Citation: *RM v Canada Employment Insurance Commission*, 2024 SST 646

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	R.M.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (615770) dated January 16, 2024 (issued by Service Canada)

Tribunal member:	Gerry McCarthy
Type of hearing:	Videoconference
Hearing date:	April 2, 2024
Hearing participant:	Appellant
Decision date:	April 5, 2024
File number:	GE-24-413

Decision

[1] The appeal is dismissed.

[2] The Appellant hasn't shown that he was available for work while taking his pre-apprenticeship course at "X." This means that he can't receive Employment Insurance (EI) benefits from July 10, 2023, to August 11, 2023.

Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Appellant was disentitled from receiving EI regular benefits from July 10, 2023, to August 11, 2023, because he wasn't available for work. An Appellant has to be available for work to get EI regular benefits. Availability is an ongoing requirement. This means that an Appellant has to be searching for a job.

[4] I have to 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 consistently stated that he wasn't looking for work owing to the full-time nature of the pre-apprenticeship course.

[6] The Appellant says that completing the pre-apprenticeship course allowed him to be exempt from the Level 1 apprenticeship course. He further says the pre-apprenticeship course should have been recognized with the 16-digit approval code and was "discriminated against" for not receiving the code.

Issue

[7] Was the Appellant available for work while taking the pre-apprenticeship course?

Analysis

[8] Two different sections of the law require Appellants 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.

[9] First, the *Employment Insurance Act* (Act) says that an Appellant has to prove that they are making "reasonable and customary efforts" to find a suitable job.[1] The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" mean.[2] I will look at those criteria below.

[10] Second, the Act says that an Appellant has to prove that they are "capable of and available for work" but aren't able to find a suitable job.[3] Case law gives three things an Appellant has to prove to show that they are "available" in this sense.[4] I will look at those factors below.

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

[12] In addition, the Federal Court of Appeal has said that Appellants who are taking training full-time are presumed to be unavailable for work.[5] This is called "presumption of non-availability." It means we can suppose that students aren't available for work when the evidence shows that they are taking training full-time.

[13] I will start by looking at whether I can presume that the Appellant wasn't available for work. Then, I will look at whether he was available based on the two sections of the law on availability.

---

[1] See section 50(8) of the *Employment Insurance Act* (Act).
[2] See section 9.001 of the *Employment Insurance Regulations* (Regulations).
[3] See section 18(1)(a) of the Act.
[4] See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.
[5] See *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.

Presuming full-time students aren't available for work

[14] The presumption that students aren't available for work applies only to full-time students.

The Appellant doesn't dispute that he was a full-time student

[15] The Appellant agrees that he was a full-time student at "X" taking the pre-apprenticeship course from June 5, 2023, to August 11, 2023**.** I see no evidence that shows otherwise. So, I accept that the Appellant was in training full-time from June 5, 2023, to August 11, 2023.

[16] The presumption applies to the Appellant.

The Appellant was a full-time student

[17] The Appellant was a full-time student from June 5, 2023, to August 11, 2023. But the presumption that full-time students aren't available for work can be rebutted (that is, shown to not apply). If the presumption were rebutted, it would not apply.

[18] There are two ways the Appellant can rebut the presumption. He can show that he has a history of working full-time while also in training.[6] Or, he can show that there are exceptional circumstances in his case.[7]

[19] The Appellant says he had "no time" to work while taking the pre-apprenticeship course from June 5, 2023, to August 11, 2023.

[20] The Commission says the Appellant consistently stated that because of the nature of his training he wasn't looking for work since he planned on returning to his employer after August 11, 2023.

[21] I find the Appellant hasn't rebutted the presumption that he was unavailable for work for the following reasons:

---

[6] See *Canada (Attorney General) v Rideout*, 2004 FCA 304.
[7] See *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.

[22] First: The Appellant was forthright in his testimony that he had “no time to work part-time” while taking his pre-apprenticeship program.

[23] Second: The Appellant testified that his pre-apprenticeship course required all his time and energy.

[24] Third: The Appellant didn’t show he had a history of working while attending school full-time.

The presumption isn’t rebutted

[25] The Federal Court of Appeal hasn’t yet told us how the presumption and the sections of the law dealing with availability relate to each other. Because this is unclear, I am going to continue on to decide the sections of the law dealing with availability, even though I have already found that the Appellant is presumed to be unavailable.

Reasonable and customary efforts to find a job

[26] The first section of the law that I am going to consider says that Appellants have to prove that their efforts to find a job were reasonable and customary.[8]

[27] The law sets out criteria for me to consider when deciding whether the Appellant’s efforts were reasonable and customary.[9] 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.

