



Citation: *JR v Canada Employment Insurance Commission*, 2023 SST 433

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: J. R.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (582418) dated April 20, 2023 (issued by Service Canada)

Tribunal member: Linda Bell

Type of hearing: Videoconference

Hearing date: September 5, 2023

Hearing participants: Appellant
Appellant's support person

Decision date: September 11, 2023

File number: GE-23-1600

Decision

[1] J. R. is the Appellant. I am allowing her appeal in part.

[2] The Appellant has shown she meets the availability requirements for regular Employment Insurance (EI) benefits from August 8, 2022, to November 4, 2022, and from December 16, 2022, onward. This means she may be entitled to EI benefits during these periods, providing there are no other disentitling or disqualifying conditions.

[3] The Appellant has not proven her availability from July 3, 2022, to August 7, 2022, and from November 7, 2022, to December 15, 2022. This means she is not entitled (disentitled) to EI benefits during these periods.

Overview

[4] The Appellant stopped working on April 1, 2022. She completed her Bachelor of Arts degree in psychology on June 14, 2022. Then she moved with her spouse to another province where he had found full-time work on a community-supported agriculture (CSA) farm.

[5] The Appellant applied for regular EI benefits on July 16, 2022. The Commission established her claim (benefit period) effective July 3, 2022. The Appellant left her home province on July 26, 2022, and arrived at their new location in another province on August 3, 2022.

[6] The Commission determined the Appellant failed to show she was available for work. It imposed a stop payment (disentitlement) starting July 4, 2022. The Commission maintained this decision upon reconsideration.

[7] The Appellant disagreed with the Commission. She appealed to the general division of the Social Security Tribunal (Tribunal), after the 30-day time limit. A different Member refused to allow her more time to appeal. The Appellant then appealed to the Tribunal's Appeal Division.

[8] The Appeal Division Member found that general division Member made a mistake about the facts. So, he allowed the Appellant more time to appeal and returned the matter to be heard by a different general division Member. I am that Member.

Matter I must consider first

Jurisdiction

[9] I have determined I have jurisdiction to decide whether the Appellant has shown she meets the availability requirements for regular EI benefits for the period starting from July 3, 2022, onward. This includes the period when she was out of the province to attend her father's funeral and manage his estate matters.

[10] The Commission submits it has not previously adjudicated or decided on the issue of the Appellant's availability while taking care of family obligations following her father's passing. The Commission argues the Tribunal does not have jurisdiction to determine this period of availability.

[11] At the hearing I explained to the Appellant that I would not be taking jurisdiction on the period she was out of the province taking care of her family obligations. But upon further review, I have determined the record is complete and the jurisprudence supports that I do have jurisdiction to determine this matter. Here is what I considered.

[12] There are Federal Court and Tribunal cases that suggest the Tribunal should take a broad approach to its jurisdiction, within the limits of the law, to manage appeals fairly, efficiently, and to consider the underlying requests and decisions to determine the scope of the reconsideration.¹

¹ See *Fu v Canada (Attorney General)*, 2019 FC 527; *ML v Minister of Employment and Social Development*, 2020 SST 281 at paragraph 17; and *MS v Canada Employment Insurance Commission*, 2022 SST 933.

[13] I recognize that the Tribunal's jurisdiction comes from the reconsideration decision made by the Commission.² If the Appellant does not agree with the reconsideration decision, they can appeal to the Tribunal's General Division.³

[14] In this case, the Appellant requested reconsideration on the issue of her availability. The Appellant says she told the Commission that she was out of town to attend her father's funeral and to deal with his estate matters, prior to the Commission completing the reconsideration process. She says she also told the Commission that information during the November 8, 2022, reconsideration discussion.

[15] I accept that the Appellant discussed the period she was out of the province to deal with her father's funeral and estate matters with the Commission. This directly relates to the issue of her availability, but the Commission failed to address it when finalizing the reconsideration.

[16] The *Department of Employment and Social Development Act* (DESD Act) says that the General Division has the power to, "give the decision that the ... Commission should have given."⁴

[17] For the reasons set out above, I find I have jurisdiction to determine the Appellant's availability starting July 3, 2022.

Issues

[18] Does the Appellant meet the availability requirements for regular EI benefits?

² See section 112 of the EI Act.

³ See EI Act, section 113.

⁴ See DESD ACT, section 54(1).

Analysis

Availability

[19] A claimant has to be available for work to get EI benefits. Availability is an ongoing requirement. This means that a claimant has to be searching for a job and be available to work.

