



[TRANSLATION]

Citation: *CL v Canada Employment Insurance Commission*, 2023 SST 955

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: C. L.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (504569) dated August 5, 2022 (issued by Service Canada)

Tribunal member: Charline Bourque

Forms of hearings: In person
Teleconference

Hearing dates: March 15, 2023
March 22, 2023

Hearing participant: Appellant

Decision date: March 29, 2023

File number: GE-22-2821

Decision

[1] The appeal is dismissed.

[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 EI regular benefits from January 9, 2022, because she wasn't available for work. 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 be searching for a job.

[4] I have to 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.

[5] The Commission says that the Claimant wasn't available because, despite the fact that the Claimant feels that there would be no employer who would hire her at her age, she didn't look for work and restricted herself to unreasonable wage and hour demands, which remains contrary to the requirements of the *Employment Insurance Act* (Act).

[6] The Claimant disagrees and says that she has contributed to EI for many years and should be entitled to it. She says that it was difficult for her to find a job because of her age and the fact that she had to care for her husband.

Issue

[7] Was the Claimant available for work?

Analysis

[8] 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.

[9] First, the Act says that a claimant has to prove that they are making “reasonable and customary efforts” to find a suitable job.¹ The *Employment Insurance Regulations* (Regulations) give criteria that help explain what “reasonable and customary efforts” means.²

[10] 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.³ Case law gives three things a claimant has to prove to show that they are “available” in this sense.⁴

[11] 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.

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

Capable of and available for work

[13] 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:⁵

- a) She wanted to go back to work as soon as a suitable job was available.
- b) She made efforts to find a suitable job.

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

² See section 9.001 of the *Employment Insurance 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.

⁵ 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.

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

[14] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.⁶

– **Wanting to go back to work**

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

[16] The Claimant confirms that she made two phone calls to employers. Still, she confirmed that she had to care for her husband and was available for work only a few hours a day.

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

[17] The Claimant hasn't made enough effort to find a suitable job.

[18] As I mentioned earlier, the Claimant's efforts to find a job included two phone calls with clients of her former employer.

[19] Those efforts weren't enough to meet the requirements of this second factor.

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

[20] The Claimant has set personal conditions that might have unduly limited her chances of going back to work.

[21] The Claimant confirms that there aren't many hours when she can work with having to care for her husband.

⁶ 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.

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

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

[23] The Claimant says that she worked for 45 years and should be entitled to EI benefits. She didn't choose to stop working, but was laid off by her employer. She would have liked to be able to continue at her job.

[24] There is no doubt that the Claimant didn't voluntarily leave her job, but that it was the employer's decision to terminate the employment. Still, the Act doesn't allow flexibility when it comes to a claimant's availability. So, I can't go against the Act, since the Claimant confirmed that she could not work because she had to care for her husband.

[25] I also understand the Claimant's difficulties finding a job because of her age. Once again, the Act requires a claimant to make the necessary efforts to find a job and search for a job. The Claimant herself confirmed that she didn't meet these criteria.

[26] Finally, my role is to apply the Act, and I can't change it just to please the Claimant who is dissatisfied. The Act sets out specific criteria that a claimant must meet to be entitled to benefits and it doesn't rely on the fact that a claimant has contributed to the EI program for many years to determine entitlement.⁷

[27] I understand that the Claimant may find the situation unfair, but unfortunately I don't have the authority to intervene or change the Act.

Conclusion

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

⁷ See *Granger v. Commission (CEIC)* FCA #A-684-85; *Wegener v. Canada (Attorney General)*, 2011 FC 137.

[29] This means that the appeal is dismissed.

Charline Bourque
Member, General Division – Employment Insurance Section