Citation: *RB v Canada Employment Insurance Commission*, 2023 SST 1421

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 (584268) dated May 1, 2023 (issued by Service Canada)

Tribunal member:	Teresa M. Day
Type of hearing:	Teleconference
Hearing date:	August 23, 2023
Hearing participant:	Appellant
Decision date:	September 8, 2023
File number:	GE-23-1487

Decision

[1] The appeal is dismissed.

[2] The Appellant is disqualified from employment insurance (EI) benefits because she voluntarily left her job without just cause when she retired on December 30, 2022.

[3] She is also disentitled to EI benefits from January 2, 2023 to March 31, 2023 because she did not prove her availability for work during this period.

[4] This means Appellant cannot be paid EI benefits.

Overview

[5] The Appellant applied for regular EI benefits on January 10, 2023. On her application, she said she was no longer working because she voluntarily retired. Her Record of Employment (ROE) said that her last paid day of work was December 30, 2022 and that she quit her job.

[6] The Respondent (Commission) investigated why the Appellant stopped working.

[7] The Appellant said she chose to retire after 40 years of working for CIBC (the employer) because the work had become too stressful for her and she didn't want to lose her employee benefits by quitting. She also told the Commission she had been looking for work by talking with friends and family but had not applied to any jobs or prepared a resume.

[8] The Commission decided the Appellant voluntarily left her job without just cause when she retired. This meant she was disqualified from receiving EI benefits on her claim[1].

[9] The Commission also investigated whether the Appellant was available for work.

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[1] Section 30(2) of the *Employment Insurance Act* (EI Act) says that a claimant who voluntarily leaves their employment without just cause will be indefinitely disqualified from EI benefits.

[10] The law says a claimant must be available for work in order to receive regular EI benefits[2]. Availability is an ongoing requirement[3]. This means a claimant must be actively searching for full-time employment and cannot impose personal conditions that might unduly restrict their ability to return to work.

[11] The Commission decided the Appellant could not receive EI benefits from January 2, 2023 to April 28, 2023 because she hadn't conducted an adequate job search and did not prove her availability for work[4].

[12] The Appellant appealed the 2 negative decisions on her claim to the Social Security Tribunal (Tribunal).

[13] I am confirming both decisions, although I am modifying the period of the availability disentitlement as recommended by the Commission[5]. These are my reasons.

Issues

[14] As set out above, there are 2 negative decisions on the Appellant's claim. She has appealed both of them.

[15] This means I must decide:

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[2] Section 18(1)(a) of the EI Act says claimants can only get EI benefits for a working day if they prove they were capable of and available for work on that day but could not find a suitable job.

[3] A claimant must show they were available on every working day during their benefit period.

[4] The indefinite disentitlement imposed for failing to prove her availability (see the March 14, 2023 decision letter at GD3-30) and was changed to a definite disentitlement from January 2, 2023 to April 28, 2023 (see the May 1, 2023 reconsideration decision letter at GD3-40). In its representations in response to the Appellant's appeal, the Commission said it is satisfied the Appellant was able to demonstrate an active job search by the end of March 2023 and asked me to modify the end-date of the disentitlement from April 28, 2023 to March 31, 2023. I am granting the Commission's request.

[5] As set out in footnote 4 above, I accept the Commission's recommendation that the period of the disentitlement (for failing to prove her availability for work) be reduced so that it only runs until March 31, 2023.

a) Did the Appellant voluntarily leave her employment without just cause when she retired on December 30, 2022?

b) Was the Appellant available for work from January 2, 2023 to April 28, 2023[6]?

Issue 1: Did the Appellant voluntarily leave her job without just cause when she retired?

[16] To answer this question, I have to decide two things. First, I must determine if the Appellant voluntarily left (quit) her job. Then I have to decide whether she had just cause for leaving.

A) Did the Appellant voluntarily leave her job?

[17] Yes, she did.

[18] The Appellant repeatedly told the Commission that she stopped working because she chose to retire[7]. The employer confirmed the Appellant retired on December 30, 2022[8].

