Citation: *CB v Canada Employment Insurance Commission*, 2025 SST 365

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant:	C. B.
Representative:	J. E.
Respondent:	Canada Employment Insurance Commission

Decision under appeal:	Canada Employment Insurance Commission reconsideration decision (565165) dated February 23, 2024 (issued by Service Canada)

Tribunal member:	Angela Ryan Bourgeois
Type of hearing:	Teleconference
Hearing date:	March 28, 2025
Hearing participant:	Appellant's representative
Decision date:	April 10, 2025
File number:	GE-24-3609

Decision

[1] The appeal is dismissed. The General Division disagrees with the Appellant.

[2] The Appellant hasn't shown that she was available for work while in school. This means that she can't receive Employment Insurance (EI) benefits.

Overview

[3] In 2021, the Appellant was a high school student. She started grade 12 in September 2021.[1]

[4] She applied for EI benefits on September 7, 2021, and established a benefit period as of September 6, 2021.

[5] The Canada Employment Insurance Commission (Commission) paid the Appellant EI benefits.

[6] She was working part-time for her usual employer, a coffee shop.[2] She left that job on September 26, 2021.

[7] In 2022, the Commission decided that it shouldn't have paid the Appellant benefits from September 26, 2021, because she had voluntarily left her job without just cause, which disqualified her from receiving EI benefits.

[8] The Commission also decided that the Appellant wasn't entitled to EI benefits from September 6, 2021, to June 23, 2022, because she hadn't proven her availability for employment while in non-referred training.[3] Claimants must prove that they are available for work to get EI regular benefits.

[9] The Appellant appealed the Commission's decisions to the General Division of the Social Security Tribunal. The General Division agreed with the Commission that the

---

[1] See page GD3-111.
[2] See page GD3-111. See also page GD3-117, that shows she was working for that employer before the dates shown on the record of employment on page GD3-15.
[3] See decision letters on page GD3-120 and GD3-139.

Appellant was disqualified from receiving EI benefits from September 26, 2021. It said that it didn't have to determine her availability for work because she didn't qualify for EI benefits.

[10] The Appellant appealed the General Division's decision to the Appeal Division. The Appeal Division allowed part of the appeal. It said that the General Division should have decided the Appellant's availability from September 6, 2021, to June 23, 2022. It returned the file to a different member of the General Division to decide this issue. This is how the file came to me.

[11] I have to decide if the Appellant has proven her availability for work from September 6, 2021, to June 23, 2022.

Matter I have to consider first

The Appellant wasn't at the hearing

[12] I scheduled the hearing in this matter for early January 2025. The Appellant reported that she wasn't available until the end of February, so I rescheduled the hearing for February 17, 2025. The Appellant then said that she couldn't get time off work until later in March. To accommodate the Appellant's schedule, I rescheduled the hearing for Friday, March 28, 2025, at 5 p.m.

[13] The Appellant's mother attended the hearing as representative and witness. She told me that the Appellant had to go out. I offered to reschedule the hearing until Monday. I heard her tell the Appellant this. The Appellant's mother then told me that the hearing could go ahead without the Appellant, we didn't need to reschedule.

[14] Appellants don't have to attend their hearings.[4] I was satisfied that the Appellant received the notice of hearing because her representative attended the hearing, and the Appellant was there with the representative when the hearing started.

[15] So, the hearing went ahead without the Appellant present.

---

[4] See section 58 of the *Social Security Tribunal Rules of Procedure.*

Issue

[16] Was the Appellant available for work while in school from September 6, 2021, to June 23, 2022?

Analysis

[17] The *Employment Insurance Act* (Act) says that claimants must prove that they are "capable of and available for work" but can't find a suitable job.[5]

[18] Case law tells me that the Appellant must prove these three things to show that she was "available" in this sense: [6]

- She had a desire to return to the labour market as soon as a suitable job was offered.
- She expressed that desire through efforts to find a suitable job.
- She didn't set personal conditions that might have unduly (in other words, overly) limited her chances of going back to work.

[19] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.[7]

[20] Also, the Federal Court of Appeal has said that claimants who are in school full-time are presumed to be unavailable for work.[8] This is called the "presumption of non-availability." It means we can suppose that students aren't available for work when the evidence shows that they are in school full-time.

---

[5] See section 18(1)(a) of the *Employment Insurance Act* (Act). Section 50(8) of the Act says that to prove that they are available for work, the Commission may ask claimants to prove that they are making reasonable and customary efforts to obtain suitable employment. The Commission mentioned this section of law but it didn't set out how or why the Appellant was disentitled under this section. So, I decided that the disentitlement was only under section 18(1)(a) of the Act.
[6] See *Faucher v Canada Employment and Immigration Commission*, A-56-96 and A-57-96.
[7] 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.
[8] See *Canada (Attorney General) v Cyrenne*, 2010 FCA 349.

[21] I will start by looking at whether I can presume that the Appellant wasn't available for work.

Presuming full-time students aren't available for work

[22] The Appellant was in high school full-time. There is no dispute about this. This means that the presumption applies to her.

[23] The presumption that full-time students aren't available for work can be rebutted (that is, shown to not apply). The Federal Court of Appeal says that I have to do a contextual analysis when deciding whether the Appellant has rebutted the presumption of non-availability.[9]

[24] So, I have considered all relevant considerations, including whether the Appellant was willing to give up school to accept a job offer, if she had a history of being regularly employed while attending school and was looking for similar hours, and if she could follow classes online at a time of her choice.

