



[TRANSLATION]

Citation: *MM v Canada Employment Insurance Commission*, 2023 SST 900

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

## Decision

**Appellant:** M. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (543304) dated October 24, 2022 (issued by Service Canada)

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**Tribunal member:** Normand Morin

**Type of hearing:** Teleconference

**Hearing date:** March 6, 2023

**Hearing participant:** Appellant

**Decision date:** April 14, 2023

**File number:** GE-22-3876

## Decision

[1] The appeal is dismissed. I find that the Appellant hasn't shown that she is available for work as of May 23, 2022.<sup>1</sup> This means that she isn't entitled to benefits from that date.

## Overview

[2] From August 12, 2021, to April 28, 2022, inclusive, and from May 5 to May 20, 2022, inclusive, the Appellant worked as an administrative officer at X (X or employer).<sup>2</sup>

[3] On May 24, 2022, she made an initial claim for EI benefits (regular benefits).<sup>3</sup> A benefit period was established effective May 22, 2022.<sup>4</sup>

[4] On August 16, 2022, the Canada Employment Insurance Commission (Commission) told her that it could not pay her EI benefits from May 23, 2022, because she told it that she would only be willing to accept work as an administrative officer in the vaccination sector and work for X. It told her that, for these reasons, it considered that she wasn't available for work. The Commission also told her that it could not pay her benefits from July 25, 2022, to August 9, 2022, since she had told it that she would be on vacation during that period. The Commission told her that she could not show that she was available for work during that period.<sup>5</sup>

[5] On October 24, 2022, after a reconsideration request, the Commission told her that it was upholding the August 16, 2022, decision.<sup>6</sup>

[6] The Appellant says that she is available for work. She says that she retired in 2009 after working as an administrative officer at X.<sup>7</sup> She went back to work in 2011.

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<sup>1</sup> See section 18(1)(a) of the *Employment Insurance Act* (Act), as well as sections 9.001 and 9.002(1) of the *Employment Insurance Regulations* (Regulations).

<sup>2</sup> See GD9-2 to GD9-4.

<sup>3</sup> See GD3-3 to GD3-11.

<sup>4</sup> See GD3-1 and GD4-1.

<sup>5</sup> See GD3-16 and GD3-17.

<sup>6</sup> See GD2-10 and GD2-22.

<sup>7</sup> Formerly X.

The Appellant says that, when she went back to work, she continued working as an administrative officer for that employer. She says that she worked part-time but could work full-time, as needed. The Appellant says that she worked in vaccination activities during the COVID-19 pandemic<sup>8</sup> at a shopping centre. She also visited communities several dozen kilometres from her home. She says that she worked in June, July, and October 2022, and in February 2023. The Appellant says that she was on the employer's call-back list to work as an administrative officer. She says that she is entitled to benefits. On November 21, 2022, the Appellant disputed the Commission's reconsideration decision before the Tribunal. That decision is being appealed to the Tribunal.

## **Preliminary matters**

[7] At the beginning of the hearing, the Appellant repeated that she isn't disputing being disentitled to benefits from July 25, 2022, to August 9, 2022, after telling the Commission that she would be on vacation during that period.<sup>9</sup>

## **Issues**

[8] In this case, I have to decide whether the Appellant has shown that she was available for work from May 23, 2022.<sup>10</sup> To do this, I must answer the following questions:

- Has the Appellant:
  - shown a desire to go back to work as soon as a suitable job is available?
  - expressed that desire through efforts to find a suitable job?
  - set personal conditions that might have unduly limited her chances of going back to work?

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<sup>8</sup> Coronavirus disease 2019.

<sup>9</sup> See GD3-21.

<sup>10</sup> See section 18(1)(a) of the Act and sections 9.001 and 9.002(1) of the Regulations.

## Analysis

[9] Two different sections of the *Employment Insurance Act* (Act) indicate that claimants have to show that they are available for work.<sup>11</sup> Both sections deal with availability, but they involve two different disentitlements.<sup>12</sup>

[10] First, a claimant isn't entitled to receive benefits for a working day in a benefit period for which they fail to prove that, on that day, they were capable of and available for work and unable to find a suitable job.<sup>13</sup>

[11] Second, to prove availability for work, the Commission may require the claimant to prove that they are making reasonable and customary efforts to find a suitable job.<sup>14</sup>

[12] To determine whether a claimant is available for work, I have to consider the specific criteria set out in the Act for determining whether their efforts to find a suitable job are reasonable and customary.<sup>15</sup> According to these criteria, the efforts must be 1) sustained, 2) directed toward finding a suitable job, and 3) consistent with nine specified activities that can be used to help claimants get a suitable job.<sup>16</sup> These activities include assessing employment opportunities, registering for job search tools or with online job banks or employment agencies, contacting prospective employers, and submitting job applications.<sup>17</sup>

[13] The criteria for determining what constitutes suitable employment are the following: 1) the claimant's health and physical capabilities allow them to commute to the place of work and to perform the work, 2) the hours of work aren't incompatible with the claimant's family obligations or religious beliefs, and 3) the nature of the work isn't contrary to the claimant's moral convictions or religious beliefs.<sup>18</sup>

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<sup>11</sup> See sections 18(1)(a) and 50(8) of the Act.

