



Citation: *BZ v Canada Employment Insurance Commission*, 2023 SST 949

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

Decision

Appellant: B. Z.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (529367) dated July 29, 2022 (issued by Service Canada)

Tribunal member: Glenn Betteridge

Type of hearing: Teleconference

Hearing date: February 15, 2023

Hearing participant: Appellant

Decision date: March 29, 2023

File number: GE-22-3688

Decision

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

[2] To get Employment Insurance (EI) regular benefits a person has to show they are available for work.

[3] B. Z. hasn't proven she was available for work from April 11 to July 15, 2022.

[4] This means the Canada Employment Insurance Commission (Commission) can't pay her EI regular benefits for that time.

Overview

[5] To get EI regular benefits a person has to be available for work. In other words, the person has to be searching for a suitable job on an ongoing basis.

[6] B. Z. (Appellant) stopped work during the COVID pandemic. She lost her job as a personal support worker (PSW) in a hospital because she wasn't vaccinated.

[7] She applied for EI regular benefits.

[8] The Commission found she limited her chances of getting work because she only looked for PSW jobs. But she needed to be vaccinated against COVID to get PSW jobs. So the Commission decided she wasn't available for work from April 11 to July 15, 2022. And didn't pay her EI benefits.

[9] The Appellant disagrees. She says she looked for PSW jobs, and applied for factory work and school custodian jobs.

[10] I have to decide whether the Appellant has proven she was available for work from April 11 to July 15, 2022.

Issue

[11] Was the Appellant available for work from April 11 to July 15, 2022?

The law about availability for work

[12] Two sections of the law say that to get EI regular benefits a person has to show they are available for work:

- A person has to prove they are making **reasonable and customary efforts** to find a suitable job.¹ The *Employment Insurance Regulations* (EI Regulations) give examples of job search activities that help explain what “reasonable and customary efforts” mean.² I will look at the examples below.
- A person has to prove they are **capable of and available for work** but can’t find a suitable job.³ To do this, they have to prove three things.⁴ I will consider these below.

[13] The Commission decided the Appellant was disentitled under both sections. So to get benefits she has to prove she meets the rules under both.

Reasonable and customary efforts

[14] The law says a person has to prove they are making reasonable and customary efforts to find a suitable job.⁵ In other words, the Appellant has to keep trying to find a suitable job.

[15] I have to consider the Appellant’s job search efforts. The EI Regulations list nine job-search activities I should look at.⁶

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

² See section 9.001 of the *Employment Insurance Regulations* (EI 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 See section 50(8) of the Act.

⁶ Section 9.001 of the EI Regulations lists: assessing employment opportunities; preparing a résumé or cover letter; registering for job-search tools or with online job banks or employment agencies; attending job-search workshops or job fairs; networking; contacting employers who may be hiring; applying for jobs; attending interviews; and doing competency tests.

[16] I also have to consider whether her efforts were sustained and directed toward finding a suitable job.⁷

[17] The Appellant says she was looking for work from April 11 until July 15, 2022:

- she looked for PSW jobs because that's the job she had done for 20 years
- she looked for PSW jobs through friends, and every day searched the Indeed job search website with her daughter's help
- she looked for PSW jobs at local nursing homes
- she received email alerts for PSW jobs
- she applied for about 10 PSW jobs on Indeed, and handed out maybe 20 resumes
- she wasn't offered any interviews for PSW jobs, she thinks because of COVID vaccination restrictions
- she expected to get called back to her hospital PSW job when COVID vaccine mandates ended, so it would be hard for to transfer to another type of job for a short period of time
- she prepared a cover letter and applied for cleaner and custodian job with two school boards
- she was interested in factory jobs, which she heard about from friends, and gave a resume to a friend when a job opened up at X

[18] I accept the Appellant's evidence of her job search activities. She testified in an upfront way. When she didn't know the answer to my question, or couldn't remember a detail, she said so. And her evidence is consistent. What she testified to at the hearing fits with what she told the Commission. Her story stayed pretty much the same over

⁷ See section 9.001 of the EI Regulations.

time. She gave more details at the hearing than she gave the Commission. But her testimony didn't contradict what she told the Commission. Finally, there is no evidence that goes against her evidence.

[19] I find the Appellant has proven she made reasonable and customary efforts to find a suitable job. She did most of the job search activities listed in the EI Regulations. And she continued to do them from April 11 to July 15, 2022. In other words, she sustained her job search efforts.

