



[TRANSLATION]

Citation: *PC v Canada Employment Insurance Commission*, 2023 SST 1392

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

## Decision

**Appellant:** P. C.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (563540) dated December 14, 2022 (issued by Service Canada)

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**Tribunal member:** Denis Bourgeois  
**Type of hearing:** Teleconference  
**Hearing date:** May 1, 2023  
**Hearing participant:** Appellant  
**Decision date:** June 13, 2023  
**File number:** GE-23-56

## **Decision**

[1] The appeal is dismissed. The Tribunal disagrees with the Appellant.

[2] The Appellant hasn't shown that he was available for work. This means that he can't receive Employment Insurance (EI) benefits.

## **Overview**

[3] The Canada Employment Insurance Commission (Commission) decided that the Appellant was disentitled from receiving EI regular benefits as of August 21 because he 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 Appellant has proven that he was available for work. The Appellant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that he was available for work.

[5] The Commission says that the Appellant wasn't available because he only wanted to work as a painter. There were no jobs available as a painter. The Commission says that the Appellant refused to try his luck in another field.

[6] The Appellant says that he only wants to work as a painter. He contacted three former employers to see whether they had any openings.

## **Matter I have to consider first**

[7] The Appellant has two separate appeal files. I chose to hear both appeals in the same hearing in the interest of proceeding as informally and quickly as circumstances, natural justice, and fairness permit.

[8] However, I didn't join the appeals. I am only able to join appeals if a common question of law or fact arises in the appeals and no injustice is likely to be caused to any

party.<sup>1</sup> In this case, the two appeals don't share a common question of law. So, I will issue two separate decisions.

## Issue

[9] Was the Appellant available for work?

## Analysis

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

[11] First, the *Employment Insurance Act* (Act) says that a claimant has to prove that they are making "reasonable and customary efforts" to find a suitable job.<sup>2</sup> The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" means.<sup>3</sup> I will look at those criteria below.

[12] 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.<sup>4</sup> Case law gives three things a claimant has to prove to show that they are "available" in this sense.<sup>5</sup> I will look at those factors below.

[13] 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.

[14] I will now consider these two sections myself to determine whether the Appellant was available for work.

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<sup>1</sup> See section 13 of the *Social Security Tribunal Regulations*.

<sup>2</sup> See section 50(8) of the *Employment Insurance Act* (Act).

<sup>3</sup> See section 9.001 of the *Employment Insurance Regulations* (Regulations).

<sup>4</sup> See section 18(1)(a) of the Act.

<sup>5</sup> See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

## **Reasonable and customary efforts to find a job**

[15] The law sets out criteria for me to consider when deciding whether the Appellant's efforts were reasonable and customary.<sup>6</sup> 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.

[16] 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 activities are the following:<sup>7</sup>

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

[17] The Commission says that the Appellant didn't do enough to try to find a job.

[18] The Appellant disagrees. He did some networking. He contacted three former employers to see whether they had any work for him as a painter. He searched for jobs on the government's website.<sup>8</sup> He says that his efforts were enough to prove that he was available for work.

[19] I find that the Appellant didn't make customary efforts to find a job. At the hearing, he said that he would have done any job he was able to do, such as finishing or framing. But, he was waiting until jobs as a painter were available. He made no effort other than for jobs as a painter.

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<sup>6</sup> See section 9.001 of the Regulations.

<sup>7</sup> See section 9.001 of the Regulations.

<sup>8</sup> See GD3-36.

[20] He didn't look for a job after September.<sup>9</sup> He says he is retired and wasn't looking for other types of work. He looked for jobs on a government website, but there weren't any with good pay.

[21] *Whiffen* explains that you should not set limits that might prevent you from finding a job. If you do set any limits on your job search, the limits should be reasonable.<sup>10</sup>

[22] The Appellant hasn't proven that his efforts to find a job were reasonable and customary.

### **Capable of and available for work**

[23] Case law sets out three factors for me to consider when deciding whether the Appellant was capable of and available for work but unable to find a suitable job. The Appellant has to prove the following three things:<sup>11</sup>

- 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.

[24] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.<sup>12</sup>

#### **– Wanting to go back to work**

[25] The Appellant has shown that he wanted to go back to work as soon as a suitable job was available. He said he would always be willing to work as a painter. I

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<sup>9</sup> See GD36 [*sic*].

<sup>10</sup> See *Canada (Attorney General) v Whiffen*, A-1472-92.

<sup>11</sup> 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.

<sup>12</sup> 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.

don't doubt the sincerity of his statement. He wanted to work, but only as a painter or in another similar job.

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

[26] The Appellant didn't make enough effort to find a suitable job.

[27] I have considered the list of job search activities given above in deciding this second factor. For this factor, that list is for guidance only.<sup>13</sup>

[28] As I mentioned earlier, the Appellant's efforts to find a new job included contacting former employers to work as a painter. He didn't contact any new potential employers. He searched online.

[29] Those efforts weren't enough to meet the requirements of this second factor because he didn't look for work after September. He knew that painter jobs would be available later, but he could have looked in other fields. He contacted only former employers.

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

[30] The Appellant did set personal conditions that might have unduly limited his chances of going back to work.

[31] The Appellant says he didn't do this because he would have done any suitable job, but he preferred to work as a painter.

[32] It is clear that he limited his chances of finding a job. The Commission says that he refused to try his luck in any field other than his usual field.

[33] I find that he set limits by saying that he was waiting until spring for painter jobs. He knew there would be some available at that time.

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<sup>13</sup> I am not bound by the list of job search activities in deciding this second factor. Here, I can use the list for guidance only.

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

[34] 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**

[35] 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 can't receive EI benefits.

[36] This means that the appeal is dismissed.

Denis Bourgeois

Member, General Division – Employment Insurance Section