



Citation: *CL v Canada Employment Insurance Commission*, 2024 SST 875

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

Decision

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

Decision under appeal: Canada Employment Insurance Commission reconsideration decision (649570) dated April 11, 2024 (issued by Service Canada)

Tribunal member: Gerry McCarthy
Type of hearing: Teleconference
Hearing date: June 4, 2024
Hearing participant: Appellant
Decision date: June 11, 2024
File number: GE-24-1718

Decision

Issue 1 (Availability)

[1] The appeal is dismissed.

[2] The Appellant hasn't shown that she was available for work from November 28, 2023, to December 13, 2023. This means that she can't receive Employment Insurance (EI) benefits from November 28, 2023, to December 13, 2023.

Issue 2 (End of Referred Training)

[3] The appeal is dismissed.

[4] The Appellant didn't show good cause for leaving her referred training program. This means the Appellant was subject to a six-week definite disqualification from EI benefits starting the week that she was otherwise payable on December 10, 2023.

Overview

Issue 1

[5] The Canada Employment Insurance Commission (Commission) decided that the Appellant was disentitled from receiving EI regular benefits from November 28, 2023, to December 13, 2023, 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 the Appellant wasn't available because she couldn't prove she was enrolled in referred training between November 28, 2023, and December 13,

2023. The Commission further says the Appellant declared non-availability while she studied during these dates.

[8] The Appellant disagrees and says she deserved to be paid EI benefits while she studied for the Alberta Apprenticeship and Industry Training (AIT) Exam.

Issue 2

[9] The Appellant started her referred training on October 11, 2023, with “Women Building Futures.” The anticipated end date for the referred training was February 16, 2024. The Appellant left the referred training course on November 24, 2023. The Appellant was officially expelled from the referred training course by “Women Building Futures” on November 27, 2023.

[10] The Commission says the Appellant didn’t prove good cause for refusing to resume her training. The Commission further says the Appellant was subject to a six-week definite disqualification starting the week that she was otherwise payable on December 10, 2023.

[11] The Appellant says she left the referred training because the program had “zero interest in getting women into the trades.”

Issue 1 (Availability)

[12] Was the Appellant available for work from November 28, 2023, to December 13, 2023?

Analysis

[13] 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, she has to meet the criteria of both sections to get benefits.

[14] First, the *Employment Insurance Act* (EI 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* (EI Regulations) give criteria that help explain what “reasonable and customary efforts” mean.² I will look at those criteria below.

[15] Second, the EI 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.

[16] The Commission decided the Appellant was disentitled from receiving benefits from November 28, 2023, to December 13, 2023, because she wasn’t available for work based on these two sections of the law.

[17] 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

[18] 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.

[19] I also have to consider the Appellant’s efforts to find a job. The EI Regulations list nine job-search activities I have to consider. Some examples of those activities are the following:⁶

- contacting employers who may be hiring
- applying for jobs

¹ See section 50(8) of the *Employment Insurance Act* (EI Act).

² See section 9.001 of the *Employment Insurance Regulations* (EI Regulations).

³ See section 18(1)(a) of the EI Act.

⁴ See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

⁵ See section 9.001 of the EI Regulations.

⁶ See section 9.001 of the EI Regulations.

- attending interviews

[20] The Commission says the Appellant didn't do enough to try to find a job. Specifically, the Commission says the Appellant couldn't prove she was enrolled in referred training from November 28, 2023, to December 13, 2023. The Commission further says the Appellant declared non-availability while she studied during this time period (GD3-83).

[21] The Appellant disagrees. She says she was studying for her Alberta Apprenticeship and Industry Training (AIT) Exam and deserved to be paid EI benefits during this time period.

[22] I find the Appellant hasn't proven she was making reasonable and customary efforts to find work for the following reasons:

[23] First: The Appellant testified she wasn't available for work from November 28, 2023, to December 13, 2023. The Appellant further stated to the Commission she wasn't available for work during this time period (GD3-83). I realize the Appellant testified she deserved benefits because she was studying for the AIT Exam. However, the Appellant confirmed during the hearing she wasn't available for work during this time. In short, there was no evidence the Appellant was making reasonable and customary efforts to find work during this time period.

[24] Second: The Appellant left her referred training on November 24, 2023. Specifically, the Appellant couldn't prove she was enrolled in referred training from November 28, 2023, to December 13, 2023. I realize the Appellant explained she was studying for the AIT Exam during this time. Nevertheless, I must apply the law to the evidence before me. In other words, I cannot ignore or re-fashion the law even for compassionate reasons.

[25] In summary: The Appellant hasn't proven that her efforts to find a job from November 28, 2023, to December 13, 2023, were reasonable and customary.

Capable of and available for work

[26] 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.

[27] 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

[28] The Appellant hasn't shown that she wanted to go back to work as soon as a suitable job was available from November 28, 2023, to December 13, 2023. On this matter, the Appellant was forthright that she was studying for the AIT Exam and wasn't available for work during this time.

– Making efforts to find a suitable job

[29] The Appellant didn't make enough effort to find a suitable job.

[30] 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

[31] The Appellant was forthright that she wasn't available for work while studying for the AIT Exam from November 28, 2023, to December 13, 2023. This wasn't enough to

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.

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.

meet the requirements of this second factor because the Appellant wasn't making any efforts to find a suitable job because she was preparing for the AIT Exam.

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

[32] The Appellant did set personal conditions that unduly limited her chances of going back to work.