[20] Different sections of the law require claimants to show they are available for work.⁵ The Commission says the Appellant was disentitled under both sections because she has not shown she was capable of and available for work and unable to find suitable employment from July 4, 2022. The Commission decided the Appellant had not met the availability requirements. It imposed two disentitlements, one under each section.

Reasonable and customary efforts to find suitable employment

[21] The law sets out criteria for me to consider when deciding whether the Appellant's efforts were reasonable and customary.⁶ I have to look at whether her efforts are sustained and whether they are directed toward finding suitable employment (a suitable job).⁷ In other words, the Appellant has to have kept trying to find a suitable job and be available to accept it.

– Reasonable and customary efforts

[22] Although the Commission does not directly say it disentitled the Appellant under section 50(8) of the EI Act, it references this section in its submissions. When

⁵ Paragraph 18(1)(a) of the *Employment Insurance EI Act* (EI Act) provides that a claimant is not entitled to be paid benefits for a working day in a benefit period for which he or she fails to prove that on that day he or she was capable of and available for work and unable to obtain suitable employment. Subsection 50(8) of the EI Act provides that, for the purpose of proving that a claimant is available for work and unable to obtain suitable employment, the Commission may require the claimant to prove that he or she is making reasonable and customary efforts to obtain suitable employment.

⁶ See section 9.001 of the *Employment Insurance Regulations* (Regulations).

⁷ Section 6 of the EI Act defines what type of employment is not suitable. Section 9.002 of the Regulations lists the criteria for determining what suitable employment is.

referencing this section, it states the Commission may require the Appellant to prove she is making reasonable and customary efforts to obtain suitable employment.

[23] The Commission's documents do not show that they asked the Appellant to prove her availability by submitting a detailed job search record. The Appellant testified that the Commission never asked her about her job search record. Nor did the Commission explain what information was required for a job search record.⁸ So, I have determined that the Appellant is not disentitled under section 50(8) of the EI Act.

– **Suitable employment**

[24] To assess the Appellant's availability, I must first determine what suitable employment is for her. The EI Act does not define suitable employment. Instead, the law provides criteria I must consider when determining whether employment is not suitable or suitable for the Appellant.⁹

[25] I find suitable employment for the Appellant is a job that she can do within her work experience and physical capacity, offering favourable pay or compensation that is usually agreed upon between good employers and their employees. Here is what I considered.

- The Appellant is highly educated. She graduated from high school, has an advanced diploma as a Child and Youth Worker, a diploma in Early Childhood Education (ECE), and a Bachelor of Arts degree in Psychology.

⁸ See *L. D. v Canada Employment Insurance Commission*, 2020 SST 688. This decision says the Commission can ask a claimant to prove that they have made reasonable and customary efforts to find a job. They can disentitle a claimant for failing to comply with this request. But they have to ask the claimant to provide this proof and tell the claimant what kind of proof will satisfy its requirements.

⁹ Section 6 of the EI Act states that employment is not suitable for a claimant if: (a) it arises out of a work stoppage from a labour dispute; (b) it is in the claimant's usual occupation and is at a lower rate of earnings or on conditions less favourable than agreed upon between good employers and their employees; or (c) it's not in the claimant's usual occupation and is either at a lower rate of pay or on less favourable conditions that the claimant might reasonably expect to obtain, having regard to the conditions the claimant had in their usual occupation or would have had if they continued to be so employed. Section 9.002 of the Regulations states the criteria for determining suitable employment are: (a) the claimant's health and physical capabilities allow them to commute to the place of work and perform the work; (b) the hours of work are not incompatible with the claimant's family obligations or religious beliefs; and (c) the nature of the work is not contrary to the claimant's moral convictions or religious beliefs.

- She worked for a school board for approximately twelve years as an early childhood educator (ECE) in a French immersion kindergarten. Prior to this, she worked for a different employer for four years as an ECE.
- She has several years' experience working in customer service, cash, cleaning, and selling tickets. That experience was acquired while working at a pizza shop and movie theatre.
- She worked for over a year as a youth counsellor.
- She has worked babysitting, picking fruit, and “volunteering a lot of her time” at the farm where she is currently residing.

[26] The Appellant says a suitable job for her includes full-time or part-time work in family services. She argued that it was never her intention to be a farm worker.

[27] I find that any type of job in family services, as an ECE, working with children, general labour, or retail type jobs are suitable jobs for the Appellant. This is supported by her former work experience and her advanced education, as set out above.

Capable of and available for work

[28] Case law sets out three factors for me to consider when deciding whether the Appellant is capable of and available for work but unable to find a suitable job. The Appellant has to prove the following three things:¹⁰

- a) She wants to go back to work as soon as a suitable job is available.
- b) She has made efforts to find a suitable job.
- c) She has not set personal conditions that might unduly (in other words, overly) limit his chances of going back to work.

