



Citation: *CN v Canada Employment Insurance Commission*, 2025 SST 337

Social Security Tribunal of Canada
General Division – Employment Insurance Section

Decision

Appellant: C. N.

Respondent: Canada Employment Insurance Commission

Decision under appeal: Canada Employment Insurance Commission
reconsideration decision (701748) dated November 6,
2024 (issued by Service Canada)

Tribunal member: Ranjit Dhaliwal

Type of hearing: In person

Hearing date: February 12, 2025

Hearing participants: Appellant
Interpreter

Decision date: March 11, 2025

File number: GE-25-148

Decision

[1] The appeal is dismissed. The General Division disagrees 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 Employment Insurance (EI) regular benefits as of April 7, 2024, 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 that the Appellant isn't available because the Appellant told them he is retired and isn't looking for work.

[6] The Appellant disagrees he is disentitled and states that when he retired his employer told him he is eligible for EI benefits. The Appellant thinks he's eligible for them because his employer said he is.

[7] It looks like the Commission had also thought the Appellant had voluntarily quit his job but later the employer corrected the record of employment to correctly show it was a layoff.¹

Issue

[8] Is the Appellant available for work?

¹ See GD6-8.

Analysis

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

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

[11] 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.⁴ Case law gives three things a claimant has to prove to show that they are “available” in this sense.⁵ I will look at those factors below.

[12] The Commission decided that the Appellant was disentitled from receiving benefits because he isn’t available for work based on these two sections of the law.

[13] I will now consider these two sections myself to determine whether the Appellant is available for work.

Reasonable and customary efforts to find a job

[14] The law sets out criteria for me to consider when deciding whether the Appellant’s efforts are reasonable and customary.⁶ I have to look at whether his efforts are sustained and whether they are directed toward finding a suitable job. In other words, the Appellant has to have kept trying to find a suitable job.

² See section 50(8) of the *Employment Insurance Act* (Act).

³ See section 9.001 of the *Employment Insurance Regulations* (Regulations).

⁴ See section 18(1)(a) of the Act.

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

⁶ See section 9.001 of the Regulations.

[15] I also have to consider the Appellant's efforts to find a job. The Regulations list nine job-search activities I have to consider. Some examples of those activities are the following:⁷

- assessing employment opportunities
- preparing a résumé or cover letter
- applying for jobs
- attending interviews

[16] The Commission says that the Appellant isn't doing anything to try to find a job.

[17] The Appellant agrees. He says that he's retired and isn't looking for work. He's taking an English language course that he admits wasn't authorized by Service Canada before he enrolled in it.

[18] The Appellant thinks he's eligible for EI benefits because the employers' emails to him said he would get them.⁸

[19] The Appellant understands that the employer isn't part of the government or authority that administers the EI benefits.

[20] Technically, at the time the Appellant took his group layoff or early retirement, he may have been eligible for EI benefits, as long as he was looking for another job. EI benefits aren't retirement benefits.

[21] I find that the Appellant isn't looking for work and is retired.

[22] The Appellant hasn't proven that his efforts to find a job are reasonable and customary.

⁷ See section 9.001 of the Regulations.

⁸ See GD2-9, GD6-6.

Capable of and available for work

[23] 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:⁹

- 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.

[24] When I consider each of these factors, I have to look at the Appellant's attitude and conduct.¹⁰

– Wanting to go back to work

[25] The Appellant hasn't shown that he wants to go back to work as soon as a suitable job is available.

[26] He repeatedly stated that he isn't looking to work again.

– Making efforts to find a suitable job

[27] The Appellant hasn't made any effort to find a suitable job.

[28] I have considered the list of job-search activities given above in deciding this second factor. For this factor, that list is for guidance only.¹¹ The Appellant agrees that he hasn't made any effort to look for a new job. He only wants to work on self-improvement, which is why he's taking the English classes.

⁹ 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.

¹⁰ 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.

¹¹ 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.

[29] Those efforts aren't enough to meet the requirements of this second factor because he would need to show some effort for me to even consider them.

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

[30] The Appellant has set personal conditions that are limiting his chances of going to work. In this case the Appellant says he's retired and isn't looking to work anymore.

[31] I find that his decision to retire has effectively limited his chances of working again.

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

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

Conclusion

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

[34] This means that the appeal is dismissed.

Ranjit Dhaliwal

Member, General Division – Employment Insurance Section