[19] At the hearing, the Appellant testified that:

- She couldn't handle the job anymore, so she decided to retire.
- She gave the employer notice of her retirement at the end of October 2022 and advised that her last day of work would be December 30, 2022.

[20] The Appellant initiated the severance of the employment relationship when she gave notice of her retirement and did not return after her last day of work on December

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[6] This is the period of the disentitlement for the decision that was reconsidered, so this is the period under review on this appeal. But see footnotes 4 and 5 above.

[7] On her application for EI benefits, the Appellant said her retirement was voluntary. See also GD3-24.

[8] See GD3-35. See also Record of Employment at GD3-21.

30, 2022. In doing so, she voluntarily left her employment at a time when the employer had work for her.

[21] I therefore find the Appellant voluntarily left her job on December 30, 2022.

B) Did the Appellant have just cause for voluntarily leaving?

[22] No, she did not.

[23] The law says you are disqualified from receiving EI benefits if you left your job voluntarily and didn't have just cause for doing so[9].

[24] Having a good reason for leaving a job isn't enough to prove just cause.

[25] The law explains what it means by "just cause." It says you have just cause to leave ***if you had no reasonable alternative to quitting*** your job when you did.

[26] It is up to the Appellant to prove she had just cause[10].

[27] She must prove this on a balance of probabilities. This means she has to show it is more likely than not that her only reasonable option was to leave her employment on December 30, 2022.

[28] When I decide whether she had just cause, I have to look at all of the circumstances that existed at the time she quit[11].

[29] The Appellant told the Commission that[12]:

a) She retired because she felt unable to keep up with her job duties, which had changed in a way that made it harder for her to work (GD3-9). She said she was unable to cope with rapid changes in technology and procedures, as well as workload and deadlines (GD3-10).

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[9] Section 30 of the EI Act.
[10] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3.
[11] See *Canada (Attorney General) v White*, 2011 FCA 190 at para 3; and section 29(c) of the EI Act.
[12] The statements cited can be found at GD3-24, GD3-27 and GD3-36 to GD3-37, unless otherwise cited.

b) She did not look for another job before she leaving because she didn't want to lose her years of service (GD3-12). She chose to retire because if she had quit, she would lose her benefits[13].

c) She'd worked for CIBC for almost 40 years, but since 2021 there had been a lot of changes to her role.

d) There was a significant change in the volume of work because she was expected to take on the workloads of employees who quit and were not replaced.

e) She was doing the work of 2-3 people. The employer told her they would be hiring, but it took several months to find a replacement.

f) New technology and processes made it harder for her to keep up because she had to learn new skills – even though the employer never said anything to her about keeping up.

g) She spoke to her employer about it and the employer advised her to keep going. The employer also hired new staff, although there was a lot of turn over.

h) The situation went on for almost a year and the stress caused her to quit.

i) She did not go to see a doctor about the stress, but it was the main cause for quitting.

j) She couldn't continue doing the work because it was too much stress for her.

k) She didn't think to ask about a leave of absence.

l) She didn't ask for a transfer to a different position because she wasn't aware of other opportunities and didn't want to impact her pension.

m) She didn't look for other work before she quit.

[13] See also Notice of Appeal at GD2-5.

n) She just decided to retire because she thought it was the best option for her. She could continue to collect a pension from her employer and then look for other work.

o) Being employed for over 40 years, she had never taken time off and she chose to retire. She couldn't handle her job anymore.

[30] At the hearing, the Appellant testified that:

- When she gave her notice in October 2022, she told the employer why she was retiring. She said she had too stress from the volume of work, staff turnover and new technology.
- She didn't look for another job before leaving on December 30, 2022.
- She was "so involved" with her existing job that she didn't have time to look for another one.
- She was very stressed. She did contact her doctor but couldn't get an appointment until June 2023. She was too stressed to wait until then.
- She didn't reach out to the employer's human resources (HR) department about the issues that were causing her stress. She'd never contacted HR about anything during her career.
- She couldn't do it anymore but didn't want to quit outright because she was concerned about losing her health and other benefits. So she decided to retire after 43 years of work.
- The decision to retire was her decision to make.

