Citation: *JS v Canada Employment Insurance Commission*, 2024 SST 1646

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	J. S.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (682769) dated September 27, 2024 (issued by Service Canada)

Tribunal member:	Nathalie Léger
Type of hearing:	Teleconference
Hearing date:	November 5, 2024
Hearing participant:	Appellant
Decision date:	November 7, 2024
File number:	GE-24-3523

Decision

[1] The appeal is allowed in part.

[2] The Appellant has shown that she was available for work from July 23, 2024, onwards. This means that she isn't disentitled from receiving Employment Insurance (EI) benefits as of that date. In other words, she is only disentitled from benefits from June 30, 2024, to July 22, 2024.

Overview

[3] The Canada Employment Insurance Commission (Commission) decided that the Appellant is disentitled from receiving Employment Insurance (EI) regular benefits as of June 30, 2024, because she wasn't available for work. A claimant has to be available for work to receive EI regular benefits. Availability is an ongoing requirement. This means that a claimant must be searching for a job.

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

[5] The Commission says that the Appellant wasn't available because she only began looking for work once she arrived at her new place of residence.[1] It also says that by limiting her search of a suitable employment within a 25 km radius of her home is a personal restriction that has the effect of unduly limiting her chances of going back to work.[2]

[6] The Appellant disagrees and states that she started looking for work as soon as she was informed by the Commission's agent on July 23, 2024, that she needed to show she was available. She admits she did not look for work before that. She also says that it is reasonable for her to not drive long distances considering the area she lives in and the fact that she cannot drive at night for health reasons.

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[1] See GD4-4.
[2] See GD4-5.

Issue

[7] Is the Appellant available for work?

Analysis

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

[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.[3] The *Employment Insurance Regulations* (Regulations) give criteria that help explain what "reasonable and customary efforts" mean.[4] 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 aren't able to find a suitable job.[5] Case law gives three things a claimant has to prove to show that they are "available" in this sense.[6] I will look at those factors below.

[11] The Commission says in its argument that the Appellant is disentitled from receiving benefits because she isn't available for work based on these two sections of the law. But I see nothing that would be relevant there to sustain a disentitlement under section 50(8) of the Act. On the contrary, the Appellant did provide the names of the places she applied to and the dates she did so.[7]

[12] Therefore, I will now consider only if section 18 of the Act to determine whether the Appellant is available for work.

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[3] See section 50(8) of the *Employment Insurance Act* (Act).
[4] See section 9.001 of the *Employment Insurance Regulations* (Regulations).
[5] See section 18(1)(a) of the Act.
[6] See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.
[7] See GD3-28.

Capable of and available for work

[13] 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:[8]

a) She wants to go back to work as soon as a suitable job is available.

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 chances of going back to work.

[14] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.[9]

– Wanting to go back to work

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

[16] She has always maintained that she wants to go back to work as soon as a suitable employment is offered. She testified to this effect at the hearing. Although she admits it might have been challenging for her to start a new job before arriving in her new place of residence on September 6, 2024, she says she was willing to start the very next day.

[17] She has also given the names of job offers she answered before she arrived at her new place of residence on September 5, 2024. Therefore, I find that she meets this criterion.

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[8] 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.
[9] 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**

[18] The Appellant has made enough effort to find a suitable job starting July 23, 2024. Prior to date, she agrees she did not search for work.

[19] I have considered the list of job-search activities found in section 9.001 of the *Employment Insurance Regulations* (Regulations) in deciding this second factor. This list is for guidance only.[10]

[20] The evidence shows that the Appellant's efforts to find a new job include :

a) looking at the job offers sent to her by Service Canada and applying on many of the jobs offered;[11]

b) updating her resumé and creating a cover letter;

c) letting friends and family know she is looking for a job;

d) going in person to many of the businesses in her small town to see if they need someone;

e) looking at the jobs website created for her town which is called "X". She testified that she looks every two days at most even if she does not meet the requirements for most of the jobs posted;

[21] The Appellant testified that it is the first time that she has to look for work in this way. She worked for 48 years for her last employer in Newfoundland. She is not aware of specialized jobs websites like Jobboom or LinkedIn. She says she is looking for any type of work, even if it pays less than what she was earning in the past. She has experience as an administrative assistant, but because of the size of her town, she knows it might be difficult to find a job in that field. She is therefore willing to work in another capacity.

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[10] 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.
[11] See GD3-28.

[22] The Commission says that because the Appellant initially says that she would not look for work before arriving in X, she has not shown that she is making reasonable efforts to find a job. I agree that the Appellant has said that she did not look for work before July 23. But the evidence shows that she did so starting July 23, 2024.[12]

[23] She did many of the elements provided by the Regulations and she is still doing them: assessing employment opportunities, preparing a cover letter and resumé, registering for an electronic job bank, networking, contacting prospective employers, etc. It is important to remember that applying on jobs is just one of the criteria listed in the Regulations – it is not the only thing that must be looked at.

[24] Considering the specific situation of the Appellant, I find that those efforts are sufficient to meet the requirements of this second factor starting July 23, 2024.

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

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

[26] The Commission says that limiting her search to a 25 km radius from her home is a personal preference that unduly limits her chances of going back to work. It says that "it has long been established" that a commute of an hour is not unreasonable.[13] The larger town in her area is Prince Albert, which is at least a 45-minute commutes (60-70 km).

[27] The Commission claims that it is only a personal preference of the Appellant not to drive at night and that it has long been established that a one-hour commute in more isolated areas is reasonable.

[28] I disagree. Every situation must be assessed based on the situation of each individual claimant. Very few hard rules exist in this area. This might be why the

[12] See GD3-28.
[13] See GD4-5.

Commission does not refer to any decisions that would explain what a “reasonable commute time” might be.[14]

[29] The Appellant testified that she has stopped driving at night more than 4 years ago because the lights from the other cars are blinding her. She does not see properly; it is making her very anxious as she is afraid that she could hit a pedestrian or have a collision because she is blinded by car lights at night. She also testified that there is no public transit system in her area that would allow her to get to Prince Albert. This was confirmed by a search done by the Commission.[15]

[30] I find that this is not a personal preference but a real health problem. It is not uncommon for people to have more difficulty driving at night as they get older. The Appellant is 64 years old. She testified that she has not been driving at night for a few years. It is not in any way a consequence of her being in a new environment or a “personal preference”. It is something she must do because the health of her eyes does not allow her to do otherwise.

[31] Furthermore, section 9.002(1) a) of the Regulations provides that to be a suitable employment, the claimant’s health and physical capabilities must allow [her] to commute to the place of work. Considering the distance and the fact that she would certainly have to drive at night, which neither her health nor her physical capabilities allow her to do, I find that limiting her search to 25 km around her home does not unduly limit to her chances of going back to work.

[32] The Appellant has testified that she has no one that could drive her, as her husband also does not drive at night. If she was to find a job in her small town, she would be ready to walk there or try to find a ride.

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[14] See GD4-5.
[15] See GD3-31 to 35.

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

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

Conclusion

[34] The Appellant has shown that she is available for work within the meaning of the law as of July 23, 2024. From June 30, 2024, to July 22, 2024, she has not shown she was available. Because of this, I find that the Appellant isn't disentitled from receiving EI benefits from July 23, 2024, onwards. So, the Appellant may be entitled to benefits.

[35] This means that the appeal is allowed in part.

Nathalie Léger
Member, General Division – Employment Insurance Section