<sup>12</sup> See sections 18(1)(a) and 50(8) of the Act.

<sup>13</sup> See section 18(1)(a) of the Act.

<sup>14</sup> See section 50(8) of the Act.

<sup>15</sup> See section 9.001 of the Regulations.

<sup>16</sup> See section 9.001 of the Regulations.

<sup>17</sup> See section 9.001 of the Regulations.

<sup>18</sup> See section 9.002(1) of the Regulations.

[14] The notion of “availability” isn’t defined in the Act. Federal Court of Appeal (Court) decisions have set out criteria for determining a person’s availability for work and whether they are entitled to EI benefits.<sup>19</sup> These three criteria are:

- wanting to go back to work as soon as a suitable job is available
- expressing that desire through efforts to find a suitable job
- not setting personal conditions that might unduly limit the chances of going back to work<sup>20</sup>

[15] In this case, the Appellant hasn’t met the Court’s criteria to show her availability for work from May 23, 2022. She hasn’t shown that her efforts to find a job from that date were reasonable and customary.

**Question 1: Has the Appellant shown a desire to go back to work as soon as a suitable job is available?**

[16] I find that the Appellant hasn’t shown a desire to go back to work as soon as a suitable job is available, from May 23, 2022.

[17] The Appellant argues that she wants to work, that she is available to do so at any time, and that she isn’t afraid to work.<sup>21</sup> She points out that she is honest and hardworking.<sup>22</sup>

[18] The Appellant explains that she retired from being an administrative officer in 2009, after 36 years of service, and went back to work in April 2011.<sup>23</sup> She says that she worked in patient reception and admissions (for example, registering and referring

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<sup>19</sup> The Court established or reiterated this principle in *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

<sup>20</sup> The Court established or reiterated this principle in *Faucher*, A-56-96; *Bois*, 2001 FCA 175; and *Wang*, 2008 FCA 112.

<sup>21</sup> See GD3-18, GD3-20, and GD3-21.

<sup>22</sup> See GD2-4 and GD2-5.

<sup>23</sup> See GD3-15, GD3-18, and GD3-20.

patients to the right place in the hospital), and as a telephone operator (for example, making appointments).

[19] She says that, since going back to work, she has always worked as an administrative officer for X, the same employer she worked for throughout her career before retiring. She points out that this has been her only employer for over 40 years.

[20] The Appellant explains that, when she went back to work, she worked part-time, but that she can also work full-time, as needed (for example, for the vaccination campaign during the COVID-19 pandemic).<sup>24</sup>

[21] She says that, in the vaccination campaigns during the COVID-19 pandemic, she worked as a [translation] “symptom monitor,” which involved seeing if vaccinated individuals had reactions to the dose they were given. She also worked as a door and printer attendant.<sup>25</sup>

[22] The Appellant indicates that she is still available for work for her usual employer in the area of vaccination.<sup>26</sup>

[23] I find that, even though the Appellant argues that she is available for work for X, she hasn't shown a desire to go back to work to accept a suitable job, except for the one she chose for that employer.

[24] I find that the Appellant's intention is to continue working for X, her usual employer.

## **Question 2: Did the Appellant express this desire through efforts to find a suitable job?**

[25] I find that the Appellant didn't show a desire to go back to work through efforts to find a suitable job from May 23, 2022.

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<sup>24</sup> See GD2-4, GD2-5, GD3-14, and GD3-15.

<sup>25</sup> See GD3-14, GD3-15, and GD3-21.

<sup>26</sup> See GD2-4, GD2-5, GD3-14, and GD3-21.

[26] The Appellant says that she never resigned from X. She says that, in a letter dated November 16, 2022, that employer confirmed that she was hired on April 1, 2012, that she is still employed for a minimum of 15 hours per week, and that she was still available for the call-back list.<sup>27</sup>

[27] The Appellant says that, to work, she made the following efforts:

- a) She is on X's call-back list as an administrative officer. Being on this list doesn't prevent her from working for other potential employers.<sup>28</sup>
- b) She is waiting to be called back by the employer. She is available for work in the area of vaccination.<sup>29</sup>
- c) That employer didn't call her to offer other types of jobs or ask her to work elsewhere after the COVID-19 vaccination campaign started.<sup>30</sup>
- d) There were technical changes in the department where she worked. She doesn't want to learn to work with new programs or software again. She says that she isn't interested in taking training so that she can work.<sup>31</sup>

[28] The Appellant says that she made no other efforts to work with other potential employers.<sup>32</sup> She says that, at her age, she won't look for another job.<sup>33</sup>

[29] The Appellant says that she is only available for work in the area of vaccination at X.<sup>34</sup>

[30] The Appellant argues that, since she stopped working in May 2022, she has had several periods of employment with that employer. She says that she worked in June

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<sup>27</sup> See GD2-6.