[31] The Commission says the Appellant had a number of reasonable alternatives to leaving when she did: she could have consulted a doctor, asked to transfer to another role or department, requested a leave of absence, or looked for other work.

[32] I agree with the Commission that the Appellant had reasonable alternatives to leaving her job when she did (on December 30, 2022).

[33] The question is not whether it was understandable for the Appellant to leave her employment, but rather whether leaving was ***the only reasonable course of action open to her***, having regard to all of the circumstances. The Commission has proven the Appellant had reasonable alternatives to quitting when she did.

[34] I will address the Claimant's arguments in turn.

Changes to her duties

[35] The law says that an employee has just cause where there are significant changes in work duties and the employee has no reasonable alternative to leaving the employment[14].

[36] I find that such circumstances did not exist for the Appellant.

[37] The court has said that if the terms and conditions of the employment are ***significantly*** altered, a claimant may have just cause for leaving their position[15]. The court has found just cause where the employer acted unilaterally in a manner which ***fundamentally alters*** the terms of the employment as they existed prior to separation[16].

[38] I must consider the following questions[17]: does the Appellant's version of the facts support a finding that there were significant changes in work duties within the meaning of the law, and, if so, was there no reasonable alternative but to leave her job when she did?

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[14] Paragraph 29(c)(ix) of the EI Act.
[15] See *Lapointe v. C.E.I.C.*, A-133-95 (FCA).
[16] See *Lapointe, supra*, and *Horslen v. C.E.I.C.*, A-517-94 (FCA)
[17] This was set out by the court in *Chaoui* 2005 FCA 66.

[39] The Appellant worked for the employer for over 40 years before leaving on December 30, 2022. At some point in 2021, her workload increased because of employee turnover, and she was spending more time learning new technology and new procedures in the workplace.

[40] The word “significant” in paragraph 29(c)(ix) of the EI Act requires the change initiated by the employer to be something of importance and outside of the norm. Minor changes in duties will not constitute just cause for leaving an employment.

[41] The additional duties associated with employee turnover in the last 18 months of her employment do not qualify as “significant” because they did not change the nature of her role and were not intended to be permanent. By the Appellant’s own admission, when she raised this issue with the employer, she was assured that new hires were coming – and new employees did, indeed, arrive[18]. While I understand the hiring process may have taken longer than the Appellant wanted, the employer was responsive to her concerns and moved to address them in an appropriate manner. The fact that there was still some staff turnover does not mean the Appellant’s position was changed so that she was meant to do the work of 2 or 3 employees going forward.

[42] Similarly, the Appellant’s need to adapt to new technology and procedures in the workplace is not outside of the norm. It was incumbent on her to ask the employer for additional support if she was struggling in these areas.

[43] I therefore find the Appellant has not proven that she experienced a significant change in her work duties. I also find that she had reasonable alternatives to quitting in response to the workload and technology changes she experienced.

[44] The changes to the Appellant’s workload and the new technology and procedures that started in 2021 (in the midst of the global Covid-19 pandemic) meant she had adjustments to make. But she was a long-standing employee and the

[18] During her reconsideration interview on May 1, 2023, the Appellant admitted to the Commission that the employer addressed her concerns on staffing (see GD3-36).

employer responded to her workload concerns when she raised them[19]. These things show she was a valued employee.

[45] There are many cases from the court imposing an obligation on EI claimants to try to resolve workplace issues with their employer, or to seek alternative employment, before making a unilateral decision to quit a job[20]. I cannot ignore this obligation.

[46] A reasonable alternative to quitting would have been for the Appellant to speak with the employer when she was struggling with the technology and new procedures involved with working from home during the pandemic – and ask for additional training and support.

[47] A further reasonable alternative would have been for the Appellant to speak with the employer if her workload continued to be too heavy after the new hires arrived and ask for further assistance. It was incumbent on the Appellant to communicate with the employer's Human Resources department and/or her manager about any issues with the training or turnover of new staff. She needed to make the employer aware that the solution of hiring more employees was still problematic and give the employer a chance to rectify the situation. This is especially the case given that the employer was in the process of hiring more staff.

