Citation: *MK v Canada Employment Insurance Commission*, 2025 SST 245

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

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

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (690976) dated December 27, 2024 (issued by Service Canada)

Tribunal member:	Audrey Mitchell
Type of hearing:	Videoconference
Hearing date:	February 18, 2025
Hearing participants:	Appellant Interpreter
Decision date:	February 24, 2025
File number:	GE-25-262

Decision

[1] The appeal is allowed in part. The Appellant is entitled to benefits for seven days while she was outside Canada. The Appellant hasn't proven that she was available for work. The Appellant knowingly made false or misleading statements when she completed her bi-weekly claims. The Canada Employment Insurance Commission (Commission) acted in a judicial way when it issued a warning.

Overview

[2] The Commission decided that the Appellant was disentitled from receiving Employment Insurance (EI) regular benefits from July 20 to August 16, 2022, because she was outside Canada.

[3] I have to decide if the Appellant was entitled to benefits while she was outside Canada. Usually, claimants aren't entitled to benefits while outside Canada. To be entitled to benefits, they have to prove that they meet one of the exemptions listed in the law.

[4] The Commission says the Appellant wasn't entitled to benefits while outside Canada. The Appellant disagrees and says she was outside Canada to attend a job interview.

[5] The Commission decided that the Appellant made false or misleading statements. It says she didn't declare that she was outside Canada. So, it issued a warning.

[6] The Appellant says she thought she said in her bi-weekly reports that she was outside Canada but may have made a mistake.

[7] The Commission decided that the Appellant was disentitled from receiving EI benefits because wasn't available for work.

[8] 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.

[9] 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.

Issues

[10] Was the Appellant entitled to EI benefits while she was outside Canada?

[11] Did the Commission properly issue a warning?

[12] Is the Appellant available for work?

Analysis

Outside Canada

[13] Claimants are not entitled to receive benefits for any period when they are not in Canada.[1] There are some exceptions to this rule.[2] There is an exemption for a claimant who is outside Canada to attend a *bona fide* job interview.[3]

[14] The Commission learned from the Canada Border Services Agency (CBSA) that the Appellant was outside Canada from July 20 to August 16, 2022, while she was getting EI benefits. In response to questions from the Commission, the Appellant said she was outside Canada to find a job. She said she was looking for an employer to sponsor her to get a work visa.

[15] The Commission followed up with the Appellant about her search for work outside Canada. She then told the Commission that she had a job offer that she could not accept because the accommodations were not suitable for her children. She sent the Commission an invitation letter to the job interview to be held on August 5, 2022.

[16] I asked the Appellant why she left Canada so early, since her job interview wasn't scheduled until August 5, 2022. The Appellant said her friend who had arranged

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[1] See section 37(b) of the *Employment Insurance Act* (Act).
[2] See section 55(1) of the *Employment Insurance Regulations* (Regulations).
[3] See section 55(1)(e) of the Regulations.

the job interview told her that the employer would hire her, so he needed to find accommodations. She testified that she left Canada early so she could find accommodations and see how far it was from the place of employment and what the rent was.

[17] The Commission acknowledged that the law allows for an absence from Canada of up to seven days to attend a job interview. But it said the Appellant doesn't meet this exception because she left Canada on July 20, but the interview wasn't until August 5.

[18] I asked the Appellant about what the Commission said. She said that when you don't have enough money, you look for the cheapest flights, and that's what she did.

[19] The Appellant testified that she didn't apply for the job outside Canada; her friend arranged the interview for her. Despite the timing of the Appellant's departure from Canada, I find that the reason she left Canada was to attend the job interview. And I find that she used the extra time to look for accommodations in case she accepted a job offer. So, I find that she meets the exemption that allows benefits for up to seven days. I find that the exemption applies from August 4 to 10, 2022.

[20] For this reason, I find that a disentitlement should be imposed from July 20 to August 3, 2022, and from August 11 to 16, 2022, because the Appellant was outside Canada.

Did the Commission properly impose a penalty in the form of a warning?

[21] The Commission can impose a penalty on a claimant if, in its opinion, the claimant provided information or made a representation that the claimant knew was false or misleading.[4]

– **Did the Appellant make false or misleading statements?**

[22] Yes, the Appellant made false or misleading statements.

[4] See section 38(1)(b) of the Act.

[23] The Appellant was outside Canada from July 20 to August 16, 2022. She left while she was getting EI benefits.

[24] The Commission included copies of the bi-weekly claimant reports the Appellant completed covering the period noted above that she was outside Canada. They show that the Appellant answered no to the question that asked if she was outside Canada.

[25] I have already found that the Appellant was outside Canada while getting EI benefits. Since the Appellant said on her reports that she was not outside Canada in the period in question, I find these statements were false.