Capable of and available for work

[20] I also have to consider whether the Appellant was capable of and available for work but unable to find a suitable job.⁸ A court decision sets out the three factors she has to prove:⁹

- She wanted to go back to work as soon as a suitable job was available.
- She made efforts to find a suitable job.
- She didn't set personal conditions that might unduly (in other words, overly) limit her chances of going back to work.

[21] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.¹⁰

– Wanting to go back to work

[22] The Appellant has shown she wanted to go back to work as soon as a suitable job was available.

⁸ See section 18(1)(a) of the EI Act.

⁹ These three factors come from the Federal Court of Appeal's decision in *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A- 57-96. I have written the three factors for plain language.

¹⁰ 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.

[23] I find the Appellant wanted to go back to work based on what she said at the hearing.

[24] She testified she had a hard time mentally after her employer suspended from her PSW job. She said getting back to work would have been really helpful for her mental and physical health. She looked for jobs every day. She was frustrated that she couldn't get a PSW job because she wasn't vaccinated.

[25] I have no reason to doubt her testimony.

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

[26] The Appellant made enough efforts to find a suitable job.

[27] When I analyze this second factor, I can look at the list of job-search activities under the EI Regulations—but I can't let it dictate my decision about this factor. And I haven't.

[28] I find her job search efforts are enough to meet this second factor. The Appellant focused on jobs appropriate to her skills and experience. And she did what she needed to do to try to find a job—she networked, used the internet, signed up for job alerts, prepared a resume and cover letters, and looked at job openings in nursing homes in her area.

[29] And she had a positive attitude towards work and wanted to go back to work. She said working helped her mental health and she wanted to work because of that. This makes sense. And I have no reason to doubt what she said.

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

[30] The Appellant set two personal conditions that unduly limited her chances of going back to work. She:

- refused to get vaccinated for COVID
- would not travel more than 30-40 minutes for a job

[31] Availability must be demonstrated for every working day.¹¹

[32] I find the Appellant's decision not to get **vaccinated for COVID** is a personal condition that unduly limited her chances of going back to work.

[33] The Appellant says she looked for PSW jobs because that is what she was trained to do. But she testified at the hearing those jobs required her to be vaccinated. So she didn't apply. I accept her testimony about this. I have no reason to doubt it.

[34] I find the Appellant placed **travel time limits** on jobs she would consider. This personal condition unduly limited her chances of going back to work.

[35] She testified that she doesn't drive. She lives in the Greater Toronto Area. And takes public transit to work. There are many job openings across the GTA, Canada's most populated area. But she only looked for jobs she could reach in 30-40 minutes. This time restriction was unreasonably narrow in the circumstances.¹² It limited her chances of finding a job and going back to work.

[36] The Commission says the Appellant **only looked for PSW jobs**. And this personal condition unduly limited her chances of going back to work from April 11 to July 15, 2022. The Commission says she only started applying to school boards for custodial and cleaning jobs on July 15, 2012.

[37] The Appellant testified she didn't know for certain when she started applying to school boards. She said it was before the Commission reversed its decision on another EI issue (July 29, 2022).¹³ And before classes ended at the end of June. I accept her testimony about this issue because she was forthcoming. And there is no evidence that goes against it.

¹¹ Section 32 of the EI Regulations says a working day is any day of the week except Saturday and Sunday.

¹² See for example *CUB 18174*. The Board said that a claimant can't unduly restrict a job search by refusing employment that's within commuting distance.

¹³ The Appellant sent the Tribunal the Commission reconsideration decision letter reversing its decision on the misconduct issue. Its dated July 29, 2022.

[38] I find she didn't restrict her job search to PSW jobs from April 11 to July 15, 2022. Based on her evidence, it's more likely than not she looked for custodial and cleaning jobs in June 2022, if not before that.

– **The Appellant wasn't capable of and available for work**

[39] The Appellant set two personal conditions that unduly limited her chances of going back to work.

[40] This means she hasn't proven she was capable of and available for work but unable to find a suitable one from April 11 to July 15, 2022.

Conclusion

[41] The Appellant hasn't proven she was available for work from April 11 to July 15, 2022.

[42] This means the Commission can't pay her EI regular benefits for this period.

[43] So I am dismissing her appeal.

Glenn Betteridge
Member, General Division – Employment Insurance Section