



[TRANSLATION]

Citation: *MM v Canada Employment Insurance Commission*, 2023 SST 2079

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

**Decision**

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

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (604916) dated July 20, 2023  
(issued by Service Canada)

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**Tribunal member:** Nathalie Léger  
**Type of hearing:** In person  
**Hearing date:** December 5, 2023  
**Hearing participant:** Appellant  
**Decision date:** December 13, 2023  
**File number:** GE-23-2481

## Decision

[1] The appeal is allowed. The Tribunal 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, she may be entitled to benefits.

## Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Appellant is disentitled from receiving EI regular benefits as of March 30, 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.

[4] I have to 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.

[5] The Commission says that the Appellant wasn't available because she didn't renew her work permit before its expiry date, meaning she could not be granted implied status by Immigration, Refugees and Citizenship Canada (IRCC).<sup>1</sup>

[6] The Appellant disagrees and says that she was only three days late because once she realized that her permit had expired, she went to see her lawyer so she could take the necessary steps.

## Issue

[7] Was the Appellant available for work?

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<sup>1</sup> See GD4-3 and GD4-4.

## Analysis

[8] 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.

[9] 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.<sup>2</sup> The *Employment Insurance Regulations* (Regulations) give criteria that help explain what “reasonable and customary efforts” mean.<sup>3</sup> I will look at those criteria below.

[10] Second, the Act says that a claimant has to prove that they are “capable of and available for work,” but unable of finding a suitable job.<sup>4</sup> Case law gives three things that a claimant has to prove to show that they are “available” in this sense.<sup>5</sup> I will look at those factors below.

[11] But since I have no evidence in the file to suggest that the Commission asked the Appellant to provide it with a list of “reasonable and customary efforts” that she made, I won’t address the requirements of this section.

[12] I will only look at the requirements of section 18 to decide whether the Appellant was available for work.

### Capable of and available for work

[13] Before I consider the specific requirements of this section, it is important to highlight the timeline of events. They are important in this file, which is different from the usual availability cases.

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<sup>2</sup> See section 50(8) of the *Employment Insurance Act* (Act).

<sup>3</sup> See section 9.001 of the *Employment Insurance Regulations* (Regulations).

<sup>4</sup> See section 18(1)(a) of the Act.

<sup>5</sup> See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

– **Timeline of events: work permit renewal**

[14] The most important dates to better understand this decision are as follows:

- June 9, 2022: Work permit expired
- June 12, 2022: Contacted a lawyer to renew the application
- September 2, 2022: Application for work permit renewal submitted
- March 17, 2023: Worked her last day and submitted EI claim
- March 20, 2023: Commission imposed indefinite disqualification
- June 15, 2023: Sent a renewal request to processing centre
- August 23, 2023: Got a new work permit

[15] The Appellant testified at the hearing that in May and June 2022, she was more concerned about her application for permanent residency. When she realized that her work permit was expiring, she contacted her lawyer right away.

[16] She says that her lawyer was late in submitting her documents, which is why her application to renew her permit wasn't submitted until September 2, 2022.

[17] I find that the Appellant is credible when she talks about these facts. Her version of the facts is consistent across her statements. Also, the summer period often results in delays, which is consistent with her application being submitted on September 2.

[18] Even though a three-day delay is enough time for the implied status not to be granted, it doesn't show that she was reckless or careless about her employment status.

[19] Also, the Appellant may not be aware of the importance of renewing her work permit despite applying for permanent residence.

[20] Finally, and this seems like the most important thing in this file, her employer let her to continue to work almost 10 months after her permit expired.

[21] If she had been laid off the moment her work permit expired, it is likely that the Appellant would have made additional efforts, like applying for her status to be restored.<sup>6</sup> So, I am not holding the IRCC's long delay to renew her work permit against her.

– **Capable of and available for work**

[22] 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:<sup>7</sup>

- a) She wants to return to work as soon as a suitable job is offered.
- b) She has made efforts to find a suitable job.
- c) She hasn't set personal conditions that might unduly (in other words, overly) limit her chance of going back to work.

[23] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.<sup>8</sup>

– **Wanting to go back to work**

[24] The Appellant has shown that she wanted to go back to work as soon as a suitable job was available. She testified at the hearing that she made efforts to find another job unsuccessfully. She also gave emotional testimony about the hardship she has endured from not having an income. In my view, this is enough to satisfy the first factor.

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<sup>6</sup> See the Government of Canada website: [Restore your status and get a work permit - Canada.ca](https://www.canada.ca/en/immigration-refugee-citizenship/services/apply-for-a-work-permit/restore-status.html).

<sup>7</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>8</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.

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

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

[26] Like I mentioned before, the Appellant's efforts to find a job have to be assessed considering the overall context of the case. The Appellant had just been let go (which she considered unfair) and was still waiting for her work permit to be renewed.

[27] Given the time that had already gone by since she had applied for a renewal, she rightfully expected that it would be renewed shortly. But she had to wait more than five months for her application to finally be processed.

[28] So, it is normal that her efforts were less intensive than other claimants. She even testified at the hearing that she contacted various employment agencies unsuccessfully.

[29] In this case's circumstances, I find that these efforts were enough to satisfy the second factor.

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

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

[31] The Commission says that the Appellant's delay in applying for a work permit renewal is a personal condition that unduly limited her chances of going back to work.

[32] I find that this isn't the case. Like I mentioned in the previous paragraphs and given the specific context of the case, the fact that her work permit wasn't renewed isn't a personal condition that unduly limits her chances of working.

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

[33] Based on my findings on these 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.

## **Conclusion**

[34] 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 disqualified from receiving EI benefits. So, she may be entitled to benefits.

[35] This means that the appeal is allowed.

Nathalie Léger

Member, General Division – Employment Insurance Section