[33] The Appellant says she wasn't available for work while studying for the AIT Exam.

[34] The Commission says the Appellant advised through her statements that she wasn't available for work from November 28, 2023, to December 13, 2023, because she was using the time to study for the AIT Exam.

[35] I find the Appellant unduly limited her chances of going back to work, because she declared she wasn't available for work while studying for the AIT Exam. I realize the Appellant testified that she deserved EI benefits because she was preparing for the AIT Exam. However, the Appellant confirmed she made the decision to leave the referred training course on November 24, 2023, and couldn't prove she was enrolled in the course from November 28, 2023, to December 13, 2023.

– **So, was the Appellant capable of and available for work from November 28, 2023, to December 13, 2023?**

[36] 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 from November 28, 2023, to December 13, 2023.

Issue 2 (End of Referred Training)

[37] Did the Appellant leave her referred training?

[38] If so, did the Appellant have good cause for leaving her referred training?

Analysis

[39] The law says that a claimant is disqualified from receiving benefits if the Commission has terminated the referred training because:

(ii) without good cause, the claimant has withdrawn from the course, program or employment activity, or

(iii) the organization providing the course, program or employment activity has expelled the claimant.¹⁰

[40] A claimant may be subject to a disqualification of 1 to 6 weeks for refusing to follow a course, or other employment related activity as directed by the Commission or a designated authority. If the duration of the course, or activity would have been less than six weeks, then the number of weeks of disqualification will not exceed the duration of the course or employment related activity, had the claimant accepted to attend. Any fraction of a week will count as one week.¹¹

[41] This principle will also apply when a claimant is subject to a disqualification because they stopped attending a course, or other employment related activity to which they were directed by the Commission or a designated authority, and the number of weeks remaining in that activity was less than six.¹²

[42] To show good cause, a claimant has to prove they acted as a reasonable and prudent person would have acted in similar circumstances.¹³

Did the Appellant leave the referred training?

[43] I find the Appellant left her referred training at “Women Building Futures” on November 24, 2023. I make this finding, because the Appellant testified she made the

¹⁰ Section 27(1)(b)(ii)(iii) of the *Employment Insurance Act* (EI Act)

¹¹ *Digest of Benefit Entitlement Principles* 1.6.9 and section 25 of the *Employment Insurance Act* (EI Act).

¹² *Digest of Benefit Entitlement Principles* 1.6.9 and section 25 of the *Employment Insurance Act* (EI Act).

¹³ See *Burke v Canada (Attorney General)*, 2012 FCA 139. This decision addressed the issue of antedate, but still provided a legal test for good cause.

decision not to continue with the referred training course on November 24, 2023. I realize the Commission submitted the Appellant was formally discharged from the referred training on November 27, 2023. The Commission further submitted that the Appellant was given the opportunity to return and resume her studies but didn't do so. Nevertheless, I will accept the Appellant's testimony that she made the decision to leave the course on November 24, 2023. The decision by the Appellant to leave the referred training was prior to date she was officially expelled on November 27, 2023 (GD3-64).

Did the Appellant have good cause for leaving her referred training?

[44] I find the Appellant didn't have good cause for leaving her referred training for the following reasons:

[45] First: There were no health reasons that prevented the Appellant from completing her referred training to the anticipated end date of February 16, 2024. I realize the Appellant testified the training had "zero interest in getting women into the trades." However, this was the Appellant's own view on the training. Nevertheless, I find a reasonable and prudent person would have continued with the course despite their reservations about the overall approach and method of teaching offered.

[46] Second: The Appellant didn't act like a reasonable and prudent person in similar circumstances. Specifically, a reasonable and prudent person would have completed the referred training to the anticipated end date to see if there was further instruction they needed. I realize the Appellant wrote that the referred training program was a fraud as the school didn't connect the student to the employer (GD2). However, this was the Appellant's own opinion on the referred training. In short, I will accept the Appellant was entitled to her own view. However, I find a reasonable and prudent person wouldn't have withdrawn from the course and instead continued to the anticipated end date of February 16, 2024.

[47] Finally, the Commission has correctly followed the *Digest of Benefit Entitlement Principles* when they disqualified the Appellant for six-weeks from benefits. I make this

finding, because the Appellant and Commission both agreed the expected end date of the referred course was February 16, 2024.

Additional Testimony from the Appellant

[48] I realize the Appellant testified that the Commission had taken away 8-weeks of her entitlement to benefits. However, the Commission submitted that the reason the Appellant was delayed payment for 7-weeks instead of the 6-weeks was that she was disentitled for availability from **November 28, 2023, until December 13, 2023**. I agree with the Commission on this matter.

[49] Finally, the Appellant's EI benefits did resume from January 21, 2024, to April 13, 2024. Previously, the Appellant had been paid benefits for the period from June 25, 2023, to November 27, 2023. On this matter, I agree with the Commission that the Appellant had exhausted her **entitlement to 38 weeks of regular EI benefits**.

Conclusion

Issue 1

[50] The Appellant hasn't shown that she was available for work within the meaning of the law from November 28, 2023, to December 13, 2023. Because of this, I find the Appellant can't receive EI benefits for this period of time.

[51] This means the appeal is dismissed.

Issue 2

[52] The Appellant didn't show good cause for leaving her referred training program. This means the Appellant was subject to a six-week definite disqualification from EI benefits starting the week that she was otherwise payable on December 10, 2023.

[53] This means the appeal is dismissed.

Gerry McCarthy

Member, General Division – Employment Insurance Section