¹⁰ 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.

[29] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.¹¹

a) Wanting to go back to work

[30] I find the Appellant has shown she wanted to go back to work as of August 8, 2022. Here is what I considered.

[31] The Appellant applied for EI benefits on July 16, 2022, prior to moving across the country. Her benefit period was made effective July 3, 2022. Although she stopped working in April 2022, and completed her schooling in June 2022, she made no efforts to find a job prior to her departure on July 26, 2022.

[32] The Appellant says she began her travels across the Country on July 26, 2022. She arrived on the farm in her new location on August 3, 2022, after travelling through the United States (US). She made no efforts to search for work, on-line or in any other fashion, prior to arriving at her new location.

[33] The Appellant testified that she began preparing for her job search on August 8, 2022. This is supported by her August 8, 2022, notes, setting out items she had to complete to find a job in her field.¹² This is also the date that she says she became aware of the community inter-agency meeting that would be held on September 3, 2022. But this conflicts with what she told the Commission.

[34] The Commission documented that during their conversation with the Appellant, she said she had not been looking for work or applying for jobs because she was busy settling into her new home on a rural farm. The Appellant disputes this. She says she told the Commission she did not apply for any jobs on the internet or through Indeed because she was "already working on the farm" and networking in her community.

¹¹ 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.

¹² See page GD2-45.

[35] I recognize the Commission documented that on September 6, 2022, there were 59 ECE job vacancies within 25 km of the Appellant's residence and one within 50 km.¹³ But the Appellant said she lived in a small rural community and felt it was better to network with professionals in her area. That is because, based on her experience, that is how professionals in her line of business gain suitable employment.

[36] On September 6, 2022, the Commission documented that the Appellant said she had previously told them she did not look for a job because she needed ten more days before looking for a job because her mother was coming to make sure she was settled into her new location. She also said that she had worked for the school board for years and she collected EI benefits every summer and never had a problem then.¹⁴

[37] During the hearing, the Appellant confirmed she made those statements to the Commission. But she also told the Commission she had started her job search efforts by networking in her community and preparing her resume. Even though she wanted more time to get settled and visit with her mom, she said this did not stop her from preparing her resume and networking with community members to help her engage in a job search.

[38] The Commission documented that the Appellant said there was another family on the farm who have two children that need childcare so she will probably be doing that for the next year.¹⁵ She also told the Commission she could go to the owner of the farm where she is living and get them to write a letter for her to say she will be working for them "in like 3 weeks."¹⁶

[39] At the hearing, the Appellant provided contradictory testimony regarding her work on the farm. She explained in detail how they were living on a CSA farm, which involves

¹³ See page GD3-18.

¹⁴ See the September 6, 2022, conversation the Commission documented on pages GD3-16 and GD3-17.

¹⁵ See page GD3-16.

¹⁶ See page GD3-17.

bartering and trading for accommodation, CSA food, and where she volunteers a lot of her time. Some of that volunteering involved caring for the farm owner's children.

[40] The Appellant also said she had been working on the farm since August 3, 2022, in a casual part-time position. She said she was paid \$20 per hour and could work "as much as I want." Upon further clarification, the Appellant said that at the beginning, she was paid in cash. Then after that, all her work and pay were recorded on her spouse's pay cheques. The only record she has of the dates she worked is what she wrote on a sticky note. If the Appellant did work during this period, she is required to declare her work and earnings on her reports.

[41] I asked the Appellant why she needed EI benefits if she was being paid \$20 per hour and could work on the farm as much as she wanted. She replied that it was never her intention to work on the farm. Instead, she wanted to work in her field of family services. She explained that the farm work was not steady. There were three farm hands, fruits are only picked when in season, and so there was not enough work for her.

[42] The Appellant testified she is only seeking EI benefits until December 31, 2022. She explained that her goal was to spend the first few weeks setting up their home, networking, getting to know the neighbourhood, and preparing her resume and documents to start applying for jobs in her field. She argued she should be allowed some time to look for a job in her field. But then her father passed away unexpectedly on October 26, 2022, and she had to leave town October 28, 2022, to attend his funeral and manage his estate. She returned home on December 15, 2022.

[43] The law states that prior to disentanglement, a claimant should be given a reasonable time to find work corresponding to his or her reasonable request.¹⁷

[44] In this case the Appellant has a history of working for school districts which traditionally operate from September to June of each year. She consistently said she wanted to work. She began attending job interviews in September 2022. She had

¹⁷ See CUBs 17524, 17387, and 16859.

secured two jobs and attended several other interviews prior to her father passing away. She is currently employed with four jobs.

