



[TRANSLATION]

Citation: *YM v Canada Employment Insurance Commission*, 2024 SST 368

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

## Decision

**Appellant:** Y. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission reconsideration decision (637240) dated January 10, 2024 (issued by Service Canada)

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**Tribunal member:** Manon Sauvé

**Type of hearing:** In person

**Hearing date:** February 29, 2024

**Hearing participant:** Appellant

**Decision date:** March 4, 2024

**File number:** GE-24-414

## **Decision**

[1] The appeal is allowed.

[2] The Appellant has shown that he is available for work. This means that he isn't disentitled from receiving Employment Insurance (EI) benefits.

## **Overview**

[3] The Appellant is a 62-year-old retiree. He returned to the labour market as a street sweeper. This seasonal job allows him to work within his physical limitations.

[4] In late November 2023, he was laid off because of a shortage of work. On November 28, 2023, he made a claim for EI benefits.

[5] On November 29, 2023, the Commission contacted the Appellant to find out whether he was making job search efforts. He said that he had a seasonal job and that he would go back to work in the spring.

[6] The Commission decided that the Appellant wasn't available for work because he was just waiting for his employer to call him back to work.

[7] After being informed of the situation, the Appellant took steps to familiarize himself with computers to look for a job. The Commission invited him to a training session, and he attended it. After that, he registered with different websites and looked at job postings.

[8] Meanwhile, he asked the Commission to reconsider its decision. He said he was looking for a job that was comparable to his current job and consistent with his physical capabilities. The Commission upheld its decision; the Appellant hadn't shown that he was available for work.

## **Issue**

[9] Is the Appellant available for work?

## Analysis

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

[11] 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” means.<sup>2</sup> I will look at those criteria below.

[12] 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.

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

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

### Reasonable and customary efforts to find a job

[15] The law sets out criteria for me to consider when deciding whether the Appellant’s efforts are reasonable and customary.<sup>5</sup> I have to look at whether his efforts are sustained and whether they are directed toward finding a suitable job. In other words, the Appellant 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.

[16] 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:<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
- attending job search workshops or job fairs
- networking
- contacting employers who may be hiring
- applying for jobs
- attending interviews
- doing competency tests

[17] The Commission says that the Appellant's efforts fall far short of showing that he is making reasonable and customary efforts to find a job. Instead, he is taking advantage of the winter to work on his house. He considers himself a retiree. He spends his time on personal projects.

[18] The Appellant, on the other hand, says that he was honest with the Commission. He feels that it decided his case quickly. He made a claim for benefits on November 28, 2023, and got a call as early as November 29, 2023. He had just made his claim and was caught off guard. The Commission also contacted him on November 30, 2023. He explained that he had a job that paid \$32 an hour and a day where he was paid \$48 an hour. He was looking for a similar job. As early as December 13, 2023, he was told that he wasn't entitled to benefits.

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

[19] Before I decide whether the Appellant has made reasonable and customary efforts to find a job, I will determine what is a suitable job in his case. To do this, I have to consider the criteria set out in the Act.

[20] So, I note that the Appellant is a street sweeper operator. He cleans up work sites after the work is completed. The pay is \$32 an hour and \$45 on Fridays. The job is consistent with his physical capabilities.

[21] Section 6(4) of the Act says that employment can't be at a lower rate or on less favourable conditions or in a different occupation at a lower rate.

[22] Section 9.002 of the Regulations says that it is necessary to consider, among other things, that **the claimant's health and physical capabilities allow them to commute to the place of work and to perform the work.**

[23] The Commission says that the Appellant hasn't provided medical evidence related to this. I would note that the Act requires a medical certificate only for special benefits.<sup>7</sup> The Appellant, meanwhile, has argued from the beginning that he has limited physical capabilities because of his age and the demanding jobs he has had in the past.

[24] So, the Appellant operates street sweepers. He has a Class 5 licence that allows him to drive certain types of vehicles, including a street sweeper. His hourly pay is \$32, and the rate is \$48 when he works overtime. This means he is justified in searching for a similar job.

[25] The Commission can't require him to work in a lower-paying job right away. He also has to consider his physical capabilities.

[26] In my view, the Appellant has made reasonable and customary efforts to find a job. After receiving the Commission's explanations, getting his access codes, and attending an information session required by the Commission, he registered with

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<sup>7</sup> Sickness, family caregiver, compassionate care

different job sites. In his testimony, he listed the sites he had visited each day after his information session.

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

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

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

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

#### **– Wanting to go back to work**

[29] The Commission says that the Appellant didn't want to go back to work as soon as a suitable job was available. He said he wanted to rest and focus on his house.

[30] The Appellant admits that he wasn't immediately ready to find a new job. He has a job that is demanding in terms of his physical capabilities. The Commission contacted him soon after he was laid off. He didn't understand the Commission's requirements.

[31] However, once he understood that he had to make efforts to find a job, he did just that.

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<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.

<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.

[32] I find that the Appellant wanted to go back to work after receiving the Commission's explanations.

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

[33] 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>

[34] As I mentioned above, the Appellant has made efforts to find a new job. He attended the information session required by the Commission, got his access codes to register with job sites, and has looked at job postings. He hasn't found a suitable job.

[35] I find that the Appellant has made efforts to find a suitable job.

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

[36] The Commission says that the Appellant is limiting his chances of going back to work; he wants a wage of \$30, doesn't want to travel more than 25 kilometres to get to work, and doesn't want physical or on-call work. Since the street sweeper job doesn't exist during the winter, he must expand his job search.

[37] I disagree with the Commission. I explained above what constitutes a suitable job within the meaning of the Act. The Appellant is justified in searching for a job that pays \$30 an hour, since he usually earns \$32 an hour. So, it isn't a limitation, as the Commission says.

[38] His physical capabilities aren't a limitation either, since a person's physical capabilities have to be considered in defining suitable employment. In the Appellant's case, he is 62 years old and has limited physical capabilities.

[39] Concerning the Appellant's seasonal job as a street sweeper operator, in *Faucher*, the Federal Court of Appeal found in favour of seasonal workers who had difficulty finding work during the winter. They were roofers, and it is difficult to work in

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<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.

that field in the winter. By asking the Appellant to find a job early in his period of unemployment when it is hard to work in his field, and by requiring him to expand his horizons so soon, I am of the view that finding him unavailable during the winter after just 15 days of unemployment is a narrow interpretation of availability.<sup>11</sup>

[40] I find that the Appellant hasn't set personal conditions limiting his chances of quickly getting back to work in a suitable job.

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

[41] After reviewing the file and hearing the Appellant's credible testimony and plausible explanations as well as the parties' submissions, I find that the Appellant has shown that he is capable of and available for work.

[42] Once he understood the Commission's expectations, the Appellant took action and made efforts to find a suitable job. The Commission could not require him to work in a job that wasn't suitable soon after he became unemployed.

## **Conclusion**

[43] The Appellant has shown that he is available for work within the meaning of the law. Because of this, I find that the Appellant isn't disentitled from receiving EI benefits.

[44] This means that the appeal is allowed.

Manon Sauvé  
Member, General Division – Employment Insurance Section

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<sup>11</sup> *Faucher v Canada (Attorney General of Canada)*, A-57-96. Page 3 is very instructive.