[TRANSLATION]

Citation: *KL v Canada Employment Insurance Commission*, 2024 SST 258

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	K. L.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (0) dated November 22, 2023 (issued by Service Canada)

Tribunal member:	Marc St-Jules
Type of hearing:	Videoconference
Hearing date:	February 12, 2024
Hearing participant:	Appellant
Decision date:	March 13, 2024
File number:	GE-23-3348

Decision

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

[2] The Appellant hasn't shown that she was available for work. This means that she can't receive Employment Insurance (EI) benefits from March 6, 2022.

Overview

[3] The Appellant submitted a renewal application for regular benefits on January 18, 2022.[1] She then received regular benefits until July 17, 2022.[2]

[4] The Commission says the Appellant told it on August 10, 2022, that she was actually sick from January 9, 2022, to June 25, 2022.[3] But the latter date was changed a few times. It was changed to April 2, 2022, and then to March 19, 2022.[4] The Appellant then submitted a certificate from a medical clinic saying she was off work until March 5, 2022.[5]

[5] In light of this new information, the Commission referred the case to its investigation department.[6]

[6] An Integrity Services investigator then interviewed the Appellant on September 13, 2022.[7] Based on this interview, the Commission says that the Appellant applied for only one job between March 2022 and July 2022.

[7] According to the Commission, this means the Appellant is disentitled from receiving regular benefits from March 6, 2022. In its view, she hasn't proven she was capable of and available for work and unable to find a suitable job.

---

[1] See RGD6.
[2] See RGD6.
[3] See GD3-13 and GD3-14.
[4] See GD3-13 and GD3-14.
[5] See GD3-25.
[6] See GD3-13 and GD3-14.
[7] See GD3-20.

[8] The Appellant disagrees and says she did look for a job. But she doesn't have proof of her job search anymore. That search was online, and she no longer has access to her account.

Matter I have to consider first

The Appellant's appeal was sent back to the General Division

[9] The Appellant first appealed to the General Division in February 2023. She was appealing a reconsideration decision dated February 2, 2023.

[10] The General Division decided that the Appellant hadn't shown that she was unable to work because of illness from March 6, 2022.

[11] The General Division also decided that the Appellant hadn't shown just cause (in other words, a reason the law accepts) for leaving her job when she did.

[12] The Appellant then appealed to the Tribunal's Appeal Division. She said she wanted regular benefits from March 6, 2022, not sickness benefits.

[13] The Appeal Division decided that the General Division had made an important error of fact. The Appeal Division agreed that the Appellant had never requested sickness benefits from March 6, 2022.

[14] As a result, the Appeal Division allowed the appeal. The file was sent back to the General Division for a decision on the Claimant's availability for work as of March 6, 2022.

[15] The Appeal Division didn't mention that a decision about voluntary leaving was needed. I have looked at the appeal at the General Division. There is no indication that the Appellant has filed an appeal on the issue of voluntary leaving, so I will only look at the issue of availability.

[16] The General Division reviewed the facts, and a new hearing took place on February 12, 2024.

[17] This decision is based on my review of the appeal file.

A request for information was made to the Commission after the hearing

[18] At the hearing, the Appellant testified that she disagreed that she had applied for benefits in October 2021 as stated in GD3. She testified that she had been unemployed since January 2022. She also said that she hadn't gotten an explanation about the overpayment.

[19] For this reason, a request for information was sent to the Commission on February 16, 2024. The Commission replied on February 20, 2024.

[20] The Commission said that the Appellant had submitted a renewal application on January 18, 2022. She requested regular benefits.

[21] The Commission also gave details about the overpayment. It said that the Appellant had received benefits until the week of July 17, 2022. So, the overpayment is 20 weeks at $578 per week.

[22] On February 22, 2024, the Tribunal asked the Appellant whether she had any additional submissions in response to these new documents. The deadline to reply was February 28, 2024.

[23] As of the date of this decision, no submissions have been received.

Issue

[24] Was the Appellant available for work from March 6, 2022?

Analysis

[25] Two different sections of the law require claimants to show that they are available for work. They have to meet the criteria of both sections to get benefits.

[26] 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.[8] The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" means.[9] I will look at those criteria below.

[27] 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.[10] Case law gives three things a claimant has to prove to show that they are "available" in this sense.[11] I will look at those factors below.

[28] The Commission decided that the Appellant was disentitled from receiving benefits because she wasn't available for work based on these two sections of the law.

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

Reasonable and customary efforts to find a job

[30] The law sets out criteria for me to consider when deciding whether the Appellant's efforts were reasonable and customary.[12] I have to look at whether her 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.

[31] 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:[13]

- assessing employment opportunities
- preparing a résumé or cover letter

---

[8] See section 50(8) of the *Employment Insurance Act* (Act).
[9] See section 9.001 of the *Employment Insurance Regulations* (Regulations).
[10] See section 18(1)(a) of the Act.
[11] See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.
[12] See section 9.001 of the Regulations.
[13] See section 9.001 of the Regulations.

- registering for job search tools or with online job banks or employment agencies
- applying for jobs

[32] I reviewed the evidence in the appeal file. I saw no request from the Commission that the Appellant prove reasonable and customary efforts to find a suitable job.

