Citation: *CB v Canada Employment Insurance Commission*, 2024 SST 1047

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:	Gary Conrad
Type of hearing:	Teleconference
Hearing date:	August 20, 2024
Hearing participant:	Appellant
Decision date:	August 30, 2024
File number:	GE-24-2337

Decision

[1] The appeal is allowed.

[2] The Appellant has shown that she was capable of and available for work for the period of disentitlement. This means that the Appellant should not be disentitled from benefits for that reason.

Overview

[3] In November 2022 the Canada Employment Insurance Commission (Commission) finished a review of the Appellant's July 2019 claim. The Commission decided that they were not able to pay the Appellant benefits from May 17, 2020, onward because she was not capable of working. They say her medical conditions prevented her from returning to the labour market.

[4] The Appellant asked the Commission to reconsider their initial decision but after a review, they upheld their initial decision.

[5] The Appellant appealed this decision to the General Division.

[6] The General Division found in the Appellant's favour; they decided she was available for work.

[7] The Commission appealed the General Division decision to the Appeal Division.

[8] The Appeal Division found the General Division made an error in failing to determine whether the Appellant was capable of work and what type of work would be suitable employment for her.

[9] The Appeal Division returned the file to the General Division to decide on the Appellant's capability and availability.

Matter I have to consider first

50(8) Disentitlement

[10] In their submissions the Commission states they disentitled the Appellant under subsection 50(8) of the *Employment Insurance Act* (Act). Subsection 50(8) of the Act relates to a person failing to prove to the Commission that they were/are making reasonable and customary efforts to find suitable employment.

[11] In looking through the evidence, I do not see any requests from the Commission to the Appellant to prove her reasonable and customary efforts, or any explanations from the Commission to the Appellant about what kind of proof she would need to provide to prove her reasonable and customary efforts.

[12] While the Commission and Appellant did discuss her job search efforts, I find the reasoning in *TM v Canada Employment Insurance Commission*, 2021 SST 11 persuasive, in that it is not enough for the Commission to discuss job search efforts with the Appellant, instead they must specifically ask for proof from the Appellant and explain to her what kind of proof would meet a “reasonable and customary” standard.

[13] I also do not see any discussion about reasonable and customary efforts during the reconsideration process or explicit mention of disentitling the Appellant under section 50(8) of the Act, or anything about the Appellant’s lack of reasonable and customary efforts in the reconsideration decision.

[14] Based on the lack of evidence the Commission asked the Appellant to prove her reasonable and customary efforts to find suitable employment under subsection 50(8) of the Act, the Commission did not disentitle the Appellant under subsection 50(8) of the Act. Therefore, it is not something I need to consider.

Issue

[15] Was the Appellant available for work?

Analysis

Capable of work

[16] In order to be considered available, the Appellant needs to be capable of working.[1]

What the Commission says

[17] The Commission says that the Appellant has a note from her doctor that says she is unable to work from February 2020 to July 14, 2020.[2]

[18] The Commission says the Appellant told them that despite the doctor's recommendation that she could not work, she was still actively looking for work.

[19] The Commission says that the Appellant's statement might have been believable if she had provided a job search record, but she did not.[3]

[20] The fact the Appellant was working two-part time jobs, but had to leave one of them, is further evidence the Appellant's illness prevented her from returning to the labour market once a suitable job became available.

What the Appellant says

[21] The Appellant says that her doctor can write whatever he wants, but she was capable of working and was actively looking for work all throughout the period her doctor said she could not work. The Appellant says she lives along and has no financial help so she had to work top survive.

[22] She did leave her job at the car dealership due to illness, but she was not incapable of working.

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[1] Section 18(1)(a) of the Employment Insurance Act says that a claimant must be "**capable of** and available for work and unable to find suitable employment."
[2] See GD04-9 referencing the note at GD03-139
[3] GD04-10

[23] She says that she has suffered from depression since 2009. She has tools (so mental techniques and physical actions) she uses to help her deal with her depression.

[24] Near the time her employment ended at the car dealership she started to feel symptoms of a crushing heaviness on her chest and was having fainting spells. This greatly concerned her but after talking to her doctor it was stated to be anxiety.

[25] This required different medication than her depression.

[26] She asked the car dealership for time off to work with her doctor to get anxiety medical dialed in, but they could not give her any leave since she was so new, so the employment relationship ended.

[27] She says after two weeks her anxiety medication was dialed in and she was good to go.

[28] The Appellant says that it is true she did not have any records of a job search to show the Commission, but that is because she does all her job searching in person. She goes to places that she knows are hiring, or might be hiring, and talks to someone face-to-face, so she has no electronic records to show.

[29] She says the fact she got a job at a clothing store and a grocery store in July 2020, shows she was out looking for work.

[30] She got her job at the grocery store because she overheard two ladies in the bakery talking about how they needed help, so she asked them if they were hiring, they said yes, and dragged her off to speak to the manager.

[31] The Appellant says the only type of work that would be unsuitable for her is work that requires working with large amounts of information, since she finds that overwhelming and too difficult to manage.

[32] She says that she did leave the clothing store, but that was just because working the two part-time jobs was adding up to more than full-time hours. She says it was too stressful for her to go from one five-hour shift directly to another five-hour shift.

[33] She says that she got another job (in customer service) shortly after she left the bakery (which she left since the training was subpar and the job was not for her) and has been working there ever since.

My findings

[34] I find the whole of the Appellant's testimony credible. I find it credible because it is plausible and supported by the evidence.

[35] I find it plausible that the Appellant was capable of working during the period of the disentitlement, and it was only for a couple of weeks after she left her job, while she was getting her medication adjusted, that she was unable to work.