[48] I agree with the Commisison that another reasonable alternative would have been for the Appellant to ask the employer to transfer her to a different position. Given her 40+ years of service, she was clearly a valued employee and could have explored the possibility of a different role within the organization.

[49] A further reasonable alternative to quitting would have been for the Appellant to continue working until she found suitable alternative employment elsewhere – especially since she had been dealing with the changes since 2021.

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[19] There is no evidence the Appellant ever raised her concerns about the new technology or procedures with her employer.
[20] Consider the analysis in *White, supra*.

[50] The Appellant pursued none of these reasonable alternatives.

[51] I therefore find that the Appellant has not met the onus on her to prove she experienced significant changes to her work duties such that she had no reasonable alternative but to leave her job on December 30, 2022. This means she has not proven just cause for leaving her job because of significant changes in her work duties.

Workplace Stress

[52] The law says that a claimant who experiences working conditions that constitute a danger to health or safety has just cause for leaving if they had no reasonable alternative but to quit[21] .

[53] I find that such circumstances did not exist for the Appellant.

[54] Where the detrimental effect on a claimant's health is being proffered as just cause, the claimant must usually: (a) provide medical evidence[22]; (b) attempt to resolve the problem with the employer[23]; and (c) attempt to find other work prior to leaving[24].

[55] I accept the Appellant's testimony that she was feeling overwhelmed and stressed at the time she quit. But she does not have a doctor's note or any medical evidence to support that her job was endangering her health and/or that she needed to leave her job for medical reasons. By her own admission, he did not see her doctor prior to giving her notice and quitting by voluntarily retiring. If she needed to leave her job for the sake of her health, it was incumbent on her to consult a doctor prior to doing so.

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[21] Paragraph 29(c)(iv) of the EI Act.
[22] *CUB 11045*
[23] See *Hernandez* 2007 FCA 320 and *CUB 21817*
[24] See *Murugaiah* 2008 FCA 10 and *CUBs 18965* and *27787.*

[56] Similarly, the Appellant did not attempt to resolve her workload issues[25] or the problems she was having with new technology and procedures (the causes of her stress) with the employer or actively look for work prior to quitting.

[57] I therefore find that the Appellant has not proven that she experienced working conditions that were a danger to her health such that she had no reasonable alternative but to leave her job on December 30, 2022.

[58] I find that a reasonable alternative to quitting would have been to consult her doctor about the potential need for a leave of absence or to quit her job for medical reasons. I also find that the reasonable alternatives set out in paragraphs 46 to 49 above also apply to this argument.

[59] The Appellant pursued none of these reasonable alternatives.

[60] I therefore find that the Appellant has not met the onus on her to prove she experienced working conditions that were endangering her health such that she had no reasonable alternative but to leave her job on December 30, 2022. This means she has not proven just cause for leaving her job for health reasons.

Intolerable working conditions

[61] Unsatisfactory working conditions will only constitute just cause for quitting where they are so ***manifestly intolerable*** that a claimant has no other choice but to leave when they did[26]. But there is a high obligation on the claimant to seek solutions to intolerable conditions before leaving[27].

[62] I find that such circumstances did not exist for the Appellant at December 30, 2022.

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[25] I refer here to the issues she had with the new hires and continued staff turnover (see paragraph 47 above).
[26] See *CUBs 16704, 12767*, and 11890.
[27] See *CUBs 57005, 57605, 57628, 69200, 69227, 71573*, and *71645*.

[63] I acknowledge the Appellant was tired of covering for other staff and was struggling to keep up with the changes in technology and procedures during the pandemic. But these are not conditions in the workplace that could be considered manifestly intolerable. The Appellant had been dealing with them since 2021 when she gave her notice in October 2022, and left her job on December 31, 2022. There was no final incident, just a gradual awareness that the job was becoming too much for her.

[64] Yet the Appellant failed to take any steps to alleviate these unsatisfactory working conditions.

[65] She decided to voluntarily retire rather than quit outright because she didn't want to lose her employee benefits.

[66] I acknowledge the Appellant's personal reasons for using retirement as her excuse for quitting her job. But I cannot ignore that she voluntarily put herself into a position of unemployment without taking steps to first preserve that employment.

