Citation: *EK v Canada Employment Insurance Commission*, 2024 SST 514

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (621820) dated January 18, 2024 (issued by Service Canada)

Tribunal member:	Elyse Rosen
Type of hearing:	Teleconference
Hearing date:	March 14, 2024
Hearing participant:	Appellant
Decision date:	March 15, 2024
File number:	GE-24-546

Decision

[1] The appeal is dismissed.

[2] The Appellant hasn't shown that she was available for work from June 29, 2023, to August 31, 2023.

Overview

[3] The Appellant works at a school in early childhood education (ECE). On June 29, 2023, she was laid off for the summer school break, as she is every summer. Her expected date of recall was August 31, 2023. She applied for EI benefits.

[4] The Canada Employment Insurance Commission (Commission) said it couldn't pay her benefits because she was taking courses, wasn't looking for work, and hadn't arranged childcare.

[5] The Appellant says none of that is accurate.

[6] She says she takes courses part-time and has been doing so for a few years. She has always combined her courses with working full time.

[7] She claims she was looking for work, but that no one wanted to hire her just for the summer.

[8] She contends that it would have been easy to arrange childcare if she had found a job. The only reason she didn't do so is because she couldn't find work and didn't need to.

[9] She says she's laid off every summer and returns to work every fall. She always gets EI benefits during the summer break. She's not a teacher and isn't paid for that period. She doesn't understand why now she's suddenly having a problem collecting EI.

[10] I have to decide if the Appellant has proven that she was available for work during her lay off.

Matter I must decide first

[11] The Appellant says she requested copies of the recordings of her calls with the Commission but hasn't yet received them. She says they will clearly show that the reconsideration agent she spoke with initially approved her claim and then changed his mind.

[12] I have decided to render my decision without waiting for the recordings.

[13] As I explained to the Appellant, this is a hearing *de novo* (in other words, I am making my own decision as to whether she was available for work based on my own assessment of the evidence). So, it doesn't matter if the reconsideration agent initially told the Appellant that he was approving her claim. Even if he did, this wouldn't impact my decision.

Issue

[14] Was the Appellant available for work during the summer break?

Analysis

[15] Not everyone who is not working is able to get EI benefits. To get benefits you need to meet certain conditions. The law says that one of the conditions to get benefits is that you have to be available for work.

[16] Two different sections of the law say that a person claiming benefits has to show that they are available for work.[1] One of those sections only applies when the Commission asks the claimant to provide proof of their job search. Since in this case the Commission only asked the Appellant to prove her job search after she had gone back to work,[2] I won't be considering that section of the law. It doesn't apply to her availability over the summer break.

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[1] See sections 18(1)(a) and 50(8) of the *Employment Insurance Act* (Act).
[2] GD3-29.

[17] The law says that a person claiming EI benefits has to show that they are **capable of and available for work but aren't able to find a suitable job**.[3]

[18] Case law (in other words, decisions of the courts) explains that there are three things a claimant has to prove to show that they are available for work. I will look at what those three things are, below.

[19] There are also additional conditions that apply to the availability of full-time students.

[20] The law says that people claiming EI benefits who are in school or training full-time are presumed to be (in other words, considered to be) unavailable for work.[4] This is called a **presumption of non-availability**. It means we can suppose that a claimant isn't available for work when they are studying or training full-time.

[21] To decide if the Appellant was available for work, I will start by looking at whether I can presume that she wasn't available for work while she was in school. If I find the presumption applies, then I will look at whether she can overcome the presumption that she wasn't available. If it doesn't apply, I will look at whether she can prove she was available for work.

Is the Appellant presumed to be unavailable for work?

[22] No. The Appellant isn't presumed to be unavailable for work.

[23] As I have already explained, if you are in school or training full time, you are presumed to be unavailable for work. But you have to be in school or training **full time** for the presumption to apply.