[36] I find it plausible because I accept she was looking for work.

[37] While she does not have a record of all her job search efforts, I accept that is because she did all her job applications in person, not online, so would have no emails or other electronic records.

[38] She has provided evidence from two different employers, one as far back as 2011, which say that the way the Appellant got the job was by walking into their store and inquiring about employment.[4]

[39] I find that if she was doing this all the way back in 2011 to find work, it shows a pattern of behavior that I have no doubt continued into 2020.

[40] So, I accept that she was looking in her local paper for any sort of hiring ads and going to those locations which were hiring to apply in person, along with walking in cold to any place she felt may be a suitable job for her and asking about work.

[41] The fact she actually obtained two jobs, at a clothing store, and grocery store, which no party disputes, further proves she was looking for work, as it is rather hard to find a job if she was not looking.

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[4] RGD02

[42] I further accept her testimony that the reason she left the clothing store was not because she was incapable of working at all, but just because working two part-time jobs, which added up to over full-time hours, was overwhelming.

[43] I find it completely plausible that the hours of the two jobs combined were more than a full-time job. I accept the one job (grocery store) was giving her around 36 hours a week, since if she lived alone and had no financial help, it is plausible she would need a job giving her almost full-time hours to survive.

[44] With a job that close to full-time hours, it is easily believable that adding another part-time job into the mix would give her hours exceeding full-time and that would be an overwhelming amount of work.

[45] While she also left her job at the grocery store, I again accept that was not because she was incapable of working, but because she disliked the job and poor training (as she stated). I accept as such because she says she acquired another job shortly after leaving the grocery store and is still working at that job to this day.

[46] So, I find, that for the period of the disentitlement, the Appellant was capable of working, despite what her doctor said, because actions speak louder than words, and I accept she was making efforts to find work, as she did end up taking two different jobs.

[47] While she was capable of working, I do find that her medical condition would place a restriction of the type of work she could do, and that any work which required her to work with large amounts of information would be unsuitable, as per her testimony.

Available for work

[48] Case law sets out three factors for me to consider when deciding whether the Appellant was available for work but unable to find a suitable job. The Appellant has to prove the following three things:[5]

[5] 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.

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

b) She was making efforts to find a suitable job.

c) She did not set personal conditions that might have unduly (in other words, overly) limit her chances of going back to work.

[49] When I consider each of these factors, I have to look at the Appellant's attitude and conduct[6] for all the entire period of the disentitlement (May 17, 2020, onward).[7]

– **Wanting to go back to work**

[50] The Appellant has shown that she wanted to work for the entire period of the disentitlement.

[51] I find as such because the Appellant says she needed to work as she lived on her own and had no other financial support. Financial need is a powerful motivator to work, so I can accept that need gave her a strong desire to work.

[52] Further, she also did end up accepting two jobs, which supports she was trying to find work. I would image that if a person did not want to work, they would make no effort to look for work or accept work that was offered to them.

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

[53] The Appellant has proven she was making sufficient efforts to find suitable work.

[54] As I have found above, while she does not have a record of all her job search efforts, I accept that is because she did all her job applications in person so would have no emails or other electronic records.

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[6] 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.
[7] GD04-5

[55] She has provided evidence from two different employers, one as far back as 2011, which say that the way the Appellant got the job was by walking into their store and inquiring about employment.[8]

[56] I find that if she was doing this all the way back in 2011 to find work, it shows a pattern of behavior that I have no doubt continued into 2020.

[57] So, I find that the Appellant's efforts of looking in her local paper for employers who were hiring, going to those locations which were hiring to apply in person, along with walking in cold to any place she felt may be a suitable job for her and asking about work, were sufficient efforts to find employment.

[58] They were sufficient as they were reasonable efforts to find a job, ongoing, and led to her actually obtaining two different jobs.

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

[59] I find the Appellant did have a personal condition, her anxiety and depression that would prevent her from applying for jobs that require handling large amounts of information, but this restriction is allowed by law, and is not overly limiting.

[60] The Appellant need only apply for employment that is suitable. Employment which she cannot do because of her health is not suitable, so she need not apply for it.[9] So, if there were any jobs she decided not to apply for because of their need to handle large amounts of information, that would be fine, since the law allows it.

[61] Regardless, I find her health conditions were not overly limiting.

[62] The fact she actually obtained two jobs, at a clothing store, and grocery store, which no party disputes, proves to me her health conditions were not overly limiting.

[63] As I have previous found, her testimony is credible on why she left the clothing store (two part-time jobs added up to more than full-time hours) and the bakery (was not

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[8] RGD02
[9] Section 9.002 of the *Employment Insurance Regulations*.

to her liking and poor training) in that it was not her health conditions that made her quit those jobs.

[64] I can readily believe she left her job at the clothing store because the hours of her two jobs combined were more than a full-time job and her other job gave her the most hours (she says the grocery store job was giving her around 36 hours a week). Since she lived alone and had no financial help, it is plausible that in order to survive she would need a job giving her almost full-time hours to survive.

[65] With the grocery store job giving her that close to full-time hours, it is easily believable that adding another part-time job into the mix would give her hours exceeding full-time and that would be an overwhelming amount of work.

[66] While she also left her job at the grocery store, I again accept that was not because she was incapable of working, but because she disliked the job and poor training (as she stated). I accept as such because she says she acquired another job shortly thereafter and is still working at that job to this day.

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

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

Conclusion

[68] The appeal is allowed.

[69] The Appellant has shown that she was capable of work and available for work for the entire period of the disentitlement.

[70] This means that the Appellant should not be disentitled from benefits for that reason.

Gary Conrad

Member, General Division – Employment Insurance Section