



Citation: *KS v Canada Employment Insurance Commission*, 2023 SST 1907

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

Decision

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

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (571463) dated March 22, 2023 (issued by Service Canada)

Tribunal member: Audrey Mitchell
Type of hearing: In person
Hearing date: October 10, 2023
Hearing participant: Appellant
Decision date: October 13, 2023
File number: GE-23-1103

Decision

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

[2] The Appellant hasn't shown that he was available for work. This means that he 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 from September 26, 2022, to February 23, 2023, because he 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 he was available for work. The Appellant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that he was available for work.

[5] The Commission says the Appellant wasn't available because he did not look for work until February 24, 2023. It also says he wasn't able to communicate with a potential employer before that.

[6] The Appellant disagrees and says he did apply for jobs.

Matter I have to consider first

The Appellant wasn't at the hearing

[7] The Appellant wasn't at the hearing at 30 minutes past the scheduled start time. He called the Tribunal to say he had been at the Service Canada location. So, the hearing was rescheduled to a new date.

The Appellant didn't send the Commission's reconsideration decision

[8] The Appellant has to send the Tribunal a copy of the Commission's reconsideration decision or the date of the reconsideration with his notice of appeal.¹ He didn't do so. I have a copy of the Commission's file that has this decision. So, I don't need the Appellant to send it.²

Issue

[9] Was 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 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.³ The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" mean.⁴ 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.⁵ Case law gives three things a claimant has to prove to show that they are "available" in this sense.⁶ 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.

¹ See section 24(1)(e) of the *Social Security Rules of Procedure*.

² See section 8(4) of the *Social Security Rules of Procedure*.

³ See section 50(8) of the *Employment Insurance Act* (Act).

⁴ See section 9.001 of the *Employment Insurance Regulations* (Regulations).

⁵ See section 18(1)(a) of the Act.

⁶ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

[14] 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

[15] The law sets out criteria for me to consider when deciding whether the Appellant's efforts were reasonable and customary.⁷ I have to look at whether his 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.

[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:⁸

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

[17] The Commission says the Appellant didn't look for work until February 24, 2023.

[18] The Appellant disagrees. He says he got daily emails about jobs and applied for jobs.

[19] I find that the Appellant hasn't proven that he was making reasonable and customary efforts to find work in the period in question.

[20] The Appellant reactivated his claim for benefits after he lost his job. He spoke to the Commission on November 23, 2022. He said he was available for work and had been looking for a full-time job. The Commission asked him where he applied for jobs. The Appellant said he didn't have his job list with him. But he said he would provide it. There is no job search list on the Commission's file for the period up to November 2022.

⁷ See section 9.001 of the Regulations.

⁸ See section 9.001 of the Regulations.

[21] The Appellant testified that he had applied for pharmaceutical jobs from September to November 2022. He said he has it in his email, but his computer had been hacked.

[22] The Commission asked the Appellant to call in for a telephone interview on November 29, 2022, to give information. The Appellant says he didn't get the letter, so he didn't call in for the interview. So, the Commission denied his application for benefits because the Appellant hadn't proven his availability for work.

[23] The Appellant asked the Commission to reconsider its decision to deny him benefits. The Commission spoke to the Appellant on February 23, 2023. It asked the Appellant if he had been applying for full-time jobs since August 10, 2022. The Commission's notes show that the Appellant said he had not.

[24] The Commission asked the Appellant to upload documents, including proof of his job search. The Appellant completed a job search form dated March 17, 2023. He took it to Service Canada. It shows that he applied for 10 jobs on February 24, 2023, two jobs on March 14, 2023, and one job on March 15, 2023.

[25] The Commission's file notes from March 17, 2023, show that the Appellant said he started applying for jobs as of February 2023. This is different to what the Appellant said at the hearing, so I asked him about it. The Appellant said he completed another job search form and gave it to Service Canada in September 2022, but they didn't give him a stamped copy confirming this.

[26] I asked the Appellant about the Commission's notes that say he hadn't applied for full-time jobs since August 10, 2022. He said it was correct, but it should be September 10, 2022. He again referred to the job search form he took to Service Canada in September 2022.

[27] The only job search form on the Commission's file is the one dated March 17, 2023. I find it likely that this is the only job search form the Appellant gave Service Canada. This is because the Appellant applied for EI benefits in October, which is after the time he says he gave Service Canada a job search list. And I don't find the

Appellant's explanation about the difference in his statement to the Commission and his testimony is reasonable.

[28] I find that if the Appellant had applied for jobs between September and November 2022, it would have been reasonable to include them in the job search form the Commission asked for in February 2023. So, I give more weight to the statement to the Commission that he hadn't looked for jobs before February 2023.

[29] Although the Appellant named three job-search tools he used to look for jobs, I don't find that his job search efforts were sustained. Even if I accept that he gave a job search form to Service Canada in September 2022, and even though he said he got daily emails for available jobs, the Appellant didn't prove that he had applied for any jobs from October through January, which is in the period in question.

[30] I find that the Commission asked the Appellant to prove that he was making reasonable and customary efforts to find a job. It did so by asking him questions and asking for his job search record on November 23, 2022. I find that because the Commission didn't receive the Appellant's job search record showing activity from when he lost his job up to February 23, 2023, and he hasn't shown that his job search efforts were sustained, the Appellant hasn't proven that his efforts to find a job were reasonable and customary.

Capable of and available for work

[31] 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:⁹

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

⁹ 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) He didn't set personal conditions that might have unduly (in other words, overly) limited his chances of going back to work.

[32] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.¹⁰

– **Wanting to go back to work**

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

[34] I have already found that the Appellant hasn't proven that his job search efforts were reasonable and customary. I don't find his statements that he was looking for work before February 2023 are credible. And I find that not looking for work isn't consistent with the attitude and conduct of someone who wants to go back to work.

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

[35] The Appellant hasn't made 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.¹¹

[37] The Appellant's stated efforts to find a new job included using automated emails from job search websites and applying for jobs. I referred to this above when looking at whether the Appellant has made reasonable and customary efforts to find a job.

[38] Because I found that he likely didn't apply for jobs before February 24, 2023, I don't find that he has done enough to meet the requirements of this second factor.

¹⁰ 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.

¹¹ 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.

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

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

[40] The Commission says the Appellant couldn't communicate with a potential employer in a timely manner before he started looking for work on February 24, 2023.

[41] The Appellant doesn't disagree. He says he didn't have a cell phone, and he questioned how an employer would be able to communicate with him.

[42] The Appellant was involved in a court matter. He said the police took his phone and the court restricted him from using anyone else's cell phone. He was only allowed to use a land line, but there wasn't one in the shelter where he was staying. He testified that he was physically capable of working, but since he didn't have a phone for communication, no one could contact him.

[43] I have already found that it wasn't likely that the Appellant applied for jobs before February 2023. I find it likely that this was because of the Appellant's personal circumstances, including his court matter, the loss of his cell phone and his housing situation, which made getting mail difficult. I find that not having a cell phone was a personal condition that might have unduly limited the Appellant's chances of returning to work, because that made it difficult for employers to contact him about potential employment.

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

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

Conclusion

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

[46] This means that the appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section