



Citation: *TH v Canada Employment Insurance Commission*, 2024 SST 1624

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

## **Decision**

**Appellant:** T. H.

**Respondent:** Canada Employment Insurance Commission

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**Decision under appeal:** Canada Employment Insurance Commission  
reconsideration decision (666542) dated June 4, 2024  
(issued by Service Canada)

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**Tribunal member:** Audrey Mitchell

**Type of hearing:** In writing

**Decision date:** July 30, 2024

**File number:** GE-24-2360

## Decision

[1] The appeal is dismissed. I disagree with the Appellant.

[2] The Appellant hasn't shown that he is available for work. This means that he can't receive Employment Insurance (EI) benefits.

## Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Appellant is disentitled from receiving EI regular benefits as of November 27, 2023, because he 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 must decide whether the Appellant has proven that he is available for work. The Appellant has to prove this on a balance of probabilities. This means that he has to show that it is more likely than not that he is available for work.

[5] The Commission says the Appellant isn't available because he hasn't shown that he is capable of working and is engaged in sustained job search activities.

## Matters I have to consider first

### The Appellant didn't respond to written questions

[6] The Tribunal has to hold a hearing in the format requested by the Appellant.<sup>1</sup> The Appellant asked to have his hearing in writing. So, I asked him to answer some questions. The Tribunal sent the questions to the Appellant to the email address that he gave.

[7] When the Tribunal sends a document to a party by email, it is considered to have been received on the next business day.<sup>2</sup> So, the Appellant got the questions sent to

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<sup>1</sup> See section 2(1) of the *Social Security Tribunal Regulations*.

<sup>2</sup> See section 22(4) of the *Social Security Tribunal Rules of Procedure*.

him by email on July 17, 2024. But he didn't answer the questions by the deadline given.

[8] I'm satisfied that the Appellant got the letter with the questions. So, I proceeded with the decision, but without his additional input.

## Issue

[9] Is the Appellant available for work?

## Analysis

### Available for work

[10] 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 sections. So, he has to meet the criteria of both sections to get benefits.

[11] 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>3</sup> The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" mean.<sup>4</sup>

[12] The Commission says it disentitled the Appellant under section 50 of the Act along with section 9.001 of the Regulations for failing to prove his availability for work. In its submissions, it says showing availability requires a claimant to prove that they are making reasonable and customary efforts to find suitable employment.

[13] The Commission's notes don't reflect that it asked the Appellant to prove his availability by sending a detailed job search record.

[14] I find a decision of the Appeal Division on disentitlements under section 50 of the Act persuasive. The decision says the Commission can ask a claimant to prove that they have made reasonable and customary efforts to find a job. It can disentitle a

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<sup>3</sup> See section 50(8) of the *Employment Insurance Act* (Act).

<sup>4</sup> See section 9.001 of the *Employment Insurance Regulations* (Regulations).

claimant for failing to comply with this request. But it has to ask the claimant to provide this proof and tell the claimant what kind of proof will satisfy its requirements.<sup>5</sup>

[15] I don't find that the Commission asked the Appellant to provide his job search record to prove his availability. So, I don't find that he is disentitled under this part of the law.

[16] 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.<sup>6</sup> Case law gives three things a claimant has to prove to show that they are "available" in this sense.<sup>7</sup> I will look at those factors below.

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

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

[18] 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**

[19] The Appellant has shown that he wants to go back to work as soon as a suitable job is available.

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<sup>5</sup> *L. D. v. Canada Employment Insurance Commission*, 2020 SST 688

<sup>6</sup> See section 18(1)(a) of the Act.

<sup>7</sup> See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

<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.

[20] The Appellant spoke to the Commission about his availability for work. The Commission asked him if he had started a job search. The Appellant said he had not; he was trying to take care of his health issue first. But after the Commission denied his application for benefits, the Appellant said he was ready and willing to work.

[21] Later, the Appellant told the Commission that he can work with his medical condition. He said he had started to look for work as of January 1, 2024.

[22] I will address the Appellant's efforts to find work below. But I'm satisfied that he has shown that he wants to return to work as soon as a suitable job is offered. Even though he has a health issue that might affect his capability of working, I find that the Appellant's action and attitude are those of someone who wants to return to work.

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

[23] The Appellant hasn't made enough effort to find a suitable job.

[24] At first, the Appellant told the Commission that he hadn't looked for work since becoming unemployed. He later said that he started to look for work on January 1, 2024. The Appellant said he assessed employment opportunities on Indeed and submitted four job applications between January 1 and May 31, 2024, but he could only remember the names of three of the companies where he applied.

[25] Since the Appellant didn't respond to the written questions sent to him, I don't have more information on his efforts to find work.

[26] I find that the Appellant used activities of the type listed in the law to try to find work. But I don't find that his efforts were enough. Without more information from the Appellant, I don't find that looking for jobs using one job search website and applying for three or four jobs in five months is enough to show that he's available for work.

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

[27] The Appellant hasn't set personal conditions that might unduly limit his chances of going back to work.

[28] The Commission didn't address this factor.

[29] The Appellant told the Commission that he had no restrictions to the hours he was willing to work. He said he would accept all shifts. He also said he was prepared to commute by bus, an hour to an hour and a half one way, or he could walk 45 minutes locally.

[30] I'm satisfied from the Appellant's evidence to the Commission that he didn't set any personal conditions that might unduly limit his chances of returning to work.

### **Capable of working**

[31] I also have to consider whether the Appellant is capable of working.<sup>10</sup>

[32] The Appellant spoke to the Commission about his health condition. He said he doesn't drive and walks with a cane, so any work has to be local.

[33] The Appellant told the Commission that his physical condition doesn't prevent him from working. But later, he told the Commission that he needs to know if he needs any special accommodation for his knee. He said that's why he's trying to get a family doctor.

[34] The Commission said that since the Appellant hasn't had a medical assessment on his capability to work, he can't establish if he can perform work duties. I asked the Appellant about this. But again, the Appellant didn't respond to this and other written questions.

[35] Based on the evidence before me that he needs to know what if any accommodations he needs due to the condition of his knee, I don't find that the Appellant has shown that he is capable of work.

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<sup>10</sup> See section 18(1)(a) of the Act.

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

[36] Based on my findings on the three factors, I find that the Appellant hasn't shown that he is capable of and available for work but unable to find a suitable job.

## **Conclusion**

[37] The Appellant hasn't shown that he is available for work within the meaning of the law. Because of this, I find that the Appellant can't receive EI benefits.

[38] This means that the appeal is dismissed.

Audrey Mitchell

Member, General Division – Employment Insurance Section