



Citation: *JF v Canada Employment Insurance Commission*, 2023 SST 1890

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: J. F.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (467335) dated April 4, 2022
(issued by Service Canada)

Tribunal member: Gary Conrad

Type of hearing: Teleconference

Hearing date: January 5, 2023

Hearing participant: Appellant

Decision date: January 6, 2023

File number: GE-22-3015

Decision

[1] The appeal is dismissed. The Claimant has not proven that he is available for work, so the disentitlement issued by the Canada Employment Insurance Commission (Commission) is upheld.

Overview

[2] The Claimant is working as a bus driver. During one of the school breaks he applied for employment insurance (EI) benefits.

[3] The Commission spoke to the Claimant and he told them he worked part-time as a school bus driver and was not looking for any other work, as he wanted to stay working as a part-time school bus driver and his employer did not have full-time hours to offer him.

[4] After speaking to the Claimant the Commission decided they could not pay him EI benefits because he was not available for work, since he was making no efforts to find work, and was just waiting to be called back to his bus driving job.

[5] I have to decide whether the Claimant has proven that he is available for work. The Claimant 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 is available for work.

Matter I have to consider first

[6] In their submissions the Commission states they disentitled the Claimant under subsection 50(8) of the *Employment Insurance Act* (Act). Subsection 50(8) of the Act relates to a person failing to prove to the Commission that they were/are making reasonable and customary efforts to find suitable employment.

[7] In looking through the evidence, I do not see any requests from the Commission to the Claimant to prove his reasonable and customary efforts, or any explanation to the Claimant about what kind of proof he would have to provide to the Commission to show he was making reasonable and customary efforts.

[8] While not bound by it, I find the reasoning in *TM v Canada Employment Insurance Commission*, 2021 SST 11 persuasive, in that it is not enough for the Commission to discuss job search efforts with the Claimant, instead they must specifically ask for proof from the Claimant and explain to him what kind of proof would meet a “reasonable and customary” standard.

[9] Based on the lack of evidence the Commission asked the Claimant to prove his reasonable and customary efforts to find suitable employment under subsection 50(8) of the Act, the Commission did not disentitle the Claimant under subsection 50(8) of the Act. Therefore, it is not something I need to consider.

Issue

[10] The Claimant's availability for work.

Analysis

[11] Case law sets out three factors for me to consider when deciding if the Claimant is available for work. The Claimant has to prove the following three things:¹

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

[12] When I consider each of these factors, I have to look at the Claimant's attitude and conduct,² over the period of the disentitlement (December 17, 2021, onward).

[13] I find, that while the Claimant does have a desire to work, that desire is limited to working part-time as a school bus driver. He testified he was not looking for other work,

¹ 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.

² 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.

as he wants to make sure he is able to devote his energies to driving the school bus; he was just waiting to be recalled to his job after the school break period ended.

[14] I can understand that the Claimant enjoys his job and that his job is important to the community, since it helps children by getting them to school, but he must be making efforts to find either additional employment, or full-time employment.

[15] I find the Claimant cannot be considered available for work if he is only waiting to be recalled to his job as the Federal Court of Appeal has said that "... a claimant cannot merely wait to be called in to work but must seek employment in order to be entitled to benefits..."³

[16] Finally, I find the Claimant wanting to only work for his employer driving school buses, and not making any efforts to find additional work, would overly limit his chances in the labour market. He would be overly limited as he cannot find additional work, or alternative full-time work, if he does not look for it because he is only willing to work part-time for his current employer.

Summary

[17] In summary, I find the Claimant is not available for work, as he cannot meet all three of the factors listed above, since he is not making efforts to find work and is just waiting to be recalled to his job as a school bus driver.

[18] While the Claimant is free to make the choice to only work part-time as a school bus driver and wait to be recalled when school breaks end, this choice prevents him from being considered available for work under the law, which means he cannot collect EI benefits.

³ *De Lamirande v Canada (Attorney General)*, 2004 FCA 311

Conclusion

[19] The appeal is dismissed. The Claimant has not proven his availability for work, so the disentitlement the Commission issued for that reason is upheld.

Gary Conrad

Member, General Division – Employment Insurance Section