



Citation: *LC v Canada Employment Insurance Commission*, 2024 SST 800

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

## Decision

**Appellant:** L. C.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (624218) dated October 25, 2023  
(issued by Service Canada)

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**Tribunal member:** Bret Edwards

**Type of hearing:** Teleconference

**Hearing date:** January 23, 2024

**Hearing participant:** Appellant

**Decision date:** January 30, 2024

**File number:** GE-23-3431

## Decision

[1] The appeal is allowed in part.

[2] The Appellant hasn't shown that she was available for work from December 26, 2022 to March 12, 2023. This means she is disentitled from receiving Employment Insurance (EI) benefits during that specific period.

[3] But the Appellant has shown that she has been available for work from March 13, 2023 onwards. This means she isn't disentitled from receiving EI benefits during this period. So, the Appellant may be entitled to benefits from March 13, 2023 onwards if she has met other qualifying conditions.

## Overview

[4] The Canada Employment Insurance Commission (Commission) decided the Appellant is disentitled from receiving Employment Insurance (EI) regular benefits from December 26, 2022 onwards because she hasn't been available for work.<sup>1</sup> A 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.

[5] I must decide whether the Appellant has proven she is available for work. The Appellant has to prove this on a balance of probabilities. This means that she has to show that it is more likely than not that she is available for work.

[6] The Commission says the Appellant isn't available because she has limited her opportunities to find suitable employment. It says she wasn't looking for full-time work up to the end of June 2023 because of family obligations and didn't apply to many jobs in July and August 2023 after she started looking for full-time work.<sup>2</sup>

[7] The Appellant disagrees and says she was available and looking for full-time work as of March 13, 2023 with no family obligations. She also says she looked for work

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<sup>1</sup> GD3-51.

<sup>2</sup> GD4-3 to GD4-4.

a lot of different ways and applied to the jobs she could even though her English is not very good.

## **Matters I have to consider first**

### **The Appellant asked for an interpreter**

[8] The Appellant asked for an interpreter as English isn't her first language. At the hearing, the Appellant confirmed that she wanted the interpreter to translate everything that was said.

[9] So, the hearing was fully conducted through an interpreter to ensure the Appellant could understand and participate in the proceedings.

### **50(8) Disentitlement**

[10] The Commission says it disentitled the Appellant under subsection 50(8) of the *Employment Insurance Act* (EI Act).<sup>3</sup> Section 50(8) of the EI Act states the Commission may require an appellant to prove reasonable and customary efforts to find suitable employment.<sup>4</sup>

[11] In other words, the Appellant only needs to prove reasonable and customary efforts under section 50(8) if the Commission exercises its discretion to require it.

[12] I've looked through the evidence and don't see any requests from the Commission to the Appellant to prove her reasonable and customary efforts, or any claims from the Commission that if she did, her proof was insufficient.<sup>5</sup>

[13] I further find the Commission didn't make any detailed submissions on how the Appellant failed to prove that she was making reasonable and customary efforts. It only mentioned this briefly when discussing the Appellant's limited availability for full-time work and job search efforts.<sup>6</sup>

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<sup>3</sup> GD4-4.

<sup>4</sup> See section 50(8) of the *Employment Insurance Act* (EI Act).

<sup>5</sup> GD3-35, GD3-47.

<sup>6</sup> GD4-3 to GD4-4.

[14] Based on the lack of evidence that the Commission asked the Appellant to prove her reasonable and customary efforts to find suitable employment, I find the Appellant isn't disentitled under this part of the law.

## Issue

[15] Is the Appellant available for work?

## Analysis

### Capable of and available for work

[16] I have to consider whether the Appellant has been capable of and available for work but unable to find a suitable job.<sup>7</sup> Case law sets out three factors for me to consider when deciding this. The Appellant has to prove the following three things:<sup>8</sup>

- a) She has wanted to go back to work as soon as a suitable job is available.
- b) She has made efforts to find a suitable job.
- c) She hasn't set personal conditions that might have unduly (in other words, overly) limited her chances of going back to work.

[17] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.<sup>9</sup>

#### – Wanting to go back to work

[18] The Appellant hasn't shown that she wanted to go back to work as soon as a suitable job is available for part of her disentitlement period, specifically from December 26, 2022 to March 12, 2023.

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<sup>7</sup> See section 18(1)(a) of the EI Act.

<sup>8</sup> 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.