[24] The Appellant testified that she has been taking 3 courses a semester. This is a part-time course load (she says a full course load is 6 classes a semester). Her studies

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[3] See section 18(1)(a) of the Act.
[4] This presumption has been reaffirmed many times over the years. See *Canada (Attorney General) v Cyrenne*, 2010 FCA 349, *Canada (Attorney General) v Gagnon*, 2005 FCA 321, *Canada (Attorney General) v Rideout*, 2004 FCA 304; *Canada (Attorney General) v Primard*, 2003 FCA 349, *Landry v Canada (Deputy Attorney General),* [1992] F.C.J. No.965 (FCA); *Horton v Canada (Attorney General),* 2020 FC 743.

occupy between 15-24 hours a week, depending on how many tests, papers, and reading assignments she has. The courses are online and are self-directed. She can do them whenever she pleases. There is no class time, only reading assignments. Once she finishes a reading assignment, she writes a quiz or submits a paper to show that she has learned the material.

[25] I find that the Appellant isn't in school full time. Because of this, I find that the presumption of non-availability doesn't apply to her.

[26] In all events, the presumption can be overcome by showing a history of combining school with work.[5] The Appellant has been doing this for over two years. She takes 3 courses every semester, including from September to June, while she works Monday to Friday, 8:30 to 4:30.

[27] Had I found that the presumption of non-availability applied to the Appellant, given her history of combining work and school during the school year, she would have been able to overcome it.

[28] This means the Appellant isn't presumed to be unavailable.

[29] I will now look at whether she can show that she was available for work.

Was the Appellant available for work?

[30] No. I find that the Appellant wasn't available for work.

[5] See *Canada (Attorney General) v Rideout*, 2004 FCA 304.

[31] As I mentioned, above, case law sets out three things for me to consider when deciding if a person claiming benefits is available for work.[6] Those three things are:

i. Wanting to go back to work as soon as a suitable job is available

ii. Making enough effort to find a suitable job

iii. Not setting personal conditions that might overly limit your chances of finding a suitable job

[32] All three conditions have to be met in order for me to conclude the Appellant was available for work. It's up to the Appellant to prove that she meets all three conditions.

[33] When I decide if she meets the three conditions, I have to look at both the Appellant's attitude and the things that she did or didn't do to make herself available for work.

a) Wanting to go back to work

[34] The Appellant testified that she wanted to work during the summer break and would be willing to accept a suitable job as soon as one became available. But I didn't find her to be credible.

[35] As I set out in more detail, below, she didn't demonstrate that she truly wanted to work. Her attitude and her actions suggest otherwise.

b) Making efforts to find a suitable job

[36] I find that the Appellant wasn't making sufficient effort to find a suitable job.

[37] Although there is case law that says that a claimant doesn't always have to immediately look for other work when they are laid off if they have a reasonable expectation of being called back, that case law doesn't apply here.[7] The Appellant knew very well that she wouldn't be called back until August 31, 2023. This is the case every

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[6] See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.
[7] *Page v. Canada (Attorney General),* 2023 FCA 169.

year. Since she knew she would be out of work from June 29 to August 31, 2023, she had the obligation to try to find work during that period.

[38] The Appellant testified that she was looking for work, but that no one wanted to hire her. I didn't find her to be credible.

[39] In July 2023, the Appellant completed a questionnaire in which she said she hadn't looked for work because she was in school and didn't have childcare.[8] She confirmed this during a conversation with the Commission in September 2023.[9] She later retracted her answer. She said she didn't understand the question.[10] She says she thought it related to the period prior to her lay-off.

[40] I don't believe that she didn't understand the question. First, she doesn't deny that she was asked if she looked for work since the start of her course or **since becoming unemployed**.[11] And second, her answer was that she didn't have childcare.[12] So, she couldn't have reasonably understood that she was being asked about the period prior to her lay-off. During the school year, while she was employed, her children were in school. So, childcare wouldn't have been an issue in that period.

[41] When questioned by the Commission in September 2023,[13] the Appellant reported that:

- her job search efforts had been limited to registering with the Job Bank for alerts for ECE positions
- she was only looking for ECE positions
- she didn't receive any notifications for ECE jobs during the summer
- she hadn't applied for any jobs because she knew there would be no jobs available for the summer months that would pay her as much as she was making in her ECE job

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[8] GD3-25.
[9] GD3-29.
[10] GD3-28 and GD3-43.
[11] GD5-4.
[12] GD3-25.
[13] GD3-28 to GD3-30.

- she was unwilling to look at any positions other than ECE positions

[42] After learning that she wouldn't be receiving benefits, the Appellant changed her story. She now claims that after two weeks of looking for ECE positions she broadened her search and applied to Walmart, Home Hardware, Winners/Homesense, and the YMCA.

[43] I don't believe her. I'm giving more weight to what she said before she knew her claim for benefits had been denied.

[44] The Appellant says the agent she spoke with in September 2023 didn't accurately record what she had told her in the call log. Inasmuch as there may have been some inaccuracies in the call log,[14] the Appellant hasn't convinced me that she didn't tell the agent she had limited her search to ECE jobs and hadn't applied to any jobs as of that September conversation.[15]

[45] Moreover, the Appellant was asked during the reconsideration process to provide evidence of the jobs she had applied to, but she never did.[16]

[46] So, I don't believe that the Appellant did more than register on the Job Bank for alerts about ECE positions. And I find that this wasn't a sufficient job search.

[47] In all events, the job search the Appellant described after leaning her claim had been denied would still be insufficient to show she was available for work (even if I were to believe it took place).

[48] She testified that she spoke with the daycare attached to her school, and with two other daycares to see if they had any summer positions. But she says daycares don't normally have positions available during the summer. Their staff tends to work year-round.

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[14] For example, the agent noted that she had daughters when she has sons.
[15] I note that at the time of that conversation she had already gone back to work.
[16] GD3-43 and GD3-47.

[49] She claims that after two weeks with no success looking for work in ECE, she expanded her search to include Walmart, Home Hardware, and Winners/HomeSense, and the YMCA.[17] She says she went in with her resumé but was told they weren't interested if she was only available until the school year started.

[50] In my view, applying to jobs that you know you're unlikely to be hired for doesn't demonstrate that you are making enough effort to find a suitable job.

[51] There are many jobs that are seasonal— for example, working in a garden center, at a summer camp, or at an outdoor recreational facility. The Appellant doesn't claim to have looked into any such jobs.

[52] So, even if I had believed that the Appellant did more than casually look for ECE work, which is all that she claimed to have done when she spoke to the Commission in September 2023, I would have found that she didn't meet this criterion.

c) Unduly limiting her chances of going back to work

[53] I find that the Appellant unduly limited her chances of finding work during the summer break by imposing personal conditions on her search.

[54] As I set out above, the Appellant was only looking for jobs she knew, or should have known, she wouldn't get.

[55] Moreover, when the Appellant spoke with the Commission in September 2023, she said that she wasn't willing to take a job that paid less than her current ECE job and that she wouldn't work in any other field.[18]

[56] I find that by imposing these conditions, and looking for jobs that were unlikely to be available to her, she unduly limited her chances of going back to work.

[57] The Commission says the Appellant also limited her chances of going back to work because she didn't have childcare. I disagree on this point.

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[17] I note that she never mentioned the YMCA when she spoke with the Commission.
[18] GD3-28 to GD3-30.

[58] The Appellant says her older son didn't need her care. And she could have easily found a summer program to put her younger son in if she had found a job. I have no evidence that contradicts this, and I accept it as fact.

[59] Based on my findings regarding the three conditions the Appellant must meet to show she was available, I conclude that she hasn't shown that it's more likely than not that she was available for work during the summer break.

[60] The fact that the Appellant may have received benefits during the summer break in previous summers is irrelevant. Each time a claim is made the claimant must demonstrate that they are entitled to benefits. For the period at issue in this appeal, the Appellant has failed to do that.

Conclusion

[61] The appeal is dismissed.

[62] I find that the Appellant wasn't available for work from June 29 to August 31, 2023.

Elyse Rosen
Member, General Division – Employment Insurance Section