



Citation: *SC v Canada Employment Insurance Commission*, 2023 SST 2032

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

## **Decision**

**Appellant:** S. C.  
**Representative:** R. M.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (599580) dated July 12, 2023  
(issued by Service Canada)

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**Tribunal member:** John Noonan

**Type of hearing:** Teleconference

**Hearing date:** October 31, 2023

**Hearing participants:** Appellant  
Appellant's representative

**Decision date:** November 10, 2023

**File number:** GE-23-2190

## Decision

[1] The appeal is dismissed.

## Overview

[2] The Appellant, S. C., a worker in NL, was upon reconsideration by the Commission, notified that it was unable to pay her Employment Insurance benefits from November 30, 2022 as she had not proven her availability for work because she had retired. The Appellant maintains that she remains a casual call nurse, available for work and she anticipates a call to return to the vaccine clinic in October 2023. The Tribunal must decide if the Appellant has proven her availability pursuant to sections 6, 18 and 50 of the Employment Insurance Act (the Act) and sections 9.001 and 9.002 of the Employment Insurance Regulations (the Regulations).

## Issues

[3] Issue # 1: Was the Appellant available for work?

Issue #2: Was she making reasonable and customary efforts to obtain work?

Issue #3: Did she set personal conditions that might unduly limit her chances of returning to the labour market?

## Analysis

[4] The relevant legislative provisions are reproduced at GD-4.

[5] In order to be found available for work, a claimant shall: 1. Have a desire to return to the labour market as soon as suitable employment is offered, 2. Express that desire through efforts to find a suitable employment and 3. Not set personal conditions that might unduly limit their chances of returning to the labour market. All three factors shall be considered in making a decision. (**Faucher A-56-96 & Faucher A-57-96**)

### Issue 1: Was the Appellant available for work?

[6] No.

[7] In this case, by the Appellant's statements and submissions, she was not seeking full time work except her expected recall to vaccine clinic work in October, 2023.

[8] The Appellant, through her affirmed testimony at her hearing, testified she was not continually seeking full time employment other than with Western Health.

[9] Later during the hearing the Appellant testified that she had been working in X until her retirement and has returned there as a casual worker in the vaccine clinic (three weeks this time) and, on occasion, in the chemo clinic (three shifts in September).

[10] She stated that she had done some work in each of the bi-weekly periods of her claim.

[11] The Appellant is still on the casual list at Western Health.

[12] I find that the actions, or lack of, on the part of the Appellant do not show a sincere desire to return to the labour market as soon as suitable full time or any employment is offered.

## **Issue 2: Was she making reasonable and customary efforts to obtain work?**

[13] No.

[14] As per her submissions and testimony at the hearing, the Appellant has not been conducting a comprehensive job search.

[15] The Appellant's submissions and testimony at the hearing indicate no on-going effort on the Appellant's part to obtain employment other the casual work with Western Health.

[16] She states that there are no full time postings within Western Health for which she is qualified, younger nurses with degrees have completed training that would allow them to work in areas of the hospital where she couldn't.

[17] I find that the Appellant has not shown that she was making reasonable and customary efforts to obtain suitable employment.

[18] The key term here is “suitable”. Her lack of a continuous search has resulted in her not obtaining gainful employment in which she can fulfill the job requirements.

[19] The Appellant’s representative testified that they live in a small town in a rural area – only healthcare and government jobs available. Most residents leave to work on ocean going or Great Lakes shipping.

[20] However, the Appellant has a history of working in X some 30 km from her home in Burnt Island. There are, as of today’s date, a number of job postings in that area albeit not in nursing.

[21] The Court held that the burden on the claimant to prove availability is a statutory requirement of the legislation that cannot be ignored. In order to obtain employment insurance benefits a claimant must be actively seeking suitable employment, even if it appears reasonable for the claimant not to do so. **Canada (AG) v. Cornelissen-O’Neil, A-652-93; De Lamirande v. Canada (AG), 2004 FCA 311**

### **Issue 3: Did she set personal conditions that might unduly limit her chances of returning to the labour market?**

[22] Yes.

[23] Again, the Appellant’s submissions and testimony at the hearing indicate no on-going effort on the Appellant’s part to obtain employment.

[24] She was not actively searching for employment during the period in question other than her expected recall to her casual position in a vaccine clinic. This was a personal choice on her part.

[25] By not seeking suitable employment other than the possible casual work at the vaccine clinic or with Western Health in general, I find that the Appellant has set

personal conditions which unduly limited her chances of finding and accepting full time employment, a requirement of being eligible to receive benefits.

[26] By itself, a mere statement of availability by the claimant is not enough to discharge the burden of proof. **CUBs 18828 and 33717**

[27] In order to be eligible to receive benefits an individual must be engaged in a comprehensive job search even it seems futile to do so.

[28] I find the Appellant, by her submissions and actions, has not met the burden of proof required to show she was in fact available for full time work.

[29] While I recognize the Appellant's situation, retirement after 36 years of service, I must consider the facts and apply the statutory requirements and cannot ignore, refashion, circumvent or rewrite the Act, even in the interest of compassion (**Canada Attorney General) v. Knee, 2011 FCA 301**).

## **Conclusion**

[30] I find that, having given due consideration to all of the circumstances, the Appellant has not successfully rebutted the assertion that she was not available for work and as such the appeal regarding availability is dismissed.

John Noonan

Member, General Division – Employment Insurance Section