[67] A reasonable alternative would have been for the Appellant to speak with employer and alert it to the level of stress she was feeling and give the employer a chance to look into options to resolve her concerns – both on the staffing front and the technology front. The fact that she did not allow the employer to address the issues[28] is indicative of the Appellant's lack of interest in preserving this employment.

[68] A decision to leave a job for personal reasons, such as the stress dealing with an increased workload due to staff turnover and new technology and procedures (as described by the Appellant), may well be ***good cause*** for leaving an employment. But the Federal Court of Appeal has clearly held that good cause for quitting a job is not the same as the statutory requirement for **"just cause"**[29]; and that it is possible for a claimant to have good cause for leaving their employment, but not "just cause" within the meaning of the law[30].

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[28] See footnote 24 above.
[29] See *Laughland* 203 FCA 129
[30] See *Vairumuthu* 2009 FCA 277

[69] The Federal Court of Appeal has also clearly held that leaving one's employment to improve one's situation – be it the nature of the work, the pay, or other lifestyle factors – does not constitute just cause within the meaning of the law[31].

[70] I find that the Appellant made a personal decision to leave her employment.

[71] While I acknowledge the Appellant's desire to remove herself from a stressful situation, she cannot expect those who contribute to the employment insurance fund to bear the costs of her unilateral decision to leave her employment in an attempt to do so.

[72] A reasonable alternative to leaving would have been to alert the employer to her concerns and allow the employer the opportunity to resolve them (or continue working to resolve them, as in the situation with the new hires). Another reasonable alternative would have been to continue working until she found suitable employment elsewhere.

[73] The Appellant failed to pursue either of these reasonable alternatives.

[74] I therefore find that the Appellant has not met the onus on her to prove that she was experiencing working conditions that were so manifestly intolerable that she had no reasonable alternative but to leave her job on December 30, 2022. This means she has not proven just cause for leaving her job because her workplace had become intolerable.

[75] It also means she is disqualified from receiving EI benefits.

C) Conclusion on Disqualification for Voluntarily Leaving

[76] The Appellant had reasonable alternatives to leaving her job on December 30, 2022. She did not avail herself of these reasonable alternatives and, therefore, has not proven just cause for voluntarily leaving her employment.

[77] This means she is disqualified from EI benefits starting from December 30, 2022.

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[31] See *Langevin* 2001 FCA 163, *Astronomo* A-141-97, *Tremblay* A-50-94, *Martel* A-169-92, *Graham* 2001 FCA 311, *Lapointe* 2009 FCA 147, and *Langlois* 2008 FCA 18.

Issue 2: Has the Appellant proven her availability for work?

[78] No, she has not.

Preliminary Matter

[79] Given my findings under Issue 1 above, it is not possible for the Appellant to be paid regular EI benefits on the application she filed January 10, 2023.

[80] Therefore, it is not strictly necessary for me to render a decision on the Appellant's availability because that decision – whether for or against the Appellant – cannot change the fact she is disqualified from receiving regular EI benefits on her claim. Said differently, my findings on the issue of the Appellant's availability for work have no impact on my findings that the Appellant is not entitled to EI benefits for the reasons set out under Issue 1 above.

[81] However, given that the Appellant addressed the availability issue in her appeal materials and at her hearing, I will proceed with the availability analysis for purposes of completeness.

Availability Analysis

[82] To be considered available for work for purposes of regular EI benefits, the law says the Appellant must show she is capable of, and available for work and unable to obtain suitable employment[32] .

[83] There is no evidence the Appellant was medically or otherwise incapable of work, so I will proceed directly to the availability analysis to assess her entitlement to regular EI benefits from January 2, 2023 to April 28, 2023[33].

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[32] Section 18(1)(a) of the EI Act.

[33] This is the period of the disentitlement in the reconsideration decision that has been appealed.

The Commission says it used ***both*** sections 18 and 50 of the EI Act to disentitle the Appellant to EI benefits. But I do not think the Commission has shown it used section 50. I see no evidence that the Commission asked the Claimant about her job search efforts or requested proof she was making

[84] The Federal Court of Appeal has said that availability must be determined by analyzing 3 factors:

a) the desire to return to the labour market as soon as a suitable job is offered;

b) the expression of that desire through efforts to find a suitable job; ***and***

c) not setting personal conditions that might unduly limit the chances of returning to the labour market[34] .