<sup>9</sup> 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.

[19] But the Appellant has shown that she wanted to go back to work as soon as a suitable job is available for the other part of her disentitlement period, specifically from March 13, 2023 onwards.

[20] The Appellant testified that she wasn't ready to look for work from December 26, 2022 to March 12, 2023 due to family obligations. I find this means she didn't want to go back to work during this period.

[21] The Appellant also testified that she was able to look for full-time work starting March 13, 2023 because she had resolved her family obligations by then. I find this means she did want to work during this period since she says she has been available for full-time work.

[22] I therefore find the Appellant hasn't shown that she wanted to go back to work from December 26, 2022 to March 12, 2023. She wasn't interested in working then.

[23] But I find the Appellant has shown that she wanted to go back to work from March 13, 2023 onwards. She has been ready to work since then.

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

[24] The Appellant didn't make enough effort to find a suitable job for part of her disentitlement period, specifically from December 26, 2022 to March 12, 2023.

[25] But the Appellant did make enough effort to find a suitable job for the other part of her disentitlement period, specifically from March 12, 2023 onwards.

[26] The Appellant testified that she wasn't looking for work from December 26, 2022 to March 12, 2023 because she wasn't ready to work during that period. I find this confirms that she wasn't making any effort to find work during that period.

[27] The Appellant also wrote in her Notice of Appeal and testified that the Commission misunderstood some of the things she said about her availability because of her poor English skills.<sup>10</sup>

[28] The Appellant testified that she has been available for full-time work from March 13, 2023 onwards. She has been able to find childcare since then, so she no longer has family obligations that have limited her ability to work.

[29] The Appellant also testified that she has taken many different steps to look for full-time work since March 13, 2023, including the following:

- She applied online to “at least 3 or 4” jobs that involve driving, which she has experience doing, including X and X.
- She looked for many more jobs online at the Canada Job Bank website after a friend referred her there.
- She emailed her resume to many potential employers, including X.
- She submitted her resume in person to different restaurants, but they didn’t consider her because she doesn’t have any experience working in that industry.
- She reached out to her previous employer (X) and returned to work there part-time from August 21, 2023 to September 29, 2023.
- X contacted her in early September 2023 for an interview after she had applied for a full-time job. She accepted the job and started working there in early October 2023.
- Her English isn’t that good, but she is trying to improve it by focusing on learning new words every day.

[30] The Commission says that the Appellant hasn’t made enough efforts to find a suitable job. It says she told the Commission that she didn’t start looking for full-time work until July 2023 and only applied to 2 or 3 jobs in July 2023 and August 2023, which

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<sup>10</sup> GD2-5.

shows she didn't make a genuine and reasonable effort to obtain suitable, full-time work.<sup>11</sup>

[31] I disagree with the Commission.

[32] I acknowledge that the Commission's record of its conversation with the Appellant on October 25, 2023 does indicate that she said she wasn't available for full-time work until July 1, 2023 because she had some childcare issues.<sup>12</sup>

[33] And I acknowledge that the Commission's record of its conversation with the Appellant on October 25, 2023 also does indicate that she said she only applied to 2 or 3 jobs in July 2023 and August 2023 once she started looking for full-time work.<sup>13</sup>

[34] But I find the Commission's record of that conversation doesn't accurately or fully capture the Appellant's job search efforts from March 13, 2023 onwards.

[35] I had a chance to speak to the Appellant and find her to be credible. Her testimony was clear, direct, and sincere. And she answered my questions with as much detail as I feel she could provide.

[36] Since I find the Appellant to be credible, I accept her explanation that the Commission misunderstood some of the things she said because of her poor English skills. It's also likely that this could have happened because there was no interpreter present during that conversation.

[37] I also note the Appellant had a chance to testify at the hearing with the help of an interpreter. Because of that, and since I find her credible, I'm satisfied that her testimony more likely reflects her true job search efforts from March 13, 2023 onwards than what was said when she spoke to the Commission. This means I find that the Appellant was available and looking for full-time work from March 13, 2023 onwards because she had

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<sup>11</sup> GD4-3 to GD4-4.

<sup>12</sup> GD3-47.

<sup>13</sup> GD3-47.

found childcare by that time. It also means that I find that she did various things to try and find work beyond simply applying for jobs.

[38] For these reasons, I give more weight to the Appellant's testimony than to the Commission's record of its conversation with the Appellant on October 25, 2023.