<sup>28</sup> See GD2-4 and GD2-5.

<sup>29</sup> See GD3-14.

<sup>30</sup> See GD2-4 and GD2-5.

<sup>31</sup> See GD3-15 and GD3-21.

<sup>32</sup> See GD3-15 and GD3-21.

<sup>33</sup> See GD3-21.

<sup>34</sup> See GD3-15 and GD3-21.

2022, but that vaccination activities slowed down during that period. The Appellant says that she also worked for it in July and October 2022, and in February 2023.<sup>35</sup> She says that she worked in a shopping centre and in communities located dozens of kilometres from her place of residence, among other places.<sup>36</sup>

[31] The Appellant says that X sent her an email, dated February 13, 2023, telling her that it didn't need her services.<sup>37</sup>

[32] In a statement to the Commission dated July 19, 2022, X indicated an [translation] "urgent need" for administrative officers in many departments.<sup>38</sup> The employer says that the Appellant makes herself available to work only in the area of vaccination which explains why she is on the call-back list and why these hours aren't guaranteed.<sup>39</sup>

[33] In this case, I find that the Appellant didn't make "reasonable and customary efforts" in the "search for suitable employment"—that is, sustained efforts directed toward finding a suitable job and consistent with nine specified activities that can be used to help claimants get a suitable job.<sup>40</sup>

[34] I find that, even though the Appellant says that she is available for work, her efforts to find a job don't show that she is willing to work for an employer other than X.

[35] It is apparent from her testimony and statements that, since May 23, 2022, she has chosen to give priority to this employer, which has been her job provider since going back to work, rather than conducting a sustained search for another job.

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<sup>35</sup> See GD3-15, GD3-18, GD3-20, and GD3-21.

<sup>36</sup> See GD2-4, GD2-5, and GD3-21.

<sup>37</sup> See GD6-2 and GD6-3.

<sup>38</sup> See GD3-12.

<sup>39</sup> See GD3-12.

<sup>40</sup> See section 9.001 of the Regulations.



[36] The Court tells us that a person's availability is assessed for each working day in a benefit period for which they can prove that on that day they were capable of and available for work and unable to find a suitable job.<sup>41</sup>

[37] I find that the Appellant's availability for work didn't lead to sustained efforts to find a suitable job with potential employers.

[38] The Court tells us that it is up to the claimant to prove availability for work. To get EI benefits, a claimant must be actively looking for a suitable job, even if it seems reasonable to them not to do so.<sup>42</sup>

[39] The Court also tells us that not ending the employment relationship and staying in the workforce doesn't necessarily make a person available for work every working day of a benefit period.<sup>43</sup>

[40] It was the Appellant's responsibility to actively look for a suitable job so that she could get EI benefits.

[41] I find that she hasn't fulfilled this responsibility since May 23, 2022.

**Question 3: Did the Appellant set personal conditions that might have unduly limited her chances of going back to work?**

[42] I find that the Appellant set "personal conditions" that unduly limited her chances of going back to work to find a suitable job from May 23, 2022.

[43] I find that the personal conditions the Appellant has imposed are mostly related to the fact that she has limited herself to working for her usual employer, X, since going back to work.

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<sup>41</sup> This principle was established by the Court in *Cloutier*, 2005 FCA 73; and *Boland*, 2004 FCA 251.

<sup>42</sup> This principle was established by the Court in *De Lamirande*, 2004 FCA 311; and *Cornelissen-O'Neil*, A-652-93.

<sup>43</sup> The Court established this principle in *Gagnon*, 2005 FCA 321.

[44] I find that the Appellant wants to work, but that she doesn't want to make herself available to an employer other than the one she has worked for since going back to work and throughout her career before retiring.

[45] Also, she only agrees to work as an administrative officer in the area of vaccination at X, even though this employer says that it has an [translation] "urgent need" for administrative officers in several of its departments.<sup>44</sup> I am of the view that she could work as an administrative officer in several departments for that employer.

[46] I find that the Appellant is very selective in the type of job she would accept, which also shows that she unduly limits her chances of going back to work.

[47] I find that, since May 23, 2022, the Appellant has set personal conditions that unduly limit her chances of going back to work to find a suitable job.

## **Conclusion**

[48] I find that the Appellant hasn't shown that she was available for work within the meaning of the Act from May 23, 2022. This means that she isn't entitled to receive EI benefits as of that date.

[49] This means that the appeal is dismissed.

Normand Morin  
Member, General Division – Employment Insurance Section

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<sup>44</sup> See GD3-12.