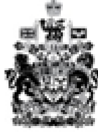

Citation: *CB v Canada Employment Insurance Commission*, 2024 SST 682

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	C. B.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (564291) dated May 1, 2023 (issued by Service Canada)

Tribunal member:	Ranjit Dhaliwal
Type of hearing:	Teleconference
Hearing date:	November 8, 2023
Hearing participants:	Appellant
Decision date:	{March 20, 2024}
File number:	GE-23-1399

Decision

[1] The appeal is partially allowed. The Tribunal partially agrees with the Appellant.

[2] The Appellant has shown that she was available for work. This means that she isn't disentitled from receiving Employment Insurance (EI) benefits. So, the Appellant may be entitled to benefits.

[3] The Appellant does not dispute the Commissions position on her Allocation of earnings and is willing to repay an overpayment of benefits.

[4] On the issue of Allocation of earnings, the Tribunal agrees with the Commission.

Overview

[5] The Canada Employment Insurance Commission (Commission) decided that the Appellant was disentitled from receiving Employment Insurance (EI) regular benefits as of May 18, 2020 and onwards because she wasn't available for work. A claimant has to be available for work to get EI regular benefits. Availability is an ongoing requirement. This means that a claimant has to be searching for a job.

[6] I must decide whether the Appellant has proven that she was 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 was available for work.

[7] The Commission says that the Appellant wasn't available because it is not satisfied with the Appellant's job search activities.

[8] The Appellant disagrees and states that she was always looking for work during the period the Commission says she wasn't available.

[9] The Appellant says that she has a history of working with minimal periods of unemployment between jobs. She says she is unable to meet her financial obligations without consistently working. In other words, she needs to work to make ends meet. This is why she continued to work even though her doctor said she should not.

[10] She says that any gap between jobs was minimal, and she made efforts to get a job as quickly as possible.

Matter I have to consider first

The Appellant does not take a position on Allocation

[11] The Commission made submissions on the allocation of unreported earnings.

[12] The Appellant says she has read the Commissions submissions on this topic and believes she might have made an error in reporting due to confusion or mistake.

[13] The Appellant insists that she did not misrepresent her earnings. On this issue both parties are in agreement.

[14] The Appellant agrees to repayment of benefits if required.

[15] Since this issue of Allocation of earnings is not is dispute, it will not be given any further analysis.

Issue

[16] Was the Appellant available for work?

Analysis

[17] Two different sections of the law require claimants to show that they are available for work. The Commission decided that the Appellant was disentitled under both of these sections. So, she has to meet the criteria of both sections to get benefits.

[18] First, the *Employment Insurance Act* (Act) says that a claimant 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.

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[1] See section 50(8) of the *Employment Insurance Act* (Act).
[2] See section 9.001 of the *Employment Insurance Regulations* (Regulations).

[19] Second, the Act says that a claimant 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 a claimant has to prove to show that they are "available" in this sense.[4] I will look at those factors below.

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

[21] I will now consider these two sections myself to determine whether the Appellant was available for work.

Reasonable and customary efforts to find a job

[22] The law sets out criteria for me to consider when deciding whether the Appellant's efforts were reasonable and customary.[5] I have to look at whether her 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.

[23] 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 activities are the following:[6]

- assessing employment opportunities
- preparing a résumé or cover letter
- networking
- contacting employers who may be hiring
- applying for jobs
- attending interviews

[24] The Commission says that the Appellant didn't do enough to try to find a job.

[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 section 9.001 of the Regulations.
[6] See section 9.001 of the Regulations.

[25] The Commission says that the Appellant has failed to show them she made any efforts to find a job.

[26] The Appellant disagrees. The Appellant says she was looking for work by going to businesses in-person and dropping off resumes. She says that she would go back and follow up with those same businesses to see if they have made a decision to hire her. The Appellant says that her efforts were enough to prove that she was available for work.

[27] I find that the Appellant made reasonable and customary efforts to find a job.

[28] The Appellant has shown that she has a history of consistently working. Looking at the time just before May 2020, when the Commission says she was not available, it is clear she quickly found work. Many times she had no gaps between jobs, and at other times just over a month.

[29] The Appellant says she has found success in getting jobs by meeting with potential employers in-person rather than sending applications electronically.

[30] While the lack of electronic records might make it difficult to prove that she made efforts, based on the pattern of her employment, it is more likely than not that she was making efforts to find a job between March 2020 and July 2020 when she ended up finding a new job.

[31] The gap of unemployment from March 2020 to July 2020 is relatively short.

[32] I have also taken into consideration that the Appellant has provided a note from her doctor which says she should refrain from working between February 2020 to July 2020. The reason for this is that the Appellant has been suffering from mental health issues since 2009.

[33] Her mental health issues were more active than usual during the period of late 2019 and all throughout the period that the Commission says she wasn’t available.

[34] Despite her health issues, the Appellant found work during this period, even though her doctor told her not to work. This supports the finding that it's more likely than not she did in-fact try to find work in-person.

[35] The Appellant has proven that her efforts to find a job were reasonable and customary.

Capable of and available for work

[36] Case law sets out three factors for me to consider when deciding whether the Appellant was capable of and available for work but unable to find a suitable job. The Appellant has to prove the following three things:[7]

a) She wanted to go back to work as soon as a suitable job was available.

b) She has made efforts to find a suitable job.

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

[37] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.[8]

– Wanting to go back to work

[38] The Appellant has shown that she wanted to go back to work as soon as a suitable job was available.

[39] The Appellant had justifiable reasons not to work, which are supported by her doctor`s note. Despite those reasons she continued to work. When she was dismissed from M ("M"), she found a job with C ("C") a little over a month later.

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[7] 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.
[8] 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.

[40] Between January 2020 and July 2020 she worked at M, C, X, and W. It seems obvious that her practice of applying in-person has been successful. Getting these jobs shows she has a general desire to be employed.

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

[41] The Appellant has made enough effort to find a suitable job.

[42] 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.[9]

[43] The Appellant's efforts to find a new job included attending employers' businesses to give them her resume and networking. I explained these reasons above when looking at whether the Appellant has made reasonable and customary efforts to find a job.

[44] Those efforts were enough to meet the requirements of this second factor because she has shown they are successful in getting her a job in a relatively short amount of time.

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

[45] The Appellant didn't set personal conditions that might have unduly limited her chances of going back to work.

[46] The Commission doesn't lead any argument on this issue in its submissions and I don't see that as a factor in this case.

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

[47] Based on my findings on the three factors, I find that the Appellant has shown that she was capable of and available for work but unable to find a suitable job.

[9] 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.

Conclusion

[48] The Appellant has shown that she was available for work within the meaning of the law. Because of this, I find that the Appellant isn't disentitled from receiving EI benefits. So, the Appellant may be entitled to benefits.

[49] This means that the appeal is partially allowed on the issue of availability.

Ranjit Dhaliwal

Member, General Division – Employment Insurance Section