[39] I also find the Appellant provided other information about her availability to the Commission that matches her testimony.

[40] More specifically, the Appellant wrote the following in her reconsideration request to the Commission: "Last Christmas break to right before March break, I did not ready to look for a full-time job. However, on March 13 and later, I tried my best to look for one that I sent out many resumes, but did not receive any responses, until Sept 7<sup>th</sup> this year, I got a message about an interview from one of the X recruitment teams."<sup>14</sup>

[41] In my view, the Appellant's reconsideration request shows that she was available and looking for full-time work after March 13, 2023. She clearly makes a distinction between the period before then ("Last Christmas break to right before March break") and the period that followed ("on March 13 and later") when discussing her desire for and efforts to find full-time work. The Commission didn't acknowledge this evidence in its arguments.<sup>15</sup>

[42] And, in my view, the Appellant's reconsideration request also shows that she her efforts to look for work have included more than just applying for jobs. She clearly says that "on March 13 and later", she sent out "many responses" but didn't get a response until "Sept 7<sup>th</sup> this year" when X contacted her for an interview, which I find means she was regularly sending out resumes during this period. The Commission didn't acknowledge this evidence in its arguments either.<sup>16</sup>

[43] I therefore find the Appellant's reconsideration request further strengthens her testimony and credibility. It aligns with her testimony that she has been available and

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<sup>14</sup> GD3-44.

<sup>15</sup> GD4-3 to GD4-4.

<sup>16</sup> GD4-3 to GD4-4.



looking for full-time work from March 13, 2023 onwards and has taken different steps since then to find full-time work besides just applying for jobs.

[44] For these reasons, I give more weight to the Appellant's reconsideration request than to the Commission's record of its conversation with the Appellant on October 25, 2023.

[45] Based on the Appellant's testimony and other evidence, I'm satisfied that she has made sufficient efforts to look for a suitable job from March 13, 2023 onwards. I'm aware that she applied for just 3 or 4 jobs. But in my view, she took several other steps to continuously look for work during this period aside from applying for jobs, such as contacting potential employers, sending out resumes, searching for jobs online, and attending an interview. These efforts ultimately led her to secure a part-time job with her former employer in late July 2023 and then secure a full-time job with a new employer (X) in early October 2023.

[46] I note the Appellant also testified that she had documents related to her job search efforts and was willing to submit them after the hearing. I followed up with her about this, but she didn't submit any documents by the deadline.<sup>17</sup>

[47] Even so, I'm still satisfied that the Appellant made sufficient efforts to look for a suitable job from March 13, 2023 onwards based on her testimony and other evidence that I've already discussed above. Not seeing the documents related to her job search efforts doesn't change the fact that I find she already gave credible testimony about her these efforts during this period and provided the Commission with other evidence that matches her testimony.

[48] In other words, I don't need to see the Appellant's documents related to her job search. She has already persuaded me through her testimony and other evidence that she has taken a variety of different steps to look for full-time work since March 13, 2023

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<sup>17</sup> GD7-1 to GD7-3.

and that these efforts have been regular and continuous and led to her finding part-time and later full-time work.

[49] So, I find the Appellant didn't make enough effort to find a suitable job for part of her disentitlement period, specifically from December 26, 2022 to March 12, 2023. She has confirmed that she wasn't ready to work and wasn't looking for work then.

[50] But I find the Appellant did make enough effort to find a suitable job for the other part of her disentitlement period, specifically from March 12, 2023 onwards. She provided credible testimony and evidence about her efforts to find full-time work.

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

[51] The Appellant did set personal conditions that might have unduly limited her chances of going back to work for part of her disentitlement period, specifically from December 26, 2022 to March 12, 2023.

[52] But the Appellant didn't set personal conditions that might have unduly limited her chances of going back to work for the other part of her disentitlement period, specifically from March 13, 2023 onwards.

[53] The Appellant testified that she wasn't ready to work and wasn't looking for work from December 26, 2022 to March 12, 2023. I find her decision not to work or look for work during this period was a personal condition that limited her ability to find work then because she chose to make these decisions.

[54] The Appellant also testified that she was looking for full-time work from March 13, 2023 onwards and didn't have any limitations on when she could work from that time forwards. And, as discussed above, she testified that she applied to 3 or 4 jobs but looked for many more jobs online, sent out many resumes, and contacted potential employers in person.

