I will review the evidence. Then, I will apply these two sections to the Claimant’s situation.

¹ See section 50(8) of the *Employment Insurance Act* (Act).

² See section 9.001 of the *Employment Insurance Regulations* (Regulations).

³ See section 18(1)(a) of the Act.

⁴ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96. The courts and the Tribunal refer to these three factors as the Faucher factors.

No reliable evidence the Claimant was available

[15] I find that there is no reliable evidence that would allow me to find the Claimant was available for work from October 3 until October 28, 2022. The evidence shows me the Claimant was not taking any steps to look for work during this time.

[16] The Claimant originally applied for EI sickness benefits. Her application took a while to decide. She is a single parent recovering from a stroke and possibly COVID. She needed income.

[17] She says the Commission asked her for medical information, which she couldn't get at the time. So she asked the Commission to switch her application to regular benefits.

[18] The Commission's file says its staff explained the difference between the eligibility rules for sickness and regular benefits to her. I don't doubt this. But it was clear to me during the hearing she hadn't really understood that to get EI regular benefits she has to prove she was looking for work—starting on October 3, 2022.

[19] The Commission says the Claimant repeatedly told it she wasn't looking for work in October 2022. The Claimant told the Commission the following:

- she didn't return to work in September and hadn't been working (notes dated October 19, 2022)⁵
- she was writing available on her EI reports but that was a mistake (notes dated October 19, 2022)
- "The claimant states she had not been looking for work due to dangers of covid19 and she has kids at home who has not been vaccinated. The claimant states she wants to apply for regular benefits and will begin looking for work as of 2022/10/31." (notes dates October 28, 2022)⁶

⁵ See GD3-22.

⁶ See GD3-24 and GD3-25.

- “The claimant states she will begin looking for work as of 2022/10/31 but cannot work in jobs that require her to drive as her license is temporarily revoked due to the stroke she had.” (notes dated October 28, 2022)
- “The claimant states she wants to apply for regular benefits and will begin looking for work as of 2022/10/31.” (notes dated October 28, 2022)
- “Client stated that she only started to look for work on 28/10/2022. Client was advised if she was not looking for work she is considered unavailable and no benefits are payable during that period.” (notes dated November 3, 2022)⁷
- “Client stated that after she was advised she could not return to her previous employment on 11/09/2022 she only started to look for work as of last Friday, 28/10/2022. That is when she went to the band office to apply and look for work.” (notes dated November 3, 2022)

[20] I accept the Commission’s notes of its calls with the Claimant and find they show that the Claimant was not looking for work in October 2022 up until the 28th, for three reasons: First, the notes are consistent. She told the Commission over and over she was not looking for work in October before the 28th. Second, she spoke to the Commission during or soon after October 2022. So it’s more likely her memory of what happened in October is more accurate than when she tried to remember later on. Third, there was no reliable evidence in her testimony that contradicted what she told the Commission. I will review her testimony next.

[21] The Commission accepts the Claimant applied for work at the band office on October 28, 2022.⁸ And I do too. There is no reliable evidence that goes against this.

[22] I used active adjudication at the hearing. I asked the Claimant many questions, in many different ways, about her availability for work in October 2022. She testified:

⁷ See GD3-28 and GD3-29.

⁸ See the Commission’s representations at GD4-1.

- There was a lot going on in October, a lot of paperwork for EI and for Manitoba Public Insurance (to get her driver's licence back).
- She had been working hard to get her driver's licence back, including going for assessments and specialist appointments in Winnipeg.
- She texted Grandpa Walter, one of the councillors, about helping her look for work, but couldn't remember whether it was September or October.
- She contacted the band office about school bus driver jobs, but couldn't remember when.
- She couldn't remember if she applied for jobs in October.
- She was looking for work in September or October but had COVID.
- "I think I was looking for work in October."

[23] The Claimant's testimony doesn't help her prove she was looking for work in October before the 28th.

[24] I find the whole of the Claimant's testimony credible but unreliable. I have no doubt she believed what she told me, and she did her best to tell the truth. But she really could not remember whether she looked for work before October 28th. When she answered my questions about what she did to look for work, she was unsure about dates and other details. She often admitted she couldn't remember or said she might have done something in September or October. And at times she told me about what happened recently when she answered my questions about October 2022.

[25] Her testimony is also inconsistent with what she told the Commission. She told the Commission she only started looking for work when she contacted the band office on October 28.

[26] The Claimant submitted three medical notes to the Commission and Tribunal, which said:

- Her medical condition prevents her from being a bus driver for a 6-month period, to be re-assessed (dated August 22, 2022)⁹
- “The above individual has been off work for medical reasons since August 15, 2022. She had been work [sic] for her present employer since Sept 2019. Please help her get unemployment insurance that is back due.” (dated November 15, 2022)¹⁰
- She may return to work as of November 17 with no restrictions (November 17, 2022)¹¹

[27] I accept these medical notes. I have no reason to doubt they are authentic. I have no reason to doubt the information in them. And there is no reliable evidence that goes against what they say.

[28] But these medical notes don't help the Claimant's case. Quite the opposite. I find these medical notes show the Claimant wasn't fit to work (and suggest she wasn't looking for work) in October 2022.

My conclusion about the evidence and the Claimant's availability

[29] I find there is **no credible and reliable evidence** that the Claimant took **any steps to look for work** from October 3 until October 28, 2022, for three reasons:

- I accept the Commission's evidence that the Claimant consistently told he Commission she was not looking for work in October up until the 28th.
- Her testimony about looking for work was completely unreliable.
- The medical notes support the evidence that she wasn't available for work from October 3 until October 28, 2022.

⁹ See GD3-35.

¹⁰ See GD5-3.

¹¹ See GD3-36.

[30] Based on my findings about the evidence, I don't need to go through the legal tests step-by-step to decide her appeal.

[31] There is no way the Claimant can prove she made "reasonable and customary efforts to find a suitable job" under section 50(8) of the EI Act. And there is no way she can prove she meets the first and second branches of the *Faucher* test under section 18(1)(a) of the EI Act.¹²

[32] In other words, she hasn't proven she was available for work.

Conclusion

[33] The Claimant hasn't proven she was available for work under the EI Act.

[34] Because of this, she can't get EI regular benefits from October 3 until October 28, 2022.

[35] This is what the Commission decided in its reconsideration decision.

[36] So I am dismissing her appeal.

Glenn Betteridge
Member, General Division – Employment Insurance Section

¹² The first and second Faucher factors are: (i) wanting to go back to work as soon as a suitable job was available; and (ii) making efforts to find a suitable job.