[85] These 3 factors are commonly referred to as the "*Faucher* factors", after the case in which they were first laid out by the court. When I consider each of these factors, I have to look at the Appellant's attitude and conduct[35].

[86] The court has also said that availability is determined for each working day in a benefit period[36].

[87] I accept the Commission's determination that the Appellant has proven her availability starting from April 1, 2023[37]. But I find she has not satisfied any of the *Faucher* factors from January 2, 2023 to March 30, 2023.

a) Wanting to go back to work

[88] The Appellant has not shown she wanted to go back to work as soon as suitable employment became available.

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reasonable and customary efforts to find a job starting from January 2, 2023 (the first potential date of entitlement). There is also no evidence that the Commission told the Appellant she wasn't making reasonable and customary efforts to find a job or explained why her efforts were insufficient – prior to imposing the original disentitlement on her claim (see the March 14, 2023 decision letter at GD3-30). Therefore, I will not consider section 50 of the EI Act in my analysis and will limit my consideration to whether the Appellant should be disentitled under section 18 of the EI Act.

[34] See *Faucher v. Canada (Employment and Immigration Commission)*, A-56-96.

[35] 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.

[36] See *Canada (Attorney General) v. Cloutier, 2005 FCA 73.*

[37] See GD4-6.

[89] In her first interview with the Commission on March 7, 2023, the Appellant said she thought retirement was the best option for her, and pointed out that she could continue to collect a pension from her employer and ***then*** look for other work[38] (emphasis added).

[90] The Appellant also said she was looking for work by talking to friends and relatives, and had not applied for any jobs since quitting her job on December 30, 2022, but she intended to find a full-time job soon[39]. She said she would like to work in retail and possibly banking but was ***currently exploring her options.***

[91] In her reconsideration interview on May 1, 2023, after her EI benefits were denied, the Appellant said she applied for a job at the end of March 2023 and went for an interview but was not successful[40]. She also applied to a fitness gym but was still waiting for that employer to contact her, and she was now online with "Indeed" but hadn't uploaded her resume or applied to any jobs.

[92] By the Appellant's own admission, in the 4 months since becoming unemployed, she only applied to 2 jobs.

[93] In her Notice of Appeal, filed May 29, 2023, the Appellant said she was ***currently looking for work***[41] (emphasis added).

[94] The Appellant testified at the hearing that:

- After she retired on December 30, 2023, she started "networking" with friends and family "by word or mouth". She let people know she was looking for a full-time job and interested in customer service positions in a retail setting.

- Towards the end of March 2023, she prepared her resume.

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[38] See GD3-24.
[39] See GD3-28.
[40] See GD3-38.
[41] See GD2-5.

- She had made contact with 1 employer over March break and reached out to that employer again after that. She was called for a job interview, but nothing came of it.

- In April 2023, she went to the mall to see if anyone was hiring.

- Also in April 2023, she dropped off a resume at the local fitness centre because there was a job posting on their website.

- In May 2023, she registered for Indeed because she had not had a response from her 2 job applications.

[95] The evidence shows the Appellant was not in a hurry to return to work after she retired. She didn't even prepare her resume until 3 months after she left her job. And she didn't start applying to jobs until after her claim for EI benefits was denied.

[96] I therefore find the Appellant did not have a desire to return to work as soon as a suitable job was available, starting from January 2, 2023[42] and continuing until the end of March 2023, because she did not want to work immediately after retiring.

[97] I accept that the Appellant had been working for over 40 years and hadn't taken any significant time off. But to satisfy the first *Faucher* factor, she must prove that she wanted to return to work ***as soon as a suitable job was available***. To do this, she must show she had a desire to return to work for every working day of her benefit period, which started January 1, 2023.

[98] She has not done so.

