



Citation: *CM v Canada Employment Insurance Commission*, 2023 SST 1859

Social Security Tribunal of Canada General Division – Employment Insurance Section

Decision

Appellant: C. M.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (595525) dated June 21, 2023 (issued by Service Canada)

Tribunal member: Elizabeth Usprich

Type of hearing: Videoconference

Hearing date: September 7, 2023

Hearing participant: Appellant

Decision date: September 11, 2023

File number: GE-23-1944

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.

Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Appellant was disentitled from receiving Employment Insurance (EI) regular benefits as of September 26, 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 Appellant has proven that she was available for work. The Appellant 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 the Appellant wasn't available because she didn't show that she was "fully available". The Commission says the Appellant didn't demonstrate that she was willing to expand her job search to find somewhere with more job opportunities.

[6] The Appellant disagrees and states she was available for full-time work. She says she lives in a tourist area that "shuts down" in the winter, so no jobs are available.

Issue

[7] Was the Appellant available for work?

Analysis

[8] The Appellant testified that she found full-time work as of May 1, 2023. Therefore, the period that I will consider will be from September 26, 2022 to April 30, 2023.

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

[10] 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.¹ The *Employment Insurance Regulations* (Regulations) give criteria that help explain what “reasonable and customary efforts” mean.² I will look at those criteria below.

[11] 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.³ Case law gives three things a Appellant has to prove to show that they are “available” in this sense.⁴ I will look at those factors below.

[12] 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.

[13] 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

[14] The law sets out criteria for me to consider when deciding whether the Appellant’s efforts were reasonable and customary.⁵ 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.

¹ See section 50(8) of the *Employment Insurance Act* (Act).

² See section 9.001 of the *Employment Insurance Regulations* (Regulations).

³ See section 18(1)(a) of the Act.

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

⁵ See section 9.001 of the Regulations.

– **Efforts to find a suitable job**

[15] 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:⁶

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

[16] The Commission says the Appellant didn't do enough to try to find a job. The Commission says the Appellant should have been willing to expand her job search by looking in areas with more opportunities. The Commission say the Appellant wasn't available every working day from Monday to Friday.⁷

[17] The Appellant disagrees. She says she was available every working day from mid-November 2022 onwards. Before that, from September 26, 2022 to mid-November, she says she was available 4 days per week because she was helping to care for her mother along with her siblings. Thankfully, her mother's health improved and her brother moved in with her mother so her assistance was no longer required. The Appellant says her efforts were enough to prove that she was available for work.

[18] The Appellant says she registered for work on the EI job bank site. Other than that, she didn't look online for any positions. The Appellant says she only "matched" with a company in Saskatchewan, which wasn't suitable as it was in another province.

[19] The Appellant went to her local LCBO to see if they were hiring. She also spoke to an employee at the local grocery store who told her they weren't hiring.

⁶ See section 9.001 of the Regulations.

⁷ See GD4-4.

[20] The Appellant says she looked in her local newspaper which is published twice a month. She says they only had construction jobs.

[21] The Appellant says she looked in a nearby city, Owen Sound, newspaper to see if they had any positions. She said there was only minimum wage fast food jobs.

[22] The Appellant says she isn't very tech oriented and didn't think to look online for jobs. Yet, she said she registered online for the EI job bank.

[23] The Appellant testified that she made inquiries, as noted above, in October 2022.

[24] The Appellant says the town she lives in is touristy so there aren't a lot of employment opportunities.

[25] I find the Appellant didn't make reasonable and customary efforts to find a job. Despite saying that she isn't tech oriented the Appellant was able to register for jobs on the EI job bank online. The Appellant could have looked to see if there were other opportunities online. Many companies that offer remote only work often provide employees with any equipment that they need. The Appellant didn't look into any possibilities.

[26] The Appellant admitted at the hearing that she probably wasn't very good at looking for a job.

[27] The Appellant says she only went to two workplaces that were local. She says she has a customer service background so there may have been other places nearby that would have had employment. But you have to search to find work. The law says there is a requirement to search for work even if you think you won't find anything.⁸ Unfortunately, in this case the Appellant didn't really undertake a fulsome search for work.

⁸ See for example *Da Lamirande v Attorney General (Canada)*, 2004 FCA 311 and *Attorney General (Canada) v Cornelissen-O'Neil*, A-652-93.

[28] The Appellant assessed a few job opportunities, registered for one online search tool, and spoke only to a couple of people about work in her area. The efforts I am looking at are from September 26, 2022 to April 30, 2023. These efforts, over seven months, are not enough to be reasonable and customary efforts. I do not find the Appellant's efforts were sustained in looking for a job.

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

Capable of and available for work

[30] I also have to consider whether the Appellant was capable of and available for work but unable to find a suitable job.⁹ Case law sets out three factors for me to consider when deciding whether the Appellant was capable of and available for work but unable to find a suitable job. The Appellant has to prove the following three things:¹⁰

- 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.
- 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 Appellant's attitude and conduct.¹¹

– Wanting to go back to work

[32] The Appellant says she wanted a full-time job. She says after mid-November 2022 she had no restrictions at all and wanted to work. I accept that the Appellant wanted to return to work.

⁹ See section 18(1)(a) of the Act.

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.

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.

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

[33] The Appellant hasn't made enough effort to find a suitable job.

[34] 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.¹²

[35] The Appellant's efforts to find a new job included going to two places of business, looking in a couple of newspapers and asking a couple of employees about possible positions. The Appellant also registered for the EI job bank. I explained these reasons above when looking at whether the Appellant has made reasonable and customary efforts to find a job.

[36] Those efforts weren't enough to meet the requirements of this second factor because she didn't engage in enough search activities over the seven-month period. The Appellant's efforts to find a job were very limited. I find that this means that she did not make suitable effort to find a job. This means the Appellant hasn't met the second factor.

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

[37] The Appellant originally set some personal conditions that may have affected her chances of going back to work. From September 26, 2022 to mid-November 2022 the Appellant was assisting with caring for her mother and was only partially available during the week.

[38] After mid-November 2022, the Appellant says she was available any day and any time. I find this means that after mid-November 2022 the Appellant didn't set personal conditions that might have unduly limited her chances of going back to work.

¹² I am not bound by the list of job-search activities in deciding this second factor. Here, I can use the list for guidance only.

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

[39] 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

[40] 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 benefits.

[41] This means that the appeal is dismissed.

Elizabeth Usprich

Member, General Division – Employment Insurance Section