[45] The Appellant testified that when she learned of her father's passing, she contacted all the prospective employers and told them of her circumstances. She told them she needed to put everything on hold and that if they wanted to give the jobs to someone else because of her absence, she would understand.

[46] The Appellant said her employers kept the jobs open for her until she returned. She returned to her home on December 15, 2022, attended an interview with X, and began working for X in the first week of January 2023. She returned to work as an on-call auxiliary librarian, a job that she started on October 24, 2022. She began two part-time contracts with X in the first week of January 2023, which total 35 hours per week. She accepted a casual/part-time position with X which started in October 2022. She began working for X on January 16, 2023.

[47] So, after careful consideration of the evidence before me, I find that it is more likely than not that the Appellant wanted to go back to work, in her normal field of work. She started her job search efforts on August 8, 2022. So, I find she has met the requirements of this first factor of availability.

b) Making efforts to find a suitable job

[48] I find the Appellant began making efforts to find a suitable job as of August 8, 2022. I have considered the list of job-search activities listed below in deciding this second factor. This list is for guidance only when considering this factor.¹⁸

[49] The Regulations list nine job-search activities I have to consider. Some examples of those EI Activities are the following:¹⁹

- assessing employment opportunities

¹⁸ I am not bound by the list of job-search EI Activities in deciding this second factor. Here, I can use the list for guidance only.

¹⁹ See section 9.001 of the Regulations.

- preparing a resume or cover letter
- contacting prospective employers
- networking
- applying for jobs and submitting resumes.

[50] The Appellant says her efforts to find a new job are enough to prove her availability. This is because after taking a couple of days to settle into her new home, she commenced her job search efforts by networking. Then on August 8, 2022, she made a list of things to do. This list sets out how she needed to update her resume, make efforts to get copies of her certification, change her drivers' license to the new province, and network with family services and school professionals in her community.

[51] The Appellant admits she made no effort to find a suitable job prior to leaving her home province on July 26, 2022. She spent several days travelling, 3 of which were in the US, before arriving at her new location on August 3, 2022. After taking a few days to get settled, she began preparing for her job search efforts.

[52] As stated above, the Appellant's recent work history and education were geared toward working with employers who normally operate from September to June of each year. She commenced her job search activities on August 8, 2022, shortly after arriving at her new location. She attended interviews in the first week of September 2022. She was hired by two employers, the X (library) and X in October 2022. She attended X training in October 2022. But due to the unfortunate circumstances of her father's passing, she did not start working until January 2023. So, I find her efforts to find a suitable job have been sustained and reasonable starting August 8, 2022.

c) Unduly limiting chances of going back to work

[53] After consideration of the evidence before me, I find there were personal conditions that unduly limited the Appellant's chances of going back to work from July 3, 2022, to August 7, 2022, and from November 7, 2022, to December 15, 2022.

– **Availability from July 3, 2022, to July 25, 2022**

[54] There is no dispute that the Appellant was not available for work from July 3, 2022, to July 25, 2022. This is the period she was residing in her former province, selling her house and preparing for her move across the country. The Appellant readily admits she made no efforts to look for or be available to work during this time. She left her former province of residence on July 26, 2022, and travelled through the US and Canada before arriving in her new area of residence on August 3, 2022. So I find she unduly limited her chances of going back to work from July 3, 2022, to July 25, 2022.

– **Availability while travelling outside Canada July 26, 2022, to July 28, 2022**

[55] The general rule is you can't get EI benefits if you are outside Canada.²⁰

[56] The Appellant states she left her former province on July 26, 2022, travelled through the United States (US) for three days, and then arrived at her new location, in the province where she now resides, on August 3, 2022.

[57] Based on the Appellant's former address, as listed on the documents on file, she was approximately one hour away from the US border. She said she left her former province on July 26, 2022, and travelled through the US for three days. So, I find she was travelling in the US for three days from July 26, 2022, to July 28, 2022.

[58] After consideration of the evidence before me, I find the Appellant is disentitled from EI benefits from July 26, 2022, to July 28, 2022, because she was outside Canada.²¹

– **Availability from July 29, 2022, to October 27, 2022**

[59] As set out above, the Appellant has not shown she was available for work and actively seeking employment from July 29, 2022, to August 7, 2022. During this period, she was travelling to her new location, where she arrived August 3, 2022. The next few

²⁰ See section 37(b) of the EI Act.