[25] In her appeal form, the Appellant wrote that:

- She was available evenings and weekends and looking for work during these times.
- She tried to go back to work but it was too much to handle with her studies on top of the 45-minute drive from her hometown to that job.
- She left her job because it was impossible to do both, but she was still looking for work closer to home.
- She was available for work after her 3 p.m. studies, until 10 p.m., but the 45-minute drive both ways was too much and unreasonable.
- She was looking for work.

[9] See *Page* v *Canada (Attorney General)*, 2023 FCA 169.

[26] The Commission says that the Appellant hasn't rebutted the presumption of non-availability. It argues that despite reporting in her appeal that she was available from 3 p.m. until 10 p.m. and looking for work, she clearly told the Commission that she didn't make any efforts to find work outside of the job she left and she didn't look for work before leaving because she was in school.[10]

[27] I find that the Appellant has rebutted the presumption of non-availability while in school full-time. These are the most relevant considerations:

- The Appellant worked 33 hours over a two-week period while attending school.[11] This isn't a "regular" history of working while attending school, but she claims she could have managed working in the evenings and weekends if it weren't for the commute.

- She started working after she applied for EI benefits. This shows that she wanted to work while going to school, even if she could receive EI benefits.

[28] I also considered that:

- The Appellant would not have left school to accept a job.

- There is no evidence that she could have attended classes online or had a flexible school schedule.

[29] I find that her efforts to work in September show a motivation to work while in school that is enough to rebut the presumption and that a closer look at the three availability factors is warranted.

[30] Now I will look at those three availability factors to determine if she has proven her availability for work as required by law.

[10] See page GD4-7.
[11] See record of employment on page GD3-15.

The availability factors

– **Desire to return to the labour market**

[31] The Appellant showed a desire to return to work as soon as a suitable job was available. She accepted a job 45 minutes away from her home. This shows that she wanted to work while attending school.

– **Expression of that desire through her job search efforts**

[32] The Appellant's job search efforts do not show that she wanted to get back to work as soon as a suitable job was available.

[33] The Appellant says that she was looking for a job closer to home, but there is little evidence of what she did to look for and find a job.

[34] Her mother testified that she had resumes out with potential employers.

[35] The Appellant told the Commission that she applied for work at the job she left and with the Hare Bay Recreation Committee.[12]

[36] The Appellant said she would have worked if she found a job.

[37] I find that the Appellant hasn't proven that she did enough to find a job. She didn't provide any details about her job search efforts.[13] She chose not to attend the hearing, so I couldn't ask her about her efforts. Without details, the Appellant's claim that she was looking for work is no more than a bald assertion that she was making efforts. The evidence of the Appellant's job search efforts does not show an expression of a desire to get back to work.

[38] For these reasons, the Appellant has not met this second factor.

---

[12] See page GD3-111 to GD3-112.
[13] I gave the parties time to file additional evidence and submissions. See RGD3. When the hearing was scheduled for January 2025, I set the filing deadline for December 27, 2024. If the Appellant had needed more time, she could have asked, just as she asked for the hearing date to be pushed back.

– Unduly limiting chances of going back to work

[39] The Appellant had a personal condition that unduly limited her chances of getting back to work.

[40] The Appellant was available for work around her school schedule, evenings and weekends. She was usually in school, Monday to Friday, 8 a.m. to 3 p.m.[14] She was not willing to change her course schedule and would not have left school to accept a job. She could work at a part-time job, Monday to Friday, 3 p.m. until 9 or 10 p.m., and Saturday and Sunday.[15]

[41] Since the Appellant had a job that met this restriction, I find that the restriction didn't unduly limit her chances of getting back to work.

[42] The Appellant could not commute 45 minutes to work. Because of her school schedule, she needed a job closer to home. The Appellant told the Commission that she was looking for work in Gander, Hare Bay and Fairbanks.[16] Since she left a job in Gander because it was too far to commute, I find it likely that from September 26, 2021 (when she left that job) she restricted her job search to the Hare Bay area, and a commute of less than 45 minutes.[17]

[43] The Appellant lives in a rural area. There are a couple of gas stations, three stores and a small restaurant. Restricting her job search to her local area meant that she was unduly limiting her chances of finding a job. Commuting up to an hour for employment is reasonable. There is nothing in the file to suggest that the Appellant wasn't capable of commuting this far because of her health or physical capabilities.[18]

[44] So, I find that limiting her availability to her local area unduly limited her chances of getting back to work from September 26, 2021.

---

[14] See page GD3-111.
[15] See page GD3-111 and GD2-4. See also page GD3-112.
[16] See page GD3-112.
[17] See page GD3-117.
[18] Evidence that she couldn't commute to a place of work because of her health and physical capabilities could indicate that it wasn't suitable employment. See section 9.002 of the *Employment Insurance Regulations.*

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

[45] Based on my findings, I find that the Appellant hasn't shown that she was capable of and available for work but unable to find a suitable job from September 6, 2021, to June 23, 2022.

[46] With respect to the period she was working, I find that she was fully employed and not available to work more than she was already working. From September 12, 2021, to September 26, 2021, she was employed to the fullest extent of her availability. She worked 33 hours during these weeks, while also attending high school.[19] With the time she spent in school, working and commuting, it's more likely than not that she wasn't capable of or available to work more than she was already working. So, she isn't entitled to EI benefits for these weeks.

Conclusion

[47] The Appellant hasn't shown that she was available for work within the meaning of the law. This means that she isn't entitled to EI benefits from September 6, 2021, to June 23, 2022.

[48] The appeal is dismissed.

Angela Ryan Bourgeois
Member, General Division – Employment Insurance Section

[19] See record of employment on page GD3-15. See also hours provided by her employer on page GD3-117.