– **Did the Appellant make the false statements knowingly?**

[26] Yes, the Appellant made the false statements knowingly.

[27] To determine if information was provided knowingly, I must decide if the Appellant subjectively knew that the statements were false or misleading. Common sense and objective factors should be taken into account when determining if a claimant had subjective knowledge that the information provided was false.[5]

[28] The Commission has to prove that the Appellant made statements that she knew were false or misleading. The burden then shifts to the Appellant to explain why the false or misleading statements were made.[6]

[29] As noted above, the Commission included copies of the Appellant's claimant reports in its reconsideration file. Each had the question, "[w]ere you outside Canada between Monday and Friday during the period of this report". The Appellant responded no to this question in each report.

[30] The Commission sent the Appellant questions to answer after it learned from the CBSA that the Appellant had been outside Canada. It asked her to explain why she failed to report her absence from Canada. The Appellant answered by saying she was

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[5] *Mootoo v. Canada (AG)*, 2003 FCA 206; *Canada (AG) v. Gates,* 1995 FCA 600
[6] *Canada (AG) v. Purcell*, A-694-94, *Gates*, *supra*

and is available for work. In an attached written statement, the Appellant said she thought her EI payments would end in July, so that's why she planned to travel then.

[31] I asked the Appellant why she responded no to the questions in her reports about being outside Canada. She said she completed her reports on her mobile phone and believes she answered yes to the question. So, I asked her if she was saying that the reports included in the Commission's reconsideration file are incorrect. The Appellant testified that she could not say that, but she wasn't lying.

[32] I don't accept the Appellant's suggestion that she made a mistake by responding no instead of yes to the question about being outside Canada. I don't find it likely that this would have happened three times. And the Appellant said that she was available for work while outside Canada and was able to properly answer yes to those questions in each report. So, I find it more likely than not that the Appellant consciously answered no and didn't simply make a mistake.

[33] I find that the question in the claimant report that asked about being outside Canada is simple and clear. And each report identifies the dates for the period. Despite the Appellant's explanation, I don't find that subjectively, she could say wasn't outside Canada, especially since she was physically outside Canada when she completed two of the three reports. So, I find that the Appellant had subjective knowledge that the information she was providing was false or misleading.

[34] Based on the above, I find that subjectively, the Appellant knew that when she answered the questions about being outside Canada, her answers were false. I find that this means that she made those false or misleading statements knowingly.

– **Did the Commission exercise its discretion in a judicial way when it issued a warning?**

[35] Yes, the Commission exercised its discretion in a judicial way when it issued a warning.

[36] The Commission's decision to impose a penalty is discretionary. These discretionary decisions should not be disturbed unless the Commission did not act in good faith, having regard to all the relevant factors.[7]

[37] The Commission issued a warning for the three false statements the Appellant made about her absence from Canada. It said it exercised its discretion judicially when it decided to issue a warning instead of a monetary penalty because of the large overpayment the Appellant faces.

[38] I asked the Appellant about the Commission's decision to issue a warning. She said there were a lot of things going on in life. She didn't explain what those things are. She didn't identify any relevant evidence that the Commission didn't consider or any irrelevant evidence that it did consider.

[39] I don't find that the Appellant added any new credible evidence at the hearing about the reasons that she made the false statements about being outside Canada in. And I don't find that the Commission acted in bad faith or in a discriminatory when it issued the warning.

[40] I find no reason to disturb the Commission's decisions about the warning. It considered mitigating circumstances when it issued the warning. I find that the Commission properly issued the warning because the Appellant knowingly made false statements. I find the Commission exercised its discretion in a judicial way.

Availability

[41] 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.

[42] 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.[8] The

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[7] *Canada (AG) v. Sirois*, A-600-95; *Canada (AG) v. Chartier*, A-42-90).
[8] See section 50(8) of the Act.

Employment Insurance Regulations (Regulations) give criteria that help explain what "reasonable and customary efforts" mean.[9]

[43] The Commission states that it disentitled the Appellant under section 50 of the Act along with sections 9.001 of the Regulations for failing to prove her availability for work. In its submissions, it says that it may require a claimant to show that they are making reasonable and customary efforts to find suitable employment.

[44] The Commission's notes do not reflect that it asked the Appellant to prove her availability by sending a detailed job search record.

[45] 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 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.[10]

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

[47] 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.[11] Case law gives three things a claimant has to prove to show that they are "available" in this sense.[12] I will look at those factors below.

Capable of and available for work

[48] The second part of the Act that deals with availability says that a claimant has to prove that they are "capable of and available for work" but aren't able to find a suitable

[9] See section 9.001 of the Regulations)
[10] *L. D. v. Canada Employment Insurance Commission*, 2020 SST 688
[11] See section 18(1)(a) of the Act.
[12] See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.

job.[13] Case law gives three things a claimant has to prove to show that they are "available" in this sense.[14]

[49] The Commission decided that the Appellant is disentitled from receiving benefits because she isn't available for work based on this section of the law.