²¹ Section states you are disentitled from receiving EI benefits while outside Canada. The disentitlement is imposed on any normal workday (Monday through Friday) that the claimant is not entitled to EI benefits.

days she was setting up her home. She began preparing for her job search on August 8, 2022.

[60] After careful consideration of the evidence before me, I find the Appellant failed to prove her availability from July 29, 2022, to August 7, 2022. This means she is disentitled from receiving EI benefits during this period.

[61] The Appellant has proven she was available for and actively seeking employment from August 8, 2022, to October 27, 2022. This means she is not disentitled from receiving EI benefits during this period, for non-availability.

– **Availability out of province at a funeral and dealing with the estate from October 28, 2022, to December 15, 2022**

[62] The law does not provide an exemption from the requirement of proving availability when a claimant leaves their home area when there is a death in the family. But the Commission does have a policy where it may consider the claimant to be available during an absence of up to 7 days, to attend a family member's funeral, if arrangements have been made to be reached without delay.²²

[63] When the absence extends beyond 7 days, the claimant may become subject to a disentitlement as of the eighth day of their absence. Each situation must be assessed individually, based on the specific facts.²³

[64] The law states that availability is not proven in such a situation, if the claimant is unable or unwilling to return home within a reasonable period of time, upon being made aware of an employment opportunity. These principles also apply to a claimant who has to leave work for this reason.²⁴

[65] When determining the Appellant's availability while away for more than 7 days to attend to her father's funeral and estate matters, I must consider the following.

²² See section 10.11.4 of the Digest of Benefit Entitlement Principles.

²³ See CUBs 74009 and 79834.

²⁴ See CUB 72198

- How long she was away from home,
- the reason she was away from home,
- whether she is making reasonable efforts to find a job either in their usual area or within their temporary location,
- whether she was able to and willing to return home to attend an interview, start work on short notice, or continue employment,
- her ability to return home within 24 to 48 hours.

[66] The Appellant states she was out of the province to deal with her father's funeral and estate matters from October 28, 2022, to December 15, 2022. She contacted her current and future employer(s) to tell them of her absence. She also told them that if they wished to offer the job to someone else, she would understand. While away, she was contacted by another employer and arranged to attend an interview near the end of December 2022, after her scheduled date of return on December 15, 2022. Her employers waited for her return. She resumed work at the beginning of January 2023, when the employers reopened after their holiday closure.

[67] As set out above, the Appellant is considered to be available for 7 days during her absence to attend her father's funeral. This means she is not subject to a disentitlement for the period from October 28, 2022, to November 4, 2022.

[68] Although prospective employers were able to contact the Appellant while she was away, she made it clear she was not available to work or attend an interview until after her scheduled return on December 15, 2022. This means she has not proven her availability and is disentitled from November 7, 2022, to December 15, 2022.²⁵

²⁵ A disentitlement is imposed on any normal workday (Monday through Friday) that the claimant is not entitled to EI benefits.

So, is the Appellant capable of and available for work?

[69] Based on my findings above, the Appellant has not shown she is capable of and available for work, and unable to find a suitable job during the following periods. This means she is disentitlement from receiving EI benefits as follows.

Disentitlement dates	Reason for Disentitlement
July 3, 2022, to July 25, 2022,	no efforts made to look for work
July 26, 2022, to July 28, 2022,	outside Canada
July 29, 2022, to Aug 7, 2022,	no efforts made – travelling and settling into new residence
Nov 7, 2022, to Dec 15, 2022,	In another province and not available to work

[70] This means the Appellant is disentitled from receiving EI benefits from July 3, 2022, to August 7, 2022, and from November 7, 2022, to December 15, 2022.

[71] The Appellant has proven she was capable of and available for work during the following periods. This means she may be entitled to EI benefits during these periods if there are no other disentanglement or disqualifying issues.

Entitlement dates	Availability has been met
Aug 8, 2022, to Oct 27, 2022,	began & continued job search efforts and started working
Oct 28, 2022, to Nov 4, 2022,	7-day period to attend family funeral.
December 16, 2022, onward	Home available to work and attend interviews

[72] This means the Appellant may be entitled to receive EI benefits from August 8, 2022, to November 4, 2022, and from December 16, 2022, onward, providing there are no other disentitling or disqualifying conditions.

[73] I acknowledge that the Appellant said she paid into the EI fund for many years, so she should be allowed benefits for the months claimed. But the employment insurance plan is an insurance scheme. It is not a pension fund or a needs-based program that you can withdraw anytime you want or need. Instead, claimants must meet the qualifying conditions and requirements set out in the EI Act to receive benefits.

Conclusion

[74] The appeal is allowed in part.

Linda Bell

Member, General Division – Employment Insurance Section