[33] I find a decision of the Appeal Division on disentitlements under section 50(8) of the Act persuasive. The decision says the Commission can ask a claimant to prove that they have made reasonable and customary efforts to find a job. It can disentitle a claimant for failing to comply with this request. But it has to ask the claimant to provide this proof and tell the claimant what kind of proof will satisfy its requirements.

[34] I saw no evidence that the Commission asked the Appellant to prove that her efforts were reasonable and customary. The Commission hasn't argued in what way the Appellant has failed to prove she wasn't [*sic*] making reasonable and customary efforts. The Commission just summarized what the law says requires [*sic*] concerning section 50(8) of the Act and section 9.001 of the Regulations.

[35] I find that the Commission didn't decide that the Appellant was disentitled under section 50(8) of the Act. That is based on a lack of proof. So, I don't need to consider that part of the law in making my decision.

Capable of and available for work

[36] I have to decide whether the Appellant was capable of and available for work but unable to find a suitable job. The case law that sets out the three factors to be considered when reviewing availability is a decision called *Faucher*. The Appellant has to prove the following three things:[14]

a) She wanted to go back to work as soon as a suitable job was available.

[14] 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.

b) She made efforts to find a suitable job.

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

[37] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.[15]

[38] Before I look at the three *Faucher* factors, I will review the evidence of both parties. I will also decide which evidence I prefer and why.

[39] The Commission says that the Appellant applied for only one job between March 2022 and July 2022. For this reason, it says that the Appellant isn't entitled to regular benefits from March 6, 2022.

[40] The Appellant disagrees. She says that she applied for several jobs. She says the investigator didn't want to accept her efforts. She says that she no longer has access to her job search.

[41] In my view, the Commission's evidence is more likely. The following paragraphs explain why.

[42] **Change of period of illness**. On August 10, 2022, the Appellant told the Commission that she was sick from January 9, 2024, [*sic*] to June 25, 2022.[16] She then changed the period she was sick. On August 23, 2022, she contacted the Commission. The new period of illness was approximately from January 16, 2022, to April 2, 2022. The Appellant then changed [the period] again. Later that same day, she said she was sick from January 16, 2022, to March 19, 2022.

---

[15] 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.
[16] See GD3-13 to GD3-15.

[43] The Appellant then submitted a medical certificate saying she was sick until March 5, 2022.[17]

[44] **Interview with Commission investigator.** On September 13, 2022, the Appellant spoke with a Commission investigator.[18] The investigator wrote that the Appellant had "applied for jobs with government-owned companies and other employers." Later, the investigator wrote, "After several questions related to her efforts, she eventually said that she only applied for a job with X ...."

[45] The Appellant says that the investigator didn't let her speak. He didn't understand what she was saying. I am not persuaded. Based on how it is written, I find there was an exchange of information.

[46] **The Appellant can't provide a job search.** I asked the Appellant for proof of her job search. She testified that she no longer had access to her account. However, she accepted her rights and responsibilities when she applied for benefits.[19] Her rights and responsibilities included keeping her job search record for six years.

[47] The Appellant says that the government didn't properly communicate the need to keep her job search [record]. I am not persuaded by this argument. It is clear on the application for benefits. The Appellant selected: "I […] have read and understand my rights and responsibilities, and; I accept my rights & responsibilities."

[48] The Appellant changed the information she gave the Commission more than once. I find her initial statements to be more credible than her testimony at the hearing. This is because her initial statements concerned a simple question about when she was sick. She answered spontaneously and before any negative decision had been made on her claim. So, I place the greatest weight on her previous, repeated statements that she was sick later than March 5, 2022.

---

[17] See GD3-25.
[18] See GD3-20 and GD3-21.
[19] See RGD6-4 to RGD6-14.

[49] This means there is a possibility that the Appellant changed her answers to increase her chances of getting benefits.

[50] I have determined that I prefer the Commission's evidence. The Appellant hasn't provided enough evidence to contradict her previous statements to various Commission employees. I will now look at the three *Faucher* factors.

– **Wanting to go back to work**

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

[52] I determined above that the Appellant applied for only one position between March 2022 and July 2022. With this information, I am not satisfied that she wanted to go back to work as soon as a suitable job was available.

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

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

[54] 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.[20]

[55] I have determined that the Appellant applied for only one position between March 2022 and July 2022.

[56] So, I find that the Appellant didn't make enough effort to find a suitable job.

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

[57] The Appellant set personal conditions that might have unduly limited her chances of going back to work.

[20] 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.

[58] The Appellant previously worked for X. That is the job that allowed her to establish her claim. After that, she only applied for a job with X.

[59] I find that the Appellant was limiting herself to working for her previous employer.

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

[60] Based on my findings on the three factors, I find that the Appellant hasn't shown that she was capable of and available for work but unable to find a suitable job.

Conclusion

[61] The Appellant hasn't shown that she was available for work within the meaning of the law. Because of this, I find that the Appellant can't receive EI regular benefits after March 5, 2022.

[62] This means that the appeal is dismissed.

Marc St-Jules
Member, General Division – Employment Insurance Section