[99] I accept the Commission's determination that her availability was proven after March 31, 2023, because that's when the Appellant finally prepared her resume and started applying for jobs. Her failure to take these steps during the first 3 months of her

[42] This is the disentitlement date for failing to prove her availability for work. It runs from the first working day (Monday) after the start of the Appellant's benefit period (which is a Sunday).

retirement shows she did not have a desire to return to work as soon as a suitable job was available.

[100] I therefore find the Appellant has not satisfied the first *Faucher* factor.

b) Job search efforts

[101] To satisfy the second *Faucher* factor, the Appellant must prove she was making enough effort to find a suitable job for every working day during her benefit period, starting from January 2, 2023.

[102] She has not done so.

[103] The evidence with respect to the Appellant's job search efforts is set out in paragraphs 89 to 94 above.

[104] Case law says that the determinative factor in assessing availability is an active, serious, continual and intensive job search, demonstrated by a verifiable record of job applications[43].

[105] The evidence does not support a finding that the Appellant's job search efforts ever reached this level between January 2, 2023 and March 31, 2023.

[106] The Appellant didn't even prepare her resume or submit a job application until the end of March 2023. She only applied for 2 jobs during the 4 months immediately after her retirement (namely, between January 2, 2023 and April 28, 2023[44]). It cannot be said that the Appellant's efforts were sustained or show an on-going effort to find employment for every working day during her benefit period.

[107] I therefore find the Appellant has not satisfied the second *Faucher* factor.

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[43] This principal was set out in the decision of *Cutts v. Canada (Attorney General)*, A-239-90.

[44] The period of the disentitlement after modification during the reconsideration process.

c) Unduly limiting chances of going back to work

[108] To satisfy the third factor, the Appellant must prove she did not set personal conditions that limited her chances of returning to work for every working day of her benefit period, starting from January 2, 2023.

[109] She has not done so.

[110] The Appellant retired on December 30, 2022 and took no steps to find work for 3 months. It took until the end of March 2023 for the Appellant to prepare her resume and contact one (1) employer. The denial of her claim for EI benefits appears to have been what spurred her to start looking for work. This shows the Appellant was taking a break from working (and from looking for work) after she retired.

[111] I acknowledge the Appellant's desire to take a break – especially after retiring with 40+ years of service. But availability for suitable employment is an objective question and cannot depend on a claimant's particular reasons for restricting their availability, even if the reasons provided may evoke sympathetic concern[45].

[112] By taking a 3-month break from working (and from looking for work), the Appellant was restricting her chances of returning to work immediately following her retirement. This personal choice limited her chances of returning to work.

[113] I therefore find that the Appellant's decision to take a 3-month break from working (and from looking for work) was a personal condition that restricted and unduly limited her chances of returning to the labour market following her retirement. However, I accept the Commission's determination the Appellant removed this personal condition and was prepared to work (and look for work) after March 31, 2023.

[114] This means she has not satisfied the third *Faucher* factor from January 2, 2023 to March 31, 2023.

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[45] See *Gagnon* 2005 FCA 321 and *Whiffen* A-1472-92.

d) Conclusion on the *Faucher* factors

[115] The Appellant must satisfy all 3 of the *Faucher* factors to prove availability pursuant to section 18 of the EI Act. Based on my findings, she has not satisfied all 3 factors during the period between January 2, 2023 and March 31, 2023.

[116] I therefore find the Appellant has not shown she was capable of and available for work, but unable to find a suitable job from January 2, 2023 to March 31, 2023. This means she is not entitled to EI benefits during this period.

[117] I acknowledge the Appellant's disappointment at not being able to receive EI benefits after contributing to the EI program for many years. However, its not enough to pay into the EI program. All claimants must meet the terms and conditions in the EI Act in order to be paid benefits. And if a claimant cannot prove their availability for work, they will be disentitled to EI benefits regardless of how many years they have contributed to the program.

Conclusion

[118] The Appellant is disqualified from EI benefits because she voluntarily left her job without just cause when she retired on December 30, 2022.

[119] She is also disentitled to EI benefits from January 2, 2023 to March 31, 2023 because she did not prove her availability for work during this period.

[120] This means the Appellant cannot be paid EI benefits.

[121] The appeal is dismissed.

Teresa M. Day

Member, General Division – Employment Insurance Section