[55] The Commission says the Appellant limited her opportunities to find suitable work because she only applied to 2 or 3 jobs and her history of part-time work, her family

responsibilities and her job search efforts don't show that she wanted to transition to a full-time job.<sup>18</sup>

[56] I disagree with the Commission.

[57] As discussed above, I find the Appellant to be credible and accept her testimony that the Commission misunderstood some of the things she said. I also find that she provided other evidence to the Commission (specifically in her reconsideration request) that aligns with her testimony.

[58] As a result, I find that the Appellant was available for full-time work without restrictions from March 13, 2023 onwards, which is contrary to what the Commission says.

[59] I also find that the Appellant's job search efforts were more extensive than what the Commission says. More specifically, I find that she applied for more jobs (3 or 4 instead of 2 or 3) and did various other things to look for work besides applying for jobs (including looking for many more jobs online and contacting potential employers in person). I'm aware that she only applied for 3 or 4 jobs during this period, but I'm persuaded that she wasn't limiting her ability to find suitable full-time work because she has shown that she took other steps to look for available jobs, including sending out many resumes.

[60] And I find that the Appellant's job search efforts do show that she wanted to secure full-time work, contrary to what the Commission says. Her testimony and reconsideration request to the Commission make clear that she has been available and looking for full-time work from March 13, 2023 onwards. And she was able to secure a full-time job with X in early October 2023 because of her job search efforts.

[61] As a result, I find the Appellant's availability for work and job search from March 13, 2023 onwards wasn't a personal condition that limited her ability to find suitable work. Her testimony and other evidence (specifically what she wrote in her

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<sup>18</sup> GD4-3 to GD4-4.

reconsideration request) shows that she was available for full-time work and didn't restrict her job search in ways that impacted her chances of going back to work.

[62] I also acknowledge that the Appellant says her English is poor.

[63] But I find the Appellant's limited English skills haven't restricted her ability to find suitable work either.

[64] The Appellant testified that she has been trying to learn new English words every day. I find this shows that she has been consciously taking steps to try and improve her English.

[65] The Appellant also testified that she has previously worked part-time and now works full-time as a bus driver. I find this shows that she has been able to secure work in an industry (transportation) where she likely needs to sometimes communicate with people in English.

[66] And the Appellant testified that she reached out to potential employers in the restaurant industry but was told they weren't interested because she doesn't have any experience. I find this shows that she feels she can work in another industry where she would likely need to sometimes communicate with people in English. And I find this also shows that her limited English skills weren't a barrier to her finding employment in that industry as there's no indication that the employers that she contacted decided not to hire her because she doesn't speak English well.

[67] Taken together, I find the Appellant's English skills aren't a personal condition that has limited her job search and chances of going back to work. She has been working to improve her English, has applied for work in different industries where she would need to speak at least some English, and is now working full-time in one of these industries.

[68] So, I find the Appellant did set personal conditions that might have unduly limited her chances of going back to work for part of her disentitlement period, specifically from December 26, 2022 to March 12, 2023.

[69] But I find the Appellant didn't set personal conditions that might have unduly limited her chances of going back to work for the other part of her disentitlement period, specifically from March 13, 2023 onwards.

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

[70] Based on my findings on the three factors, I find the Appellant hasn't shown that she was capable of and available for work but unable to find a suitable job for part of her disentitlement period, specifically December 26, 2022 to March 12, 2023. During that period, she didn't want to go back to work, didn't make any effort to look for work, and set personal conditions that unduly limited her chances of finding suitable work.

[71] But I also find the Appellant has shown that she has been capable of and available for work but unable to find a suitable job for the other part of her disentitlement period, specifically from March 13, 2023 onwards. Since that time, she has wanted to go back to work, has made enough efforts to look for work, and hasn't set personal conditions that have unduly limited her chances of finding suitable work.

## **Conclusion**

[72] The Appellant hasn't shown that she was available for work within the meaning of the law from December 26, 2022 to March 12, 2023. Because of this, I find the Appellant can't receive EI benefits during that period.

[73] But the Appellant has shown that she has been available for work within the meaning of the law since March 13, 2023. Because of this, I find the Appellant isn't disentitled from receiving EI benefits from that date onwards. So, the Appellant may be entitled to benefits during that period.

[74] This means the appeal is allowed in part.

Bret Edwards

Member, General Division – Employment Insurance Section