[50] 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:[15]

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

b) She is making 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.

[51] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.[16]

– **Suitable job**

[52] The Appellant's former employer issued a record of employment (ROE). It said the Appellant had quit her job. In the comments section of the ROE, the employer said the Appellant left for family-related personal reasons.

[53] When she first spoke to the Commission, the Appellant said she had quit her job because had no one to look after her children. She said there was no one to take her children to and pick them up from school. She added that the school was complaining

[13] See section 18(1)(a) of the Act.
[14] See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.
[15] 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.
[16] 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.

about this. But she also said that she was looking for a job with hours from 8:00 a.m. to 4:00 p.m. after her children's summer vacation would end on August 29, 2022.

[54] The Appellant later told the Commission that she needed a job that would accommodate her so she could drop off her children to daycare or school.

[55] The Appellant testified that her previous job was a contract job, and she wasn't getting much work, so she quit. So, I asked her about what the Commission's notes show she said about the reason for quitting her job. The Appellant responded by saying that the Commission should not be concerned with her personal situation. She added that she didn't say what the Commission's notes reflect.

[56] I give more weight to the Commission's notes than to the Appellant's testimony. I do so because the comments on the ROE, from a neutral source, support what the Commission's notes reflect that the Appellant said. So, I find that the Appellant had family obligations that led her to quit her job, and that job wasn't suitable.

[57] Despite the above, I have no reason to doubt the Appellant's statement to the Commission that she could work 8:00 a.m. to 4:00 p.m. She told the Commission that daycare starts at 7:00 a.m., so this would give her enough time to get to work. And these hours are different from the night shifts she testified she was working at her previous job. So, I find that a suitable job for the Appellant is one that she can do from 8:00 a.m. to 4:00 p.m.

– Wanting to go back to work

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

[59] The Appellant said that she was always available for work. She submitted evidence of having applied for jobs. And she left Canada to attend a job interview.

[60] I will look at whether the Appellant's efforts to find work are enough below. But I am satisfied that she wanted to go back to work.

– Making efforts to find a suitable job

[61] The Appellant hasn't shown that she made enough effort to find a suitable job.

[62] The Regulations list nine job-search activities. Some examples of those activities are the following:[17]

- registering for job-search tools or with online job banks or employment agencies
- applying for jobs
- attending interviews

[63] For this factor, that list is for guidance only.[18]

[64] The application for benefits tells claimants that they should keep a record of their job search efforts for six years.[19] So, I asked the Appellant if she kept a record of everything she had done since February 2022 to look for work. The Appellant said she sent a record of her job search to the Commission. After this, she sent another job search record to the Tribunal. She confirmed at the hearing that these were the only jobs she applied for.

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[17] See section 9.001 of the Regulations.
[18] 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.
[19] See page GD3-8.

[65] In the one-year period from when the Appellant applied for benefits, she applied for one job in March 2022, two in April 2022, two in May 2022, three in June 2022, and one in November 2022. She also had the job interview outside Canada in August 2022.

[66] I acknowledge that to find jobs to apply to, the Appellant had to assess job opportunities. All of the in-Canada job applications were through the Indeed website. So, I find that the Appellant engaged in activities of the type listed in the law to try to find work. But I don't find that she has proven that her job search efforts were sustained.

[67] I find that the Appellant made some effort to find work after she quit her previous job. But there were no job applications after her children's school year ended in June, until November 11, 2022, and she didn't submit evidence of anything after that. I find that her job search efforts were sporadic. And I don't find that this is enough to satisfy this factor.

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

[68] The Appellant set personal conditions that might have unduly limited her chances of going back to work from June 23 to August 29, 2022.

[69] The Commission says the Appellant's family obligations limit her availability for work. But I have already found above that a suitable job for the Appellant was one that she could do from 8:00 a.m. to 4:00 p.m. The Appellant told the Commission that she looked for work with these hours from June 1 to 22, 2022. But after that her children's summer break started, and the Appellant said it ended on August 29, 2022.

[70] I find that the Appellant likely had childcare issues in the summer of 2022, and this was a personal condition that limited her chances of returning to work. I find that the pattern of her job search and statement to the Commission supports that personal condition existed from June 23 to August 29, 2022.

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

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

Conclusion

[72] The Appellant has shown that she was outside Canada for one of the reasons listed in the law, but only from August 4 to 10, 2022.

[73] The Appellant hasn't shown that from February 15, 2022, she is available for work within the meaning of the law.

[74] The Commission acted judicially when it issued a warning.

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

Audrey Mitchell
Member, General Division – Employment Insurance Section