[28] 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 are the following:[10]

- assessing employment opportunities
- contacting employers who may be hiring
- applying for jobs

[8] See section 50(8) of the Act.
[9] See section 9.001 of the Regulations.
[10] See section 9.001 of the Regulations.

[29] The Commission says the Appellant didn't do enough to try to find a job. Specifically, the Commission says the Appellant consistently stated that he wasn't looking for work because of the full-time nature of the pre-apprenticeship program.

[30] The Appellant was forthright in his testimony that he wasn't looking for work while taking the pre-apprenticeship program from June 5, 2023, to August 11, 2023.

[31] I find the Appellant wasn't making reasonable and customary efforts to find work, because he testified that he wasn't looking for work while taking the pre-apprenticeship program from June 5, 2023, to August 11, 2023.

[32] In summary: The Appellant hasn't proven that his efforts to find a job were reasonable and customary.

Capable of and available for work

[33] I also have to consider whether the Appellant was capable of and available for work but unable to find a suitable job.[11] Case law sets out three factors for me to consider when deciding this. The Appellant has to prove the following three things:[12]

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.

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

[34] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.[13]

---

[11] See section 18(1)(a) of the Act.
[12] 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.
[13] 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.

Wanting to go back to work

[35] The Appellant hasn't shown that he wanted to go back to work as soon as a suitable job was available from June 5, 2023, to August 11, 2023. I make this finding, because the Appellant was forthright in his testimony that he wasn't available for work while taking the pre-apprenticeship training.

Making efforts to find a suitable job

[36] The Appellant hasn't made enough effort to find a suitable job while taking his pre-apprenticeship training from June 5, 2023, to August 11, 2023.

[37] 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.[14]

[38] As mentioned, the Appellant was forthright in his testimony that he wasn't able to work at a job while taking his pre-apprenticeship training. In short, the Appellant confirmed he wasn't making any efforts to find a job from June 5, 2023, to August 11, 2023.

Unduly limiting chances of going back to work

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

[40] The Appellant confirmed during the hearing that his pre-apprenticeship course was full-time and occurred during regular hours from Monday to Friday.

[41] The Commission says the Appellant's pre-apprenticeship training was full-time which was why he couldn't work for his employer from June 5, 2023, to August 11, 2023.

[42] I find the Appellant unduly limited his chances of going back to work while taking the apprenticeship training from June 5, 2023, to August 11, 2023. I make this finding

[14] 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.

because the Appellant testified that the pre-apprenticeship training required all his time and energy. Furthermore, I agree with the Commission that the Appellant's apprenticeship training was full-time which was why he couldn't work for his employer from June 5, 2023, to August 11, 2023.

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

[43] Based on my findings on the three factors, I find the Appellant hasn't shown that he was capable of and available for work but unable to find a suitable job while taking his pre-apprenticeship program.

Additional Testimony from the Appellant

[44] I recognize the Appellant testified that the pre-apprenticeship course was "discriminated against" for not being given the 16-digit approved training code which the Commission required. Nevertheless, the only issue before me was whether the Appellant was available for work while taking his pre-apprenticeship course. On this matter, I must apply the law. In other words, I cannot ignore or re-fashion the law even for compassionate reasons.[15]

[45] The Appellant further testified the Ontario Government recognized that completing the pre-apprenticeship course would exempt a person from Level 1 apprenticeship training. Still, the Appellant's pre-apprenticeship course wasn't provided with a 16-digit approved training code which the Commission required in order to pay the Appellant EI benefits. On this matter, I have no discretion to ignore the requirements specified by the Commission with regard to an approved training code.

[46] Finally, the Appellant expressed confusion as to why the Commission disentitled him from July 10, 2023, to August 11, 2023, when his course started June 5, 2023. On this matter, I wish to emphasize that the Appellant applied for regular EI benefits on July 7, 2023, and established his claim on **July 9, 2023**. So, the Commission was looking at

---

[15] *Knee v. Canada (Attorney General)*, 2011 FCA 301.

the period from July 10, 2023, to August 11, 2023, owing to when the Appellant established a claim for EI benefits.

Conclusion

[47] The Appellant hasn't shown that he was available for work within the meaning of the law. Because of this, I find the Appellant can't receive EI benefits from July 10, 2023, to August 11, 2023.

[48] This means the appeal is dismissed.

Gerry McCarthy

Member, General Division – Employment Insurance Section