



Citation: *SD v Canada Employment Insurance Commission*, 2023 SST 4

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

**Decision**

**Appellant:** S. D.  
**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (533291) dated September 14, 2022 (issued by Service Canada)

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**Tribunal member:** Kristen Thompson  
**Type of hearing:** Teleconference  
**Hearing date:** January 13, 2023  
**Hearing participant:** Appellant  
**Decision date:** January 31, 2023  
**File number:** GE-22-3365

## Decision

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

[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 Employment Insurance (EI) regular benefits from December 13, 2021, to March 22, 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 must 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 she said that she isn't looking for work, she only applied for one job, and she was expecting to be recalled to her usual employer in March 2022.

[6] The Claimant disagrees and states that she was suspended from her usual employment, due to her employers mandatory COVID-19 vaccination policy, but she was anticipating a return to work in March 2022. She says that she returned to her usual employment on March 22, 2022. She says that, if her employer didn't lift the suspension, she would have been able to work at a restaurant in town.

## 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 *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>1</sup> The *Employment Insurance Regulations* (Regulations) give criteria that help explain what “reasonable and customary efforts” mean.<sup>2</sup> I will look at those criteria below.

[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.<sup>3</sup> Case law gives three things a claimant has to prove to show that they are “available” in this sense.<sup>4</sup> I will look at those factors below.

[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 determine whether the Claimant was available for work.

### Reasonable and customary efforts to find a job

[13] The law sets out criteria for me to consider when deciding whether the Claimant’s efforts were reasonable and customary.<sup>5</sup> I have to look at whether her efforts were sustained and whether they were directed toward finding a suitable job. In other words, the Claimant has to have kept trying to find a suitable job.

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<sup>1</sup> See section 50(8) of the *Employment Insurance Act* (Act).

<sup>2</sup> See section 9.001 of the *Employment Insurance Regulations* (Regulations).

<sup>3</sup> See section 18(1)(a) of the Act.

<sup>4</sup> See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

<sup>5</sup> See section 9.001 of the Regulations.

[14] I also have to consider the Claimant'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>6</sup>

- assessing employment opportunities
- preparing a résumé or cover letter
- registering for job-search tools or with online job banks or employment agencies
- applying for jobs
- attending interviews

[15] The Commission says that the Claimant didn't do enough to try to find a job. It says that the Claimant said she isn't looking for work. It says that she only applied for one job, and when she interviewed with that employer, she told them she was expecting to be recalled to her usual employer in March 2022.

[16] The Claimant disagrees. She says that she shouldn't have to look for a job because she was anticipating a return to work in March 2022 to her usual job. She says that, if her usual employer didn't lift the suspension, she would have been able to work at a restaurant in town.

[17] The Claimant says that she was working as a cook for her usual employer for 11 years.

[18] The Claimant says that she was suspended from her usual employment in December 2021, as she didn't follow the employer's mandatory COVID-19 vaccination policy.

[19] The Claimant says that she was made aware of the policy on August 31, 2021. She says that the deadline to comply with the policy was October 31, 2021. She says

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

that the deadline was extended until a date in December 2021. She says she was suspended after the deadline passed.

[20] In anticipation of her suspension, the Claimant says that she prepared a résumé. She says that she applied to work at a restaurant in town. She says that she was aware that this restaurant paid their employees well, as compared to other food services jobs in her town.

[21] The Claimant says she interviewed with the restaurant in October 2021. She says that she told the prospective employer that she anticipated that she would return to her usual job. She says that the prospective employer didn't want to train her just to have her leave right away. She says that, if her usual employer didn't lift the suspension, she would have been able to work at this restaurant.

[22] The Claimant says that she registered with a job bank, provided through the Commission. She says she received bi-weekly job postings related to the food services industry starting January 24, 2022, onward. She says that she reviewed the posting each time they came out.

[23] The Claimant says that the job bank listings weren't suitable. She says some of the jobs were too far away. She says that the jobs in town were part-time positions or only paid minimum wage, which wouldn't have provided her with a sufficient salary to cover her living expenses.

[24] The Claimant says that she didn't apply for any other jobs. She says that she didn't attend at any job fairs or workshops, network, or undergo evaluations of her competencies.

[25] The Claimant says that she started to work on her GED to complete her high school studies, along with a self-guided computer course. She says that she thought upgrading her skills would help her to look for a job with a better salary.

[26] The Claimant says she was in contact with her union, about her usual job. She says that she was told by her union that she would likely get her job back.

[27] The Claimant says that COVID-19 restrictions started to lift at the end of February 2022. She says that she received an email from her usual employer on March 8, 2022, stating that suspended employees will be able to return to work by March 31, 2022. She says that she received a return-to-work email from her supervisor on March 10, 2022. She says that she returned to work on March 22, 2022.

[28] Decisions of the Court and the Tribunal's Appeal Division tell us that a claimant can't merely wait to be called back to their usual job and must look for a job to be entitled to benefits. This requirement doesn't go away if the unemployment period is short-term. It follows the position that the employment insurance program is designed so that only those who are genuinely unemployed and actively looking for work will receive benefits.<sup>7</sup>

[29] I find that the Claimant hasn't proven that her efforts to find a job were reasonable and customary. The Claimant was waiting to see if her suspension from her usual employment would be lifted. She didn't actively pursue a job with the restaurant or any other job. I find that reviewing job bank postings, without applying for any further jobs or taking any other steps in a job search, wasn't enough to show that she was making enough effort to find a job.

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

[30] 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:<sup>8</sup>

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

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<sup>7</sup> *Canada (Attorney General) v Cornelissen-O'Neill*, A-652-93; *De Lamirande v Canada (Attorney General)*, 2004 FCA 311, *MP v Canada Employment Insurance Commission*, 2022 SST 802.

<sup>8</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.

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

[31] When I consider each of these factors, I have to look at the Claimant's attitude and conduct.<sup>9</sup>

– **Wanting to go back to work**

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

[33] The Claimant says she applied for and interviewed with a restaurant in October 2021. She says that she told the prospective employer that she anticipated that she would return to her usual job. She says that the prospective employer didn't want to train her just to have her leave right away. She says that, if her usual employer didn't lift the suspension, she would have been able to work at this restaurant.

[34] I find that, had the Claimant wanted to go back to work as soon as a suitable job was available, she would have accepted the job at the restaurant or, at a minimum, tried speaking with the owner again. As the Claimant didn't actively pursue this job, or any other job, I find that she hasn't shown she wanted to go back to work.

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

[35] The Claimant didn't make enough effort to find a suitable job.

[36] 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>10</sup>

[37] The Claimant's efforts to find a new job included preparing a résumé in anticipation of a suspension from her usual job, applying for and interviewing with one job, and reviewing job bank postings.

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<sup>9</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.

<sup>10</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.

[38] The Claimant testified that she didn't look for work. She says that she knew she could be employed at the restaurant if her usual employment didn't recall her.

[39] The Claimant testified that she wished she was told by the Commission, right off the bat, that she wasn't eligible for EI benefits. If so, she says she would have gone out to get a job.

[40] I find that the Claimant's efforts weren't enough to meet the requirements of this second factor because her actions were passive. She was waiting to see if she would return to her usual employment. She applied to only one job and was waiting to see if she should pursue this job further. Her only other job search was to review job posting provided to her by the Commission, and she didn't apply for any further jobs.

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

[41] The Claimant didn't set personal conditions that might have unduly limited her chances of going back to work.

[42] The Claimant says that she started to work on her GED to complete her high school studies in January 2022, until she returned to work in March 2022. She says that spent 3 hours per week working on her studies.

[43] The Claimant says that she started to complete a self-guided computer course. She says that she ordered a book. She says that she started to review the book, as if it were a workbook. She says that spent 1 to 2 hours per week working on her studies.

[44] I find that the Claimant spent a limited amount of time working on her studies, she wasn't obligated to complete her studies, and she stopped her studies once she received a job offer to return to her usual job. As such, the Claimant didn't set personal conditions that might have unduly limited her chances of going back to work.

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

[45] 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. She didn't set personal conditions that might have unduly limited her chances of going back



to work. However, the Claimant hasn't shown that she wanted to go back to work as soon as a suitable job was available, and she wasn't making enough efforts to find a suitable job.

## **Conclusion**

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

[47] This means that the appeal is dismissed.

Kristen Thompson  
Member